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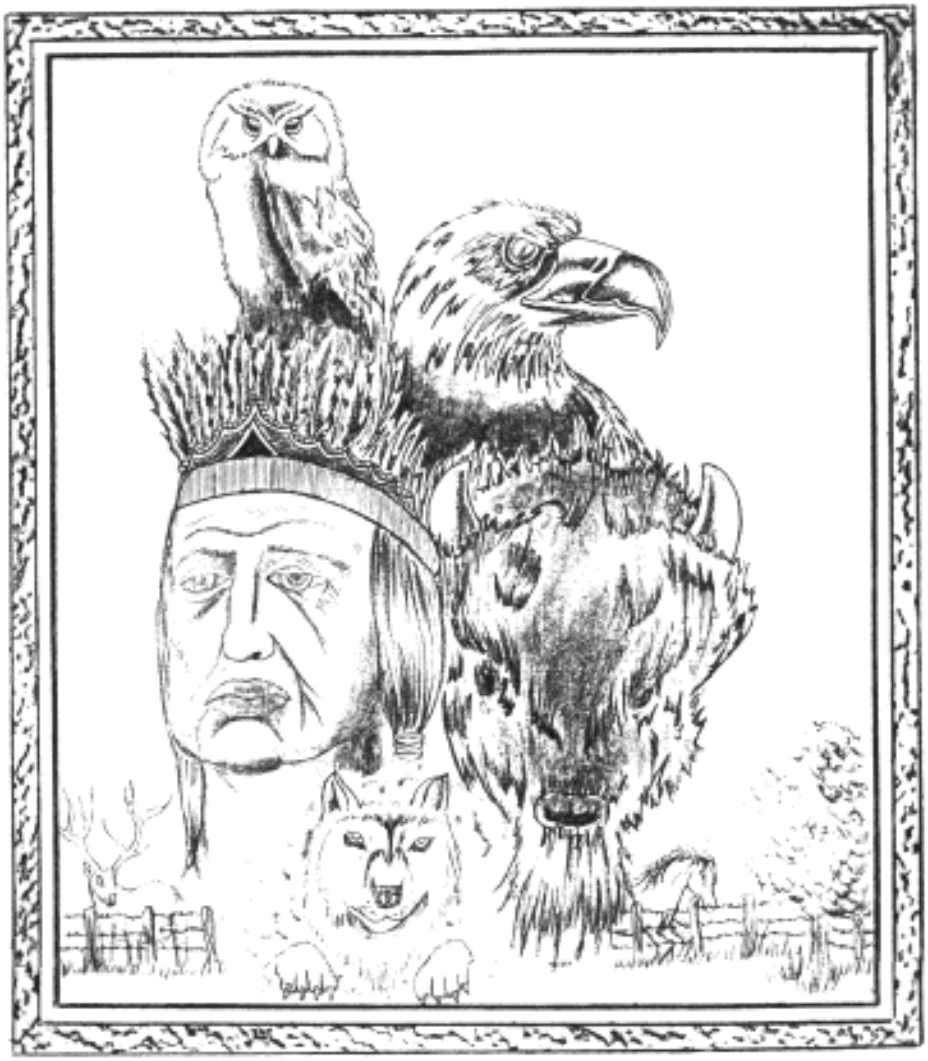

This month's front cover artwork:

Artist: *Pedro Torres*

10th Grade

Zapata High School

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

We will display artwork on the cover of each *Texas Register.* The artwork featured on the front cover is chosen at random.

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

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

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ADOPTED RULES

EXEMPT FILINGS

TABLES AND GRAPHICS

OPEN MEETINGS

ATTORNEY GENERAL

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

Request for Opinions

RQ-975. Request from Mr. Barry R. Mc Bee, Chair, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, concerning whether the legislature may authorize the Natural Resources Conservation Commission to grant exemption from pollution control and abatement provisions.

RQ-976. Request from the Honorable Steve Holzheauser, Chair, Committee on Energy Resources, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning clarification of Attorney General Opinion DM-444, regarding the relationship between New Braunfels Utilities and the City of New Braunfels.

RQ-977. Request from the Honorable James M. Kuboviak, Brazos County Attorney, 300 East 26th Street, Suite 325, Bryan, Texas 77803, concerning whether a district clerk may simultaneously hold the position of unpaid reserve deputy sheriff.

RQ-978. Request from the Honorable Teel Bivins, Chair, Senate Education Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, concerning whether Education Code, §51.306, which requires a basic skills test for students at public universities, may be applied to students at proprietary schools.

RQ-979. Request from the Honorable Ron Lewis, Chair, County Affairs, Texas House of Representatives, P.O. Box 2910 Austin, Texas 78768-2910, concerning the effect of House Bill 2179, Acts 1997, 75th Leg., R.S., ch. 442, on public contracts that use day labor.

RQ-980. Request from the Honorable Chris Harris, Chair, Administration Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068, concerning whether an "outsource" company that provides services in employment and labor issues must be licensed by the Board of Private Investigators and Private Security Agencies.

RQ-981. Request from Patti J. Patterson, M.D., Commissioner of Health, 1100 West 49th Street, Austin, Texas 78756-3199, concerning constitutionality of chapter 150, Agriculture Code, which regulates the labeling of imported meat.

RQ-982. Request from Mr. Tommy V. Smith, Executive Director/ Commissioner, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, concerning definition of a "management search consultant" firm.

RQ-983. Request from Ms. Sherry L. Robinson, Waller County, Criminal District Attorney, 836 Austin Street, Suite 105, Hempstead, Texas 77445, concerning constitutionality of property ownership qualification for membership on the board of supervisors of the Brookshire-Katy Drainage District.

RQ-984. Request from the Honorable Renee Ann Mueller, Washington County Attorney, County Courthouse, 100 East Main, Suite 103, Brenham, Texas 77833, concerning whether an elected county attorney may simultaneously serve as a community college instructor.

RQ-985. Request from the Honorable Rodney Ellis, Co-Chair, Joint Committee on Historically Underutilized Business, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068, concerning authority of the General Services Commission to promulgate rules regarding the Historically Underutilized Business Program.

RQ-986. Request from the Honorable Rodney Ellis, Chair, Jurisprudence Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068, concerning authority of the Houston City Council with regard to the Houston-Harris County Sports Authority.

RQ-987. Request from the Honorable Rodney Ellis, Chair, Jurisprudence Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068, concerning constitutionality of Senate Bill 1417, Acts 1997, 75th Leg., R.S., ch. 1327, and related questions.

TRD-9712447

OFFICE OF THE SECRETARY OF STATE

Under provisions of the Texas Election Code (Article 31.001), the secretary of state is authorized to issue opinions based on the election laws.

Questions on particular submissions should be addressed to the Office of the Secretary of State, Elections Division, P.O. Box 12887, Austin, Texas 78711, 1 (800) 252-9602 or (512) 463-5650.

Election Law Opinion

AOG-2(1997) Request from the Honorable Debra Danburg, Chair, House Elections Committee, P.O. Box 66602, Houston, Texas 77266, concerning construction of Act of May 31, 1997, 75th Legislature, Regular Session, House Bill 298, §8(a)-(b).

SUMMARY House Bill 298, 75th Legislature, Regular Session, section 8, subsections (a) and (b), are meaningless surplusage. These subsections are null, void and of no legal effect whatsoever.

TRD-9712409

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EMERGENCY RULES

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

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

TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 21. Student Services

Subchapter P. Professional Nurses' Student Loan Repayment Program

19 TAC §21.509

The Texas Higher Education Coordinating Board adopts emergency amendments to Chapter 21, Subchapter P, §21.509, concerning Professional Nurses' Student Loan Repayment Program (Priorities of Application Approval). The rule is to be adopted on an emergency basis pursuant to §2001.034 of the Texas Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The rules are being proposed for emergency action to bring them into compliance with the decision of the Fifth Circuit Court of Appeals in Hopwood v. Texas. To comply with the court's ruling and the Attorney General's guidance, the rules are being amended to delete race, ethnicity or minority status from the criteria used for making awards to students.

The amendments to the rules are proposed under Texas Education Code, Section 61.656 and Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996).

§21.509. Priorities of Application Approval.

The advisory committee shall advise the board on priorities of application approval based upon the following criteria (not in priority order):

[(1) ethnic or racial minority status;]

(1)[(2)] geographical area of nursing practice;

(2)[(3)] employment by a state agency;

(3)[(4)] employment on a nonprofit nursing school faculty;

(4)[(5)] whether the person is a practicing nurse in an area with an acute nursing shortage; and

(5)[(6)] financial need.

Issued in Austin, Texas, on September 12, 1997.

TRD-9712157
James McWhorter
Assistant Commissioner for Administration
Texas Higher Coordinating Board
Effective date: September 12, 1997
Expiration date: January 12, 1998
For further information, please call: (512) 483–6162

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Subchapter HH. Exemption Program for Texas Air and Army National Guard/ROTC Students

19 TAC §21.1055, §21.1057

The Texas Higher Education Coordinating Board adopts emergency amendments to Chapter 21, Subchapter HH, §21.1055 and §21.1057, concerning Exemption Program for Texas Air and Army National Guard/ROTC Students. The rule is to be adopted on an emergency basis pursuant to §2001.034 of the Texas Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The rules are being proposed for emergency action to bring them into compliance with the decision of the Fifth Circuit Court of Appeals in Hopwood v. Texas. To comply with the court's ruling and the Attorney General's guidance, the rules are being amended to delete race, ethnicity or minority status from the criteria used for making awards to students.

The amendments to the rules are proposed under Texas Education Code, Section 61.656 and Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996).

§21.1055. Definitions.

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

Adjutant General–The Adjutant General's Office to which the Texas Air and Army National Guard report.

Board–The Texas Higher Education Coordinating Board.

Chief Executive Officer–the President of a participating ROTC institution.

Commissioner–The commissioner of higher education, the chief executive officer of the board.

Financial need–The cost of attendance at an eligible institution less the expected family contribution and any gift aid for which the student is eligible. The cost of attendance and family contribution are to be determined in accordance with board guidelines. The cost of attendance includes tuition, fees, books and supplies and living expenses.

Full-time Student–An individual enrolled for the equivalent of at least 12 semester credit hours each semester, including military science courses.

[Minority–A student whose ethnic or racial group is Black (Non-Hispanic), Hispanic, American Indian or Alaskan Native, or Asian or Pacific Islander.]

Program Officer–The Texas Air and Army National Guard/ROTC Exemption Program Officer designated by an eligible institution to represent the board for the program on that campus.

Resident– A bona fide resident of the State of Texas as determined by the board and reflected in Subchapter B of this chapter (relating to Determining Residence Status). Nonresident students eligible to pay resident tuition rates are excluded from this program.

Room and Board Exemption–An exemption from the payment of an eligible institution's fees and charges for lodging and board as described in Section 21.1062(b) of this title (relating to Award Amounts).

ROTC–The Reserve Officers Training Corps for the Texas Air National Guard and the Texas Army National Guard.

ROTC Institution–An institution of higher education, as defined by Section 61.003 of the Texas Education Code, that maintains a Reserve Officers' Training Corps (ROTC).

Tuition and Fee Exemption–An exemption from the payment of all of an eligible institution's dues, fees, and enrollment charges, including correspondence courses, general property deposit fees, and student services fees. This does not include fees or charges for clothing, books or supplies.

§21.1057. Selection Committee.

(a) (No change.)

(b) Duties. The selection committee shall

(1) review applications and conduct interviews of students who have applied for the exemption and determine which students qualify to receive the exemption, taking the following criteria into consideration:

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

[(C) the state's ethnic, racial and gender diversity; and]

(C)[(D)] projected staffing requirements for the Texas Air and Army National Guard

(2) determine whether an extension of the two-year lodging and board exemption or four-year tuition and fee exemption should be granted for periods of active military duty required of the student;

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

Issued in Austin, Texas, on September 12, 1997.

TRD-9712159
James McWhorter
Assistant Commissioner for Administration
Texas Higher Coordinating Board
Effective date: September 12, 1997
Expiration date: January 12, 1998
For further information, please call: (512) 483–6162

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Chapter 22. Grant and Scholarship Programs

Subchapter F. Provisions for the Scholarship Programs for Vocational Nursing Students

19 TAC §22.103, §22.104

The Texas Higher Education Coordinating Board adopts emergency amendments to Chapter 22, Subchapter F, §22.103 and §22.104, concerning Provisions for the Scholarship Programs for Vocational Nursing Students. The rule is to be adopted on an emergency basis pursuant to §2001.034 of the Texas Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The rules are being proposed for emergency action to bring them into compliance with the decision of the Fifth Circuit Court of Appeals in Hopwood v. Texas. To comply with the court's ruling and the Attorney General's guidance, the rules are being amended to delete race, ethnicity or minority status from the criteria used for making awards to students.

The amendments to the rules are proposed under Texas Education Code, Section 61.656 and Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996).

§22.103. Program Titles and Distinctions.
Three scholarship programs for vocational nursing students are to be administered in accordance with this subchapter. Their titles are the General Scholarship Program for Vocational Nursing Students, the **Vocational Nursing Scholarship Program** [Scholarship Program for Ethnic Minorities in Vocational Nursing] and the Scholarship Program for Rural Vocational Nursing Students. All three programs will be administered in keeping with this subchapter**.** [;however:]

(1) **Funds awarded through the General Scholarship Program for Vocational Nursing Students may go to any eligible student.** [funds awarded through the Scholarship Program for Ethnic Minorities in Vocational Nursing can only go to students who are members of ethnic or racial minority groups comprising less than fifty percent of the state's population as revealed in the most recent federal census, and,]

(2) (No change.)

§22.104. Eligible Students.
To receive funds through one of the Vocational Nurses Scholarship Programs, a student must meet the general eligibility requirements of this chapter and be enrolled in a vocational nursing program. In determining student eligibility, the board shall consider the following factors relating to each applicant:

[(1) member of an ethnic minority or race comprising less than fifty percent of the state's population;]

(1)[(2)] scholastic ability and performance as measured by high school rank and grade point average, GED score, or college grade point average;

(2)[(3)] geographical area of nursing practice;

(3)[(4)] financial need;

(4)[(5)] receipt of Aid to Families with Dependent Children or participation in another public welfare program; and

(5)[(6)] employment by a state agency.

Issued in Austin, Texas, on September 12, 1997.

TRD-9712161
James McWhorter
Assistant Commissioner for Administration
Texas Higher Coordinating Board
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For further information, please call: (512) 483–6162

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Subchapter G. Provisions for the Scholarship Programs for Professional Nursing Students

19 TAC §§22.123, 22.124, 22.125

The Texas Higher Education Coordinating Board adopts emergency amendments to Chapter 22, Subchapter G, §§22.123, 22.124, 22.125, concerning Provisions for the Scholarship Programs for Professional Nursing Students. The rule is to be adopted on an emergency basis pursuant to §2001.034 of the Texas Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The rules are being proposed for emergency action to bring them into compliance with the decision of the Fifth Circuit Court of Appeals in Hopwood v. Texas. To comply with the court's ruling and the Attorney General's guidance, the rules are being amended to delete race, ethnicity or minority status from the criteria used for making awards to students.

The amendments to the rules are proposed under Texas Education Code, Section 61.656 nd Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996).

§22.123. Program Titles and Distinctions.

Five scholarship programs for nursing students are to be administered in accordance with this subchapter. Their titles are the **Professional Nursing Scholarship Program** [Scholarship Program for Ethnic Minorities in Professional Nursing], the Scholarship Program for Rural Professional Nursing Students, the Scholarship Program for Licensed Vocational Nurses Becoming Professional Nurses, the Scholarship Program for Rural BSN and Graduate Nursing Students, and the General Scholarship Program for Professional Nursing Students. All five programs will be administered in keeping with this subchapter. [; however:]

[(1) funds awarded through the Scholarship Program for Ethnic Minorities in Professional Nursing can only go to students whose ethnic or racial group is Black, Non-Hispanic; Hispanic, Asian or Pacific Islander, American Indians or Alaskan Natives;]

(1)[(2)] Funds awarded through the Scholarship Program for Rural Professional Nursing Students can only go to students who graduated from high schools located in rural areas (nonmetropolitan areas as defined by the United States Census Bureau in its most recent census) or who have lived in such a rural area of Texas for the 12 months prior to enrollment in a professional nursing program. Furthermore, Rural Professional Nursing Scholarship recipients must be attending a nursing program offered in a rural area of the state (a nonmetropolitan county as defined by the most recent census of the United States Census Bureau). Extended campuses, if in rural (nonmetropolitan) locations, are eligible to participate.

(2)[(3)] Funds awarded through the Scholarship Program for Licensed Vocational Nurses Becoming Professional Nurses must go to students who are Licensed Vocational Nurses enrolled in a program leading to licensure as a Professional Nurse.

(3)[(4)] Funds awarded through the Scholarship Program for Rural BSN and Graduate Nursing Students must go to students who graduated from high schools located in rural (nonmetropolitan) areas or who have lived in a rural area of Texas for the 12 months prior to enrollment in a professional nursing program. Rural BSN and graduate nursing students may be attending a nursing program offered at any eligible institution in the State.

(4)[(5)] Funds awarded through the General Scholarship Program for Professional Nursing students may go to any eligible student.

§22.124. Eligible Students.

To receive funds through one of the Professional Nursing Student Scholarship Programs, a student must meet the general eligibility requirements of this chapter and be enrolled in a professional nursing program or, (if applying for an award through the Scholarship Program for Licensed Vocational Nurses studying to become Professional Nurses) be a Licensed Vocational Nurse enrolled on at least a half-time basis in a program of study leading to licensure as a Professional Nurse. In determining what best promotes the health care and educational needs of this State, the board shall consider the following factors relating to each applicant:

[(1) member of an ethnic minority or race which is Black, Non-Hispanic; Hispanic; Asian or Pacific Islander; American Indians or Alaskan Natives minority status;]

(1)[(2)] scholastic ability and performance as measured for entering freshmen by high school grade point average, rank and scores on standardized college entrance examination, and for continuing or transfer college students by its college grade point average;

(2)[(3)] geographical area of nursing practice;

(3)[(4)] financial need;

(4)[(5)] whether the person received Aid to Families with Dependent Children or participates in another public welfare program;

(5)[(6)] employment by a state agency;

(6)[(7)] eployment on a nursing school faculty of an eligible institution; and

(7)[(8)] whether the person at the time of application to participate in the scholarship program is a practicing nurse in an area with an acute nursing shortage or is likely to practice in such an area.

§22.125. Award Amounts.

The maximum award for a student through any of the programs is the lesser of the student's financial need or the program maximum as stated below:

(1) for the **Professional Nursing Scholarship Program** [Scholarship Program for Ethnic Minorities in Professional Nursing] – $2,000 per year for those enrolled in an associate degree program and $3,000 for each student enrolled in a baccalaureate or graduate degree program;

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

Issued in Austin, Texas, on September 12, 1997.

TRD-9712163
James McWhorter
Assistant Commissioner for Administration
Texas Higher Coordinating Board
Effective date: September 12, 1997
Expiration date: January 12, 1998
For further information, please call: (512) 483–6162

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Subchapter I. Provisions for the Fifth-Year Accounting Student Scholarship Program

19 TAC §22.163

The Texas Higher Education Coordinating Board adopts emergency amendments to Chapter 22, Subchapter I, §22.163, concerning Provisions for the Fifth-Year Accounting Student Scholarship Program (Eligible Students). The rule is to be adopted on an emergency basis pursuant to §2001.034 of the Texas Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The rules are being proposed for emergency action to bring them into compliance with the decision of the Fifth Circuit Court of Appeals in Hopwood v. Texas. To comply with the court's ruling and the Attorney General's guidance, the rules are being amended to delete race, ethnicity or minority status from the criteria used for making awards to students.

The amendments to the rules are proposed under Texas Education Code, Section 61.755 and Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996).

§22.163. Eligible Students.

(a) (No change.)

(b) In selecting recipients the program officer shall consider at a minimum the following factors relating to each applicant:

(1) (No change.)

[(2) member of an ethnic minority or race which is Black, non-Hispanic; Hispanic; Asian or Pacific Islander or American Indian or Alaskan Native;]

(2)[(3)] scholastic ability and performance as measured by the student's cumulative college grade point average as determined by the institution in which the student is enrolled; and

(3)[(4)] Texas residency.

Issued in Austin, Texas, on September 12, 1997.

TRD-9712165
James McWhorter
Assistant Commissioner for Administration
Texas Higher Coordinating Board
Effective date: September 12, 1997
Expiration date: January 12, 1998
For further information, please call: (512) 483–6162

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PROPOSED RULES

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

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

TITLE 7. BANKING AND SECURITIES

Part II. Texas Department of Banking

Chapter 25. Prepaid Funeral Contracts

The Texas Department of Banking (the department) proposes amendments to §25.23, concerning application fees, and §25.51 and §25.54, concerning investment of trust funds. The amendments are presented separately by subchapter under a common pream ble as required by the *Texas Register*.

The proposed amendments will revise the manner in which statutory source law is cited to conform with the recent codification of the source law into the Finance Code, effective September 1, 1997. In the event of a simple citation change from source law to the Finance Code, the change is being made administratively, without the necessity of a proposed amendment and adoption. In the case of the sections proposed to be amended, substantial wording and organizational changes are required to change citations. No substantive changes will occur as a result of the amendments to citations.

While no substantive changes are required in §25.54 to implement citation changes, a change in law effective September 1, 1997, by Act of May 29, 1997, House Bill 1843, §2, 75th Legislature, creates the opportunity for a discretionary exemption, u pon application, from the investment limits of §25.54 and Finance Code, §154.258(b), (c), and (d). New §25.54(d) incorporates the new provisions of law.

Everette D. Jobe, General Counsel, Texas Department of Banking, has determined that for the first five-year period the section as proposed will be in effect, there will be no fiscal implications for state or local government as a result of enforcing o r administering the section.

Mr. Jobe also has determined that for each year of the first five-year period the section as proposed will be in effect, the public benefit anticipated as a result of the amendment will be conformity of the section with underlying source law and conse quent reduction of potential public confusion. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted in writing to Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

Subchapter B. Regulation of Licenses

7 TAC §25.23

The amendments are proposed pursuant to rulemaking authority under Finance Code, §154.051, which authorizes the department to prescribe reasonable rules and regulations concerning all matters relating to the enforcement and administration of Chapter 154. Prior to September 1, 1997, identical rulemaking authority resides at Texas Civil Statutes, Article 548b, §2, the source law codified into Finance Code, §154.051.

Finance Code, Chapter 154, is affected by the proposed amendments.

§25.23. Application Fees.

(a) Definitions. **Words and terms used in this subchapter that are defined in the Finance Code, §154.002, have the same meanings as defined therein.** The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) [Act-Texas Civil Statutes, Article 548b.]

[(2) Commissioner-The Banking Commissioner of Texas.]

[(3) Department-The Texas Department of Banking.] [(4)] Outstanding contracts-Unmatured, prepaid funeral benefit contracts. For purposes of determining fees that vary with the number of outstanding contracts, the number of outstanding contracts shall be the number reported by a seller in the most recen t annual report on file with the department, subject to adjustments for errors or mistakes in such annual report. If a seller has not filed an annual report for the fiscal year immediately preceding the relevant

determination date, the department shall d etermine, in its sole discretion based on reasonably obtainable and reliable information, the number of outstanding contracts.

(2)[(5)] Permit holder-A person having a valid permit to sell prepaid funeral benefits.

[(6) Prepaid funeral benefits- Prearranged or prepaid funeral or cemetery services or funeral merchandise, including caskets, grave vaults, and all other articles of merchandise incidental to a funeral service. The term does not include a grave lot, gra ve space, grave marker, monument, tombstone, crypt, niche, or mausoleum unless it is sold in contemplation of trade or barter for services and merchandise to which the Act applies.]

(3) [(7)] Seller- **As defined in the Finance Code, §154.002, and also** [A person selling, accepting funds or premiums for, or soliciting contracts for prepaid funeral benefits or contracts or policies of insurance to fund prepaid funera l benefits in this state,] including**, for purposes of this section pursuant to Finance Code, §154.107,** a seller who has discontinued selling prepaid funeral benefits but still has outstanding contracts.

(b) Application fees. The application fees set forth in this subsection have been set in accordance with the **Finance Code, Chapter 154,** [Act] for the purpose of defraying the cost of administering **the Finance Code, Chapter 154** [this Ac t]. Except as otherwise provided in this subsection, all fees are due at the time the application is filed and are nonrefundable. An application submitted without the appropriate filing fee will be deemed incomplete and will not be considered.

(1) New permit application fee. An applicant for a new prepaid funeral benefits permit, other than an applicant seeking a permit for the sole purpose of administering previously sold and outstanding contracts, shall pay a $500 fee. An applicant that ad ministers previously sold and outstanding contracts and wishes to again sell prepaid funeral benefits shall pay the greater of a $500 fee or the fee calculated pursuant to paragraph (2) of this subsection. In addition to the application fee, an applican t shall pay any extraordinary costs incurred by the department pursuant to any out of state investigation of the applicant as required by the **Finance Code, §154.102(3)** [Act, §3]. Extraordinary costs shall be paid by the applicant within 20 d ays after written request by the department.

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

(c) (No change.)

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

Issued in Austin, Texas, on September 12, 1997.

TRD-9712173
Everette D. Jobe
General Counsel
Texas Department of Banking
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 475–1300

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Subchapter C. Investment of Trust Funds

7 TAC §25.51, §25.54

The amendments are proposed pursuant to rulemaking authority under Finance Code, §154.051, which authorizes the department to prescribe reasonable rules and regulations concerning all matters relating to the enforcement and administration of Chapter 154. Prior to September 1, 1997, identical rulemaking authority resides at Texas Civil Statutes, Article 548b, §2, the source law codified into Finance Code, §154.051.

Finance Code, Chapter 154, is affected by the proposed amendments.

§25.51. Definitions.

Words and terms used in this subchapter that are defined in the Finance Code, §154.002, have the same meanings as defined therein. The following words and terms, when used in this subchapter, shall have the following meanings, unless the cont ext clearly indicates otherwise.

[Act-Texas Civil Statutes, Article 548b.]

[Commissioner-The Banking Commissioner of Texas.]

[Department-The Texas Department of Banking.]

Foreign security-A bond, evidence of indebtedness or obligation that would meet the requirements of the **Finance Code, §154.258(a)(5)** [Act, §5A(d)(5)], but for the fact that it is issued by a foreign country or a corporation organized under the laws of a foreign country, or a common or preferred stock that is publicly trading on a stock exchange located within the United States and would be described by the **Finance Code, §154.258(a)(7) or (8)** [Act, §5A(d)(7) or §5A(d)(8)], bu t for the fact that it is issued by a corporation organized under the laws of a foreign country.

[Funeral provider-The funeral home designated in a prepaid funeral benefits contract that has agreed and obligated itself to provide the specified prepaid funeral benefits.]

Government security-A security that is a permissible investment under the **Finance Code, §154.258(a)(2) or (3)** [Act, §5A(d)(2) or §5A(d)(3)], but not including a municipal security under the **Finance Code, §154.258(a)(4)** [Act, §5A(d)(4)].

Insured deposit-An investment authorized under the **Finance Code, §154.258(a)(1)** [Act, §5A(d)(1)].

Trustee-The person or entity named as trustee in the instruments creating or amending a prepaid funeral trust, including a trust department in a state or national bank in this state or a trust company authorized to do business in this state, with which prepaid funeral benefits funds have been placed under the **Finance Code, §154.253** [Act, §5(a)(2)].

Trust fund or trust funds-The total prepaid funeral benefit funds related to a single permit holder.

§ 25.54. Investment Limitations.

(a) Subject to §25.52 of this title (relating to the Prudent Person Rule), no more than 70% of trust funds may be invested in any combination of the following:

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

(3) common stock of a corporation organized under the laws of the United States or of a state; **and** [and/or]

(4) (No change.)

(b) No more than 10% of total trust funds may be invested in any combination of real estate, oil and gas interests, limited partnerships, foreign securities, and any other investments not specifically authorized by the **Finance Code, Chapter 154, [Act] or this subchapter.**

(c) (No change.)

(d) Notwithstanding the foregoing, the commissioner may waive a limitation provided by this section, and by Finance Code, §154.258(b), (c), or (d), on written request of a permit holder, if the commissioner concludes that the waiver does not threa ten an unreasonable risk of loss to the prepaid funeral benefits trust funds. The commissioner by order shall approve or disapprove the request not later than the 60th day after the date the commissioner receives the request. If the commissioner does n ot disapprove the request before the expiration of this period, the request is approved. If the permit holder does not request a hearing before the 11th day after the date of an order of disapproval, the order takes effect on that 11th day. If a hearin g is timely requested, the hearing shall be conducted as a contested case under Government Code, Chapter 2001.

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

Issued in Austin, Texas, on September 12, 1997.

TRD-9712174
Everette D. Jobe
General Counsel
Texas Department of Banking
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 475-1300

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TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 21. Student Services

Subchapter P. Professional Nurses' Student Loan Repayment Program

19 TAC §21.509

(Editor's note: The Texas Higher Education Coordinating Board proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas Higher Education Coordinating Board proposes amendments to Chapter 21, Subchapter P, §21.509 concerning Professional Nurses' Student Loan Repayment Program (Priorities of Application Approval). The proposed changes are being made to bring them into compliance with the decision of the Fifth Circuit Court of Appeals in Hopwood v. Texas. To comply with the court's ruling and the Attorney General's guidance, the rules are being amended to delete race, ethnicity or minority status from the criteria used for making awards to students.

Sharon Cobb, Assistant Commissioner for Student Services has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Ms. Cobb also has determined that for the first five years the rule is in effect the public benefit will be that the criteria used for making awards to students would not include race, ethnicity or minority status. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

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

The amendments to the rules are proposed under Texas Education Code, Section 61.656 and Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996) which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Professional Nurses' Student Loan Repayment Program (Priorities of Application Approval).

There were no other sections or articles affected by the proposed amendments.

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

Issued in Austin, Texas, on September 12, 1997.

TRD-9712156
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 483–6162

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Subchapter HH. Exemption Program for Texas Air and Army National Guard/ROTC Students

19 TAC §21.1055, §21.1057

(Editor's note: The Texas Higher Education Coordinating Board proposes for permanent adoption the amended sections it adopts on an emergency basis in this issue. The text of the amended sections are in the Emergency Rules section of this issue.)

The Texas Higher Education Coordinating Board proposes amendments to Chapter 21, Subchapter HH, §21.1055 and §21.1057, concerning Exemption Program for Texas Air and Army National Guard/ROTC Students. The proposed changes are being made to bring them into compliance with the decision of the Fifth Circuit Court of Appeals in Hopwood v. Texas. To comply with the court's ruling and the Attorney General's guidance, the rules are being amended to delete race, ethnicity or minority status from the criteria used for making awards to students.

Sharon Cobb, Assistant Commissioner for Student Services has determined that for the first five-year period the rule is in effect

there will be no fiscal implications as a result of enforcing or administering the rule.

Ms. Cobb also has determined that for the first five years the rule is in effect the public benefit will be that the criteria used for making awards to students would not include race, ethnicity or minority status. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

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

The amendments to the rules are proposed under Texas Education Code, Section 61.027 and Section 54.212 and Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996) which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Exemption Program for Texas Air and Army National Guard/ROTC Students.

There were no other sections or articles affected by the proposed amendments.

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

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TRD-9712158
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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For further information, please call: (512) 483–6162

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Chapter 22. Grant and Scholarship Programs

Subchapter F. Provisions for the Scholarship Programs for Vocational Nursing Students

19 TAC §22.103, §22.104

(Editor's note: The Texas Higher Education Coordinating Board proposes for permanent adoption the amended sections it adopts on an emergency basis in this issue. The text of the amended sections are in the Emergency Rules section of this issue.)

The Texas Higher Education Coordinating Board proposes amendments to Chapter 22, Subchapter F, §22.103 and §22.104 concerning Provisions for the Scholarship Programs for Vocational Nursing Students. The proposed changes are being made to bring them into compliance with the decision of the Fifth Circuit Court of Appeals in Hopwood v. Texas. To comply with the court's ruling and the Attorney General's guidance, the rules are being amended to delete race, ethnicity or minority status from the criteria used for making awards to students.

Sharon Cobb, Assistant Commissioner for Student Services has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Ms. Cobb also has determined that for the first five years the rule is in effect the public benefit will be that the criteria used for making awards to students would not include race, ethnicity or minority status. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

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

The amendments to the rules are proposed under Texas Education Code, Section 61.656 and Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996) which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Provisions for the Scholarship Programs for Vocational Nursing Students.

There were no other sections or articles affected by the proposed amendments.

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

Issued in Austin, Texas, on September 12, 1997.

TRD-9712160
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 483–6162

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Subchapter G. Provisions for the Scholarship Programs for Professional Nursing Students

19 TAC §§22.123, 22.124, 22.125

(Editor's note: The Texas Higher Education Coordinating Board proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas Higher Education Coordinating Board proposes amendments to Chapter 22, Subchapter G, §22.123, §22.124, §22.125 concerning Provisions for the Scholarship Programs for Professional Nursing Students. The proposed changes are being made to bring them into compliance with the decision of the Fifth Circuit Court of Appeals in Hopwood v. Texas. To comply with the court's ruling and the Attorney General's guidance, the rules are being amended to delete race, ethnicity or minority status from the criteria used for making awards to students.

Sharon Cobb, Assistant Commissioner for Student Services has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Ms. Cobb also has determined that for the first five years the rule is in effect the public benefit will be that the criteria used for making awards to students would not include race, ethnicity or minority status. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

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

The amendments to the rules are proposed under Texas Education Code, Section 61.656 and Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996) which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Provisions for the Scholarship Programs for Professional Nursing Students.

There were no other sections or articles affected by the proposed amendments.

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

Issued in Austin, Texas, on September 12, 1997.

TRD-9712162
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 483–6162

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Subchapter I. Provisions for the Fifth-Year Accounting Student Scholarship Program

19 TAC §22.163

(Editor's note: The Texas Higher Education Coordinating Board proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas Higher Education Coordinating Board proposes amendments to Chapter 22, Subchapter I, §22.163 concerning Provisions for the Fifth-Year Accounting Student Scholarship Program (Eligible Students). The proposed changes are being made to bring them into compliance with the decision of the Fifth Circuit Court of Appeals in Hopwood v. Texas. To comply with the court's ruling and the Attorney General's guidance, the rules are being amended to delete race, ethnicity or minority status from the criteria used for making awards to students.

Sharon Cobb, Assistant Commissioner for Student Services has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Ms. Cobb also has determined that for the first five years the rule is in effect the public benefit will be that the criteria used for making awards to students would not include race, ethnicity or minority status. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

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

The amendments to the rules are proposed under Texas Education Code, Section 61.755 and Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996) which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Fifth-Year Accounting Student Scholarship Program (Eligible Students).

There were no other sections or articles affected by the proposed amendments.

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

Issued in Austin, Texas, on September 12, 1997.

TRD-9712164
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 483–6162

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TITLE 22. EXAMINING BOARDS

Part VII. State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments

Chapter 141. Fitting and Dispensing of Hearing Instruments

22 TAC §141.16

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee) with the approval of the Texas Board of Health (board) proposes an amendment to §141.16, concerning the fitting and dispensing of hearing instruments. The amendment requires that hearing tests not conducted in a stationary acoustical enclosure include a notation of the ambient noise level.

The amendment allows for additional requirements when a hearing examination is not conducted in a stationary acoustical enclosure. These requirements include: a sound level measurement to determine the ambient noise level shall be conducted and documented on the audiogram at the time of the examination; a calibrated sound level meter will be used to determine the ambient noise level; and the ambient noise level shall not exceed 50 dBA equivalent.

Bernie Underwood, C.P.A., Chief of Staff, Associateship for Health Care Quality and Standards, has determined that for the

first five-year period the sections will be in effect, fiscal implications for state government are anticipated to be negligible. The cost and process of administering the program will be offset by revenues generated from licensing fees. There will be no fiscal implications for state or local government.

Ms. Underwood also has determined that for each year of the first five years the section is effect, the public benefits anticipated as a result of enforcing or administering the section will be continued protection of the health, safety, and welfare of the citizens of Texas from the harmful effects of fitters and dispensers of hearing instruments by unskilled or unprincipled practitioners. There is no or minimal effect on small businesses. The probable economic cost to persons required to comply with the rule amendment as proposed is $200. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Bobby D. Schmidt, Executive Director, State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, 1100 West 49th Street, Austin, Texas 78756-3183, Telephone (512) 834-6784. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 4566-1.01 et seq., which provides the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, subject to the Texas Board of Health approval, with the authority to adopt rules concerning the regulation and licensure of fitters and dispensers of hearing instruments.

This action affects Texas Civil Statutes, Article 4566-1.01 et seq.

§141.16. Conditions of Sale.

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

(g) Audiometric testing not conducted in a stationary acoustical enclosure.

(1) Sound level measurements must be conducted at the time of testing.

[(1) A notation shall be made on the hearing test if testing was done in a stationary acoustical enclosure.]

(2) Ambient noise level of location of audiometric testing[, if not done in a stationary acoustical enclosure,] shall include a notation on the hearing test of the following items:

(A) (No change.)

(B) model and serial number of equipment used to determine ambient noise level; [and]

(C) date of last calibration of sound level meter used to determine the ambient noise level; and

[(C) date of last calibration of equipment used to determine ambient noise level.]

(D) ambient noise level dBA equivalent.

(3) The test environment ambient noise level shall not exceed 50 dBA equivalent.

[(3) If audiometric testing is not conducted in a stationary acoustic enclosure the test environment shall have a dBA equivalent maximum allowable ambient noise level of 50 dBA.]

(4) (No change.)

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

Issued in Austin, Texas, on September 15, 1997.

TRD-9712301
Susan K. Steeg
General Counsel
State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 458-7236

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Part IX. Texas State Board of Medical Examiners

Chapter 185. Physician Assistants

The Texas State Board of Medical Examiners proposes amendments to §§185.2, 185.4, 185.6, 185.19, 185.20, 185.22, 185.23, 185.25, the repeal of §185.21 and new §185.21, concerning physician assistants. The proposed amendments will update the definition for physician assistant; will add documentation requirements for licensure; will clarify documentation which shall be submitted as part of the renewal process; will update grounds for denial of licensure and for disciplinary action; will add reporting requirements for investigations and update Prehearing procedures. Section 185.21 is being repealed and replaced by new §185.21 in order to remove the existing language and to add new information regarding Administrative Penalty for Physician Assistants.

Tony Cobos, general counsel, has determined that for the first five-year period the sections are in effect there will be no effect for state and local government.

Mr. Cobos also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be: an updated definition for physician assistant; additional documentation requirements for licensure; clarification of documentation which shall be submitted as part of the renewal process; updated grounds for denial of licensure and for disciplinary action; additional reporting requirements for investigations and updated Prehearing procedures and additional guidelines regarding Administrative Penalty for Physician Assistants. There will be no effect to small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

22 TAC §§185.2, 185.4, 185.6, 185.19, 185.20-185.23, 185.25

The amendments and new rule are proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495(b), §2.09(a), which provide the Texas State Board of Medical Examiners

with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act, and the Physician Assistant Licensing Act, Texas Civil Statutes, Article 4495b-1, §23, which authorizes the Texas State Board of Physician Assistant Examiners to adopt reasonable and necessary rules for the performance of its duties.

Texas Civil Statutes, Article 4495(b), §§5, 7, 8, 10, 18, and 23 are affected by this proposal.

§185.2. Definitions.

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

Physician assistant - **A person licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners.** [A graduate of a physician assistant or surgeon assistant training program accredited by the American Medical Association's Commission on Accreditation of Allied Health Education Programs and who has passed the certifying examination administered by the National Commission on the Certification of Physician Assistants, and who is licensed as a physician assistant by the board.]

§185.4. Licensure.

(a) Except as otherwise provided in this section, an individual shall be licensed by the board before the individual may function as a physician assistant. A license shall be granted to an applicant who:

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

(3) has successfully completed an educational program for physician assistants or surgeon assistants accredited by the Commission on Accreditation of Allied Health Education Programs, or by that committee's predecessor or successor entities, **and holds a valid and current certificate issued** [and has passed the Physician Assistant National Certifying Examination administered] by the National Commission on Certification of Physician Assistants;

(4)-(8) (No change.)

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

§185.6. Annual Renewal of License.

(a) (No change.)

(b) The following documentation shall be submitted as part of the renewal process:

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

(3) A physician assistant may request in writing an exemption for the following reasons:

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

(C) [medical practice and] residence of longer than one year's duration outside the United States; or

(D) (No change.)

(4)-(8) (No change.)

(c)-(h) (No change.)

§185.19. Grounds for Denial of Licensure and for Disciplinary Action.

The board may refuse to issue a license to any person and may, following notice of hearing and a hearing as provided for in the Administrative Procedure Act, take disciplinary action against any physician assistant who:

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

(3) violates [any provision of these rules or of] the Physician Assistant Licensing Act **, or any rules relating to the practice of a physician assistant.** [;]

(4)-(10) (No change.)

(11) has committed any act that is in violation of the laws of the State of Texas if the act is connected with practice as a physician assistant; a complaint, indictment, or conviction of a law violation is not necessary for the enforcement of this provision; proof of the commission of the act while in practice as a physician assistant or under the guise of practice as a physician assistant is sufficient for action by the board under this section; [or]

(12) has had the person's license or other authorization to practice as a physician assistant suspended, revoked, or restricted or who has had other disciplinary action taken by another state regarding practice as a physician assistant or had disciplinary action taken by the uniformed services of the United States**. A** [, based on acts by the licensee similar to acts described in this section; a] certified copy of the record of the state or uniformed services of the United States taking the action is conclusive evidence of it**;** [.]

(13) fails to keep complete and accurate records of purchases and disposal of drugs listed in Chapter 483, Health and Safety Code, as required by Chapter 483, Health and Safety Code, or any subsequent rules. A failure to keep the records for a reasonable time is grounds for disciplinary action against the license of a physician assistant. The board or its representative may enter and inspect a physician assistant's place or places of practice during reasonable business hours for the purpose of verifying the correctness of these records and of taking inventory of the drugs on hand;

(14) writes a false or fictitious prescription or a dangerous drug as defined by Chapter 483, Health and Safety Code;

(15) prescribes , dispenses, or administers a drug or treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is prescribed, dispensed, or administered;

(16) unlawfully advertises in a false, misleading, or deceptive manner. Advertisements shall be defined as false, misleading, or deceptive consistent with §4, Article 4512p, Revised Statutes;

(17) alters, with fraudulent intent, any physician assistant license, certificate, or diploma;

(18) uses any physician assistant license, certificate, or diploma that has been fraudulently purchased, issued, or counterfeited or that has been materially altered;

(19) aids or abets, directly or indirectly, the practice as a physician assistant by any person not duly licensed to practice as a physician assistant by the board;

(20) is removed or suspended or has disciplinary action taken by his peers in any professional association or society, whether the association or society is local, regional, state, or national in scope, or is being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of privileges, or other disciplinary action, if that action, in the opinion of the board, was based on unprofessional conduct or professional incompetence that was likely to harm the public. This action does not constitute state action on the part of the association, society, or hospital medical staff;

(21) has repeated or recurring meritorious health care liability claims that in the opinion of the board evidence professional incompetence likely to harm the public, or

(22) through his practice as a physician assistant sexually abuses or exploits another person.

§185.20. Discipline of Physician Assistants.

(a) The board, upon finding a physician assistant has committed any **of the acts set forth** [offense described] in §185.19 of this title (relating to Grounds for Denial of Licensure and for Disciplinary Action), **shall enter an order imposing one or more of the following** [may] :

(1) (No change.)

(2) **administer** [order] a public [or private] reprimand;

(3) order revocation, suspension, **limitations** [limitation], or [other] restrictions of a physician assistant's license **, or other authorization to practice as a physician assistant, including limiting the practice of the person to, or excluding from the practice, one or more specified activities of the practice as a physician assistant or stipulating periodic board review**;

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

(7) order the physician assistant to perform public service [as a part of any disciplinary order; or];

(8) require the physician assistant to complete additional training**; or** [.]

(9) assess an administrative penalty against the physician assistant.

(b) (No change.)

§185.21. Administrative Penalty.

(a) The board by order may impose an administrative penalty, subject to the provisions of the Administrative Procedure Act, against a person licensed or regulated under the Physician Assistant Licensing Act who violates the Act or a rule or order adopted under the Act.

(b) The penalty for a violation may be in an amount not to exceed $5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) patient harm and the severity of patient harm;

(2) economic harm to any individual or entity and the severity of such harm;

(3) environmental harm and severity of such harm;

(4) increased potential for harm to the public;

(5) attempted concealment of misconduct;

(6) premeditated misconduct;

(7) intentional misconduct;

(8) motive;

(9) prior misconduct of a similar or related nature;

(10) disciplinary history;

(11) prior written warnings or written admonishments from any government agency or official regarding statutes or regulations pertaining to the misconduct;

(12) violation of a board order;

(13) failure to implement remedial measures to correct or mitigate harm from the misconduct;

(14) lack of rehabilitative potential or likelihood of future misconduct of a similar nature;

(15) relevant circumstances increasing the seriousness of the misconduct; and

(16) any other matter that justice may require.

(d) If the board by order finds that a violation has occurred and imposes an administrative penalty, the board shall give notice to the person of the board's order. The notice must include a statement of the right of the person to judicial review of the order.

§185.22. Complaint Procedure Notification.

(a) Methods of Notification. Pursuant to the Medical Practice Act, §2.09(s)(2), for the purpose of directing complaints to the Texas State Board of Medical Examiners, the board and its licensees shall provide notification to the public of the name, mailing address, and telephone number for filing complaints by one or more of the following methods:

(1) displaying in a prominent location at their place or places of business, signs in English and Spanish of no less than 8 and 1/2 inches by 11 inches in size with the **board-approved** [council-approved] notification statement printed alone and in its entirety in black on a white background in type no smaller than standard 24-point Times Roman print with no alterations, deletions, or additions to the language of the board-approved statement; or

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

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

§185.23. Investigations.

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

(c) Impaired Physician Assistants.

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

(3) Rehabilitation Order.

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

(C) A rehabilitation order entered pursuant to this section shall be a nondisciplinary private order and shall contain findings of fact and conclusions of law. A rehabilitation order, if entered by agreement, shall be an agreed disposition or settlement agreement for purposes of civil litigation and shall be exempt from the open records law, Chapter 552, Government Code. Confidentiality may be preserved through one or more of the following:

(i) **privileged and** confidential informal settlement conferences/show compliance proceedings;

(ii) **privileged and** confidential modification and termination requests and proceedings;

(iii)-(iv) (No change.)

(D)-(F) (No change.)

(d)-(h) (No change)

(i) Immunity **and Reporting Requirements.**

(1) A person, health care entity, medical peer review committee, or other entity that without malice furnishes records, information, or assistance to the board is immune from any civil liability arising from such act.

(2) Any medical peer review committee in this state, any physician assistant licensed to practice in this state, any physician assistant student, or any physician licensed to practice medicine or otherwise lawfully practicing medicine in this state shall report relevant information to the board related to the acts of any physician assistant in this state if, in the opinion of the medical peer review committee, physician assistant, physician assistant student, or a physician, a physician assistant poses a continuing threat to the public welfare through his practice as a physician assistant. The duty to report under this section shall not be nullified through contract.

§185.25. Procedure - Prehearing.

(a) Discovery. After the initiation and filing of a formal complaint, or upon the filing of the board's initial pleading in any other contested matter, the following discovery rules shall apply:

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

(5) Remedies and Sanctions. A failure to comply with a discovery request to the extent required by board rule, medical board rule, the Physician Assistant Licensing Act, the Medical Practice Act, or as agreed between the parties in a discovery agreement, may be remedied and sanctioned by ordering any or all of the following:

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

(C) payment by a party of the actual travel, lodging, and court reporter costs, but not attorney fees, incurred by an opposing party as a result of the failure to comply with the discovery requirements under **board rule** [council rule];

(D)-(E) (No change.)

(6)-(13) (No change.)

(b) (No Change.)

(c) Show Compliance Proceeding. Pursuant to the Administrative Procedure Act, §2001.054, the following rules shall apply to show compliance proceedings:

(1) Prior to institution of board proceedings to revoke, suspend, or take disciplinary action relating to a license or to involuntarily modify restrictions on a license, the physician assistant shall be given an opportunity to show compliance with all requirements of law for the retention of an unrestricted license either in writing, or through a personal appearance at **a privileged and confidential** [an] informal meeting with **one or more** [three] representatives of the board, at the option of the licensee.

(2)-(4) (No Change.)

(5) **One or more** [Two] members of the board, consisting of at least one physician assistant or one physician, shall conduct the show compliance proceeding as the board's representatives. The representative who has seniority on the board shall chair the proceeding.

(6)-(15) (No change.)

[(16) The licensee may have the show compliance proceeding recorded and reduced to writing at the licensee's expense after providing written notice to the Director of Hearings for the medical board at least one day in advance of the show compliance proceeding. Recording and transcribing equipment shall be provided by the licensee. Efforts to mediate the disputed matters or discussions concerning possible settlement options shall not be recorded.]

(d)-(g) (No change.)

(h) Informal Disposition. Pursuant to the Administrative Procedure Act, §2001.056, the following rules shall apply to informal dispositions of any complaint or matter relating to the Physician Assistant Licensing Act or of any contested case.

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

(3) To facilitate the expeditious disposition of complaints or contested cases, the board may provide a licensee with an opportunity to attend **a privileged and confidential** [an] informal settlement conference. The informal settlement conference may be held in conjunction with, and simultaneously with, a show compliance proceeding held pursuant to subsection (c) of this section.

(4) (No change.)

(5) **One or more** [Two] members of the board, consisting of at least one physician assistant or one physician, shall conduct the informal settlement conference as the board's representatives. The representative who has seniority on the board shall chair the conference.

(6)-(19) (No change.)

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

Issued in Austin, Texas, on September 15, 1997.

TRD-9712386
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 305-7016

♦ ♦ ♦

22 TAC §185.21

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

The repeal is proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495(b), §2.09(a), which provide the

Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act, and the Physician Assistant Licensing Act, Texas Civil Statutes, Article 4495b-1, §23, which authorizes the Texas State Board of Physician Assistant Examiners to adopt reasonable and necessary rules for the performance of its duties.

Texas Civil Statutes, Article 4495(b), §§5, 7, 8, 10, 18, and 23 are affected by this proposal.

§185.21. Disciplinary Entity.

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

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Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 305-7016

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Part XXII. Texas State Board of Public Accountancy

Chapter 501. Professional Conduct

General Provisions

22 TAC §501.40

The Texas State Board of Public Accountancy proposes an amendment to §501.40, concerning Registration Requirements.

The proposed amendment to §501.40 removes certain language which may be required under Miller v Stuart (11 Cir. 1997); recognizes and exempts the situation where a CPA who is a full-time employee of a law firm prepares income-tax returns for the law firm's clients in connection with the law firm's practice of law; and corrects the spelling of "insured."

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

Mr. Treacy also has determined that during the first five-year period the rule is in effect the anticipated public benefit as a result of enforcing or administering the rule will be in compliance with an appellate court opinion; a clearer understanding of the registration exemption for law firms; and correct spelling. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to Paul Gavia, Acting General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3900.

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

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

§501.40. Registration Requirements.

(a) (No change.)

(b) A certificate or registration holder engaged in the client practice of public accountancy as defined in §501.2 of this chapter (relating to Definitions) who is not required to practice through an entity registered with the board pursuant to subsection (a) of this section must, in each advertisement or written statement by the certificate or registration holder and/or by his or her employer or principal, in which reference is made to the certificate or registration holder or his or her association with the employer or principal as such, [whether or not the specific certificate or registration holder is named,] include an asterisk by the name of the employer or principal, which asterisk shall refer to a notation included within conspicuous proximity and with reasonable prominence that says "Not qualified to register with the Texas State Board of Public Accountancy to practice public accountancy in Texas." The notation must be printed in type not less bold than that contained in the body of the advertisement or written statement. If the advertisement is in audio format only, the foregoing notation shall be clearly declared at the conclusion of each such presentation.

(c) Notwithstanding the foregoing, the requirements of this section do not apply with regard to a certificate or registration holder performing services:

(1) as a licensed attorney at law of this state while in the practice of law[;] or **as an employee of a licensed attorney when acting within the scope of the attorney's practice of law; or**

(2) as an employee, officer, or director of a federally-insured depository institution, when lawfully acting within the scope of the legally permitted activities of the institution's trust department.

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

Issued in Austin, Texas, on September 11, 1997.

TRD-9712372
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 305-7800

♦ ♦ ♦

22 TAC §501.43

The Texas State Board of Public Accountancy proposes an amendment to §501.43, concerning Advertising.

The proposed amendment to §501.43 relocates the word "improperly" to a more logical location.

William Treacy, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal

implications for state or local government as a result of enforcing or administering this rule.

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

Comments on the proposal may be submitted to Paul Gavia, acting, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3900.

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

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

§501.43. Advertising.

(a) *(No change.)*

(b) A false, fraudulent, misleading, deceptive, or unfair statement or claim includes, but is not limited to, a statement or claim which:

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

(7) implies the ability to **improperly** influence any court, tribunal, regulatory agency or similar body or official [improperly or] due to some special relations;

(8)-(10) (No change.)

(c)-(g) (No change.)

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

Issued in Austin, Texas, on September 11, 1997.

TRD-9712373
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 305-7800

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Chapter 521. Fee Schedule

22 TAC §521.1

The Texas State Board of Public Accountancy proposes an amendment to §521.1, concerning License Fees.

The proposed amendment to §521.1 will raise the practice unit registration fee to $40 effective with the 1998 license.

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

Mr. Treacy also has determined that during the first five-year period the rule is in effect the anticipated public benefit as a result of enforcing or administering the rule will be increased practice unit registration fees to cover increased expenditures as required by Rider 5 of the Board's current appropriations. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to Paul Gavia, acting General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3900.

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

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

§521.1. License Fees.

(a) (No change.)

(b) Effective **with the 1998 license** [January 1, 1996], the annual fee for a license issued to a practice unit shall be **$40** [$25] and may not be prorated.

(c) (No change.)

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

Issued in Austin, Texas, on September 11, 1997.

TRD-9712375
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 305-7800

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 97. Communicable Diseases

Control of Communicable Diseases

25 TAC §§97.1–97.5

The Texas Department of Health (department) proposes amendments to §§97.1–97.5, concerning control of communicable diseases. Specifically the sections clarify definitions, what to report, when to report, who shall report, and where to report. The amendments add and delete diseases to the list of reportable diseases.

Significant amendments to §§97.1–97.5 concern the reporting of antibiotic resistant bacteria. The optimism of the antibiotic era that began 50 years ago is waning. Even before the widespread use of penicillin in the late 1940s, resistance was detected in

both gram-positive and gram-negative organisms. Within one year of methicillin's introduction in 1960, methicillin resistant strains of *Staphylococcus aureus* emerged. In recent years drug-resistant *Streptococcus pneumoniae*, which accounts for 3,000 cases of meningitis and 7,000,000 cases of otitis media nationwide annually, has been recognized. With the recent emergence of vancomycin resistant *Enterococcus* species, for which there is no antibiotic therapy, and the potential for vancomycin resistant *Staphylococcus aureus*, the need to determine the incidence of invasive *Staphylococcus aureus*, *Streptococcus pneumoniae*, and *Enterococcus* species and the percentage of resistant isolates has become urgent. A first step toward curtailing the pernicious progression of antibiotic resistance involves increasing the medical community's awareness of the problem. This is best accomplished by providing health care providers with timely surveillance data detailing the incidence of resistant organisms in their communities.

Additional revisions address other emerging disease threats. For instance, an increased incidence of Creutzfeldt-Jacob Disease (CJD) has been noted in northeast Texas. This fatal disease is characterized by a rapidly progressive dementia accompanied by severe muscle spasms and incoordination. Also, yersiniosis is an emerging disease, and can cause serious gastrointestinal illness and that may sometimes lead to unnecessary surgery. Making these conditions reportable will result in better case ascertainment allowing the department to identify risk factors and possible control measures. It has recently been recognized that several closely related organisms can cause the same disease. Rocky Mountain spotted fever (RMSF) needs to be changed to spotted fever group rickettsioses and invasive group A streptococcal disease needs to be changed to invasive streptococcal disease because several spotted fever group rickettsia can cause RMSF-like illnesses and more than one *Streptococcus* species can cause invasive disease. Because it has not contributed to a public health response, reporting of tuberculosis infection in persons less than 15 years of age is being deleted.

Michael F. Kelley, M.D., M.P.H., Chief, Bureau of Communicable Disease Control, has determined that for the first five-year period the proposed sections are in effect, there will be no increased costs to state government or local government as a result of enforcing or administering the section as proposed.

Doctor Kelley has also determined that for each year of the first five years that the sections are in effect, the public benefit will be that health care providers will have knowledge of antibiotic resistance trends in their communities for these pathogens; this knowledge will help the physicians to use antibiotics in the most judicious fashion. The reporting of CJD, spotted fever group rickettsioses, invasive streptococcal disease, and yersiniosis will allow the department to determine trends and identify risk factors and possible control measures. The cost to large businesses required to comply with these sections, i.e. hospitals and freestanding laboratories, will be $15 or less per month per institution. There will be no cost to small business. There will be no cost to any other persons. There will be no impact on local employment.

Comments on the proposed sections may be sent to Kate Hendricks, M.D., M.P.H.&T.M., Director, Infectious Disease Epidemiology and Surveillance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, telephone (512) 458-7328. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The amendments are proposed under the Health and Safety Code, Chapter 81, which provides the Board of Health (board) with the authority to prevent and control communicable disease; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The amendments affect Health and Safety Code, §§12.001, 81.042, 81.044, and §§81.081–81.094.

§97.1. Definitions.

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

Ampicillin resistant *Haemophilus influenzae* - Any beta-lactamase producing *Haemophilus influenzae* .

Penicillin resistant *Streptococcus pneumoniae* - *Streptococcus pneumoniae* with a penicillin MIC of 2 μ g/mL or greater (high level), and an intermediate level resistance of 0.1- 1 μ g/mL.

Reportable disease - Any disease or condition that is required to be reported under the Act or by these sections. See §97.3 of this title (relating to What **Condition** To Report **and What Isolates To Report or Submit**). Any outbreak, exotic disease, or unusual group expression of illness which may be of public health concern, whether or not the disease involved is listed in §97.3 of this title, shall be considered a "reportable disease."

Specimen Submission Form G-1- A multipurpose specimen submission form available from the Texas Department of Health, Bureau of Laboratories, 1100 West 49th Street, Austin, Texas, 78756-3199.

Vancomycin resistant *Enterococcus* species —*Enterococcus* species with a vancomycin minimum inhibitory concentration (MIC) of 32 micrograms per milliliter (μ g/mL) or greater or a disk diffusion zone of 14 millimeters or less. *Enterococcus casseliflavus* and *Enterococcus gallinarum* that are normally vancomycin intermediate do not need to be reported.

Vancomycin resistant *Staphylococcus aureus*and vancomycin resistant coagulase negative *Staphylococcus* species - For the purposes of reporting, *Staphylococcus aureus* or a coagulase negative *Staphylococcus* species with a vancomycin MIC of 8 μ g/mL or greater.

§97.2. Who Shall Report.

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

(c) Except as provided in subsection (b) of this section, any person who is in charge of a clinical laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields **microscopic** [microscopical], **culture** [cultural], **serologic** [serological], or other evidence of a reportable disease **,** [or] health condition**, or bacterial organism** shall report as required by this section.

(d)-(g) (No change.)

*§97.3. What **Condition** To Report **and What Isolates To Report or Submit**.*

(a) (No change.)

(b) Reportable conditions **or isolates** .

(1) Confirmed and suspected cases of the following diseases are reportable: acquired immune deficiency syndrome (AIDS); amebiasis; anthrax; botulism - adult and infant; brucellosis; campylobacteriosis; chancroid; chickenpox; *Chlamydia trachomatis* infection; cholera; **Creutzfeldt-Jakob disease (CJD);** cryptosporidiosis; dengue; diphtheria; ehrlichiosis; encephalitis (specify etiology); *Escherichia coli* O157:H7 **infection**; gonorrhea; Hansen's disease (leprosy); *Haemophilus influenzae* type b infection, invasive; hantavirus infection; hemolytic uremic syndrome (HUS); hepatitis, acute viral (specify type); human immunodeficiency virus (HIV) infection; legionellosis; listeriosis; Lyme disease; malaria; measles (**rubeola** [Rubeola]); meningitis (specify type); meningococcal infection, invasive; mumps; pertussis; plague; poliomyelitis, acute paralytic; rabies in man; relapsing fever; [Rocky Mountain spotted fever;] rubella (including congenital); salmonellosis, including typhoid fever; shigellosis; **spotted fever group rickettsioses (such as Rocky Mountain spotted fever);** streptococcal disease, invasive [Group A]; syphilis; tetanus; trichinosis; tuberculosis; [tuberculosis infection in persons less than 15 years of age;] typhus; *Vibrio* infection **(specify species)**; viral hemorrhagic fevers; [and] yellow fever**; and yersiniosis**.

(2) (No change.)

(3) The following organisms shall be reported: *Enterococcus* species; vancomycin resistant *Enterococcus* species; vancomycin resistant *Staphylococcus aureus*; vancomycin resistant coagulase negative *Staphylococcus*species; *Streptococcus pneumoniae* ; penicillin - resistant *Streptococcus pneumoniae* ; and ampicillin - resistant *Haemophilus influenzae* .

(c) Minimal reportable information requirements. The minimal information that shall be reported for each disease is as follows:

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

(4) for tuberculosis - name, [city,] **present address, present telephone number,** age, date of birth, sex, race and ethnicity, physician, disease, type of diagnosis, date of onset, [and] antibiotic susceptibility results**, initial antibiotic therapy, and any change in antibiotic therapy**; [and]

(5) for all other reportable **conditions listed in subsection (b)(1) of this section** [diseases] - name, [city,] **present address, present telephone number,** age, date of birth, sex, race and ethnicity, physician, disease, type of diagnosis, date of onset, address, and telephone number**;**[.]

(6) for all *Enterococcus* species, all *Streptococcus pneumoniae*, all *Haemophilus influenzae* regardless of resistance patterns - quarterly numeric totals; and

(7) for vancomycin resistant *Enterococcus* species; ampicillin - resistant *Haemophilus influenzae*; penicillin resistant *Streptococcus pneumoniae*; vancomycin resistant *Staphylococcus aureus*; vancomycin resistant coagulase negative *Staphylococcus* species, - name, city of submitter, date of birth or age, sex, anatomic site of culture, and date of culture.

(d) Diseases requiring submission of cultures. For all *Neisseria meningitidis* from normally sterile sites, all vancomycin resistant *Staphylococcus aureus*, and vancomycin resistant coagulase negative *Staphylococcus* species pure cultures shall be submitted accompanied by a Specimen Submission Form G-1.

§97.4. When to Report ***a Condition or Isolate; When to Submit an Isolate****.*

(a) The following reportable diseases are public health emergencies and suspect cases shall be reported immediately **by phone** to the local health authority or the regional director of the Texas Department of Health (department): botulism, foodborne; cholera; diphtheria; *Haemophilus influenzae* type b infection, invasive; measles (**rubeola** [Rubeola]); meningococcal infection, invasive; pertussis; poliomyelitis, acute paralytic; plague; rabies in man; viral hemorrhagic fevers; [and] yellow fever **; and vancomycin resistant *Staphylococcus aureus*.**

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

(g) For *Enterococcus* species; vancomycin resistant *Enterococcus* species; *Streptococcus pneumoniae*; penicillin - resistant *Streptococcus pneumoniae*; ampicillin - resistant *Haemophilus influenzae*; and vancomycin resistant coagulase negative *Staphylococcus* species; - reports shall be made no later than the last working day of March, June, September, and December.

(h) All *Neisseria meningitidis* from normally sterile sites, all vancomycin resistant *Staphylococcus aureus*, and all vancomycin resistant coagulase negative *Staphylococcus* species shall be submitted as pure cultures to the Texas Department of Health, Bureau of Laboratories, 1100 West 49th Street, Austin, Texas 78756-3199 as they become available.

§97.5. Where to Report ***a Condition or Isolate; Where to Submit an Isolate****.*

(a) (No change.)

(b) The administrative officer of a clinical laboratory, blood bank, mobile unit, or other facility shall report **a condition or submit an isolate** as follows.

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

(3) For vancomycin resistant *Staphylococcus aureus* immediately report by phone to the Infectious Disease Epidemiology and Surveillance Division at 1-800-252-8239. For *Enterococcus* species; vancomycin resistant *Enterococcus* species; vancomycin resistant coagulase negative *Staphylococcus* species; ampicillin - resistant *Haemophilus influenzae*; *Streptococcus pneumoniae* ; and penicillin - resistant *Streptococcus pneumoniae*; reports shall be mailed to the Infectious Disease Epidemiology and Surveillance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, or faxed to the Infectious Disease Epidemiology and Surveillance Division at 512-458-7616.

(4) All *Neisseria meningitidis* from normally sterile sites, all vancomycin resistant *Staphylococcus aureus* , and all vancomycin resistant coagulase negative *Staphylococcus* species shall be submitted as pure cultures to the Texas Department of Health, Bureau of Laboratories, 1100 West 49th Street, Austin, Texas, 78756-3199.

(c) (No change.)

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

Issued in Austin, Texas, on September 17, 1997.

TRD-9712377
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: October 27,1997
For further information, please call: (512) 458–7236

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Immunization Requirements in Texas Elementary and Secondary Schools and Institutions of Higher Education

25 TAC §97.63

The Texas Department of Health (department) proposes an amendment to §97.63, concerning immunization requirements for children in Texas elementary and secondary schools and institutions of higher education. This amendment will increase the age at which the fourth dose of diphtheria-tetanus-pertussis/ diphtheria-tetanus-acellular pertussis vaccine is required to 18 months from 15 months. Current medical recommendations indicate that the fourth dose of diphtheria-tetanus-pertussis/ diphtheria-tetanus-acellular pertussis vaccine should be given within the age range of 15 to 18 months. This amendment is proposed to allow pediatricians greater flexibility in scheduling immunizations, thus, increasing the efficiency of pediatric care.

Robert D. Crider, Jr. , M.S., M.P.A. Director, Immunization Division, has determined that for the first five-year period the section is in effect, there will be no fiscal implications for state or local government as a result of enforcing the section as proposed.

Mr. Crider also has determined that for the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be the increase in efficiency of pediatric care. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Mr. Robert D. Crider, Jr., M.S., M.P.A., Director, Immunization Division, Texas Department of Health, 1100 West 49th Street, Austin Texas 78756, 458-7284, or (800) 252-9152. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

This amendment is proposed under the Health and Safety Code, §81.004, which authorizes the Texas Board of Health (board) to adopt rules necessary for the effective administration and implementation of this chapter; §81.023, which authorizes the board to develop immunization requirements for children; and §12.001 which requires the board to adopt rules for the performance of each duty imposed by law on the board or department.

This amendment affects the Health and Safety Code, Chapter 81.

§97.63. Required Immunizations.

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

(c) The following immunizations are required in the respective age groupings. A child or student must meet all the immunization requirements specific to an age group upon first entering the age group.

(1) Children less than five years of age: polio vaccine; diphtheria-tetanus-pertussis (DTP) or diphtheria-tetanus-acellular pertussis (DTaP) vaccine; measles, mumps, and rubella vaccine (MMR); and *Haemophilus influenzae* type b conjugate vaccine (HibCV).

(A)-(E) (No change.)

(F) Children 15 months of age, but not yet five years of age (15 months through four years of age):

(i) (No change.)

***(ii)* Any combination of DTP/DTaP vaccine will meet the following requirement:**

***(I)* Children 17 months of age and younger are required to have three doses of DTP/DTaP vaccine; and**

***(II)* Children 18 months of age through four years of age are required to have four doses of DTP/ DTaP vaccine. Children with a medical contraindication to pertussis vaccine will need to have had at least four doses of any combination of DTP/DTaP or diphtheria-tetanus (DT) vaccines if their first dose was given before the first birthday or only three doses if the first dose was given on or after the first birthday;**

[(ii) four doses of DTP/DTaP vaccine are required. Any combination of four doses of DTP/DTaP will meet this requirement. Children with a medical contraindication to pertussis vaccine will need to have had at least four doses of any combination of DTP/ DTaP or diphtheria-tetanus (DT) vaccines if their first dose was given before the first birthday or only three doses if the first dose was given on or after the first birthday;]

(iii)-(iv) (No change.)

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

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

Issued in Austin, Texas, on September 15, 1997.

TRD-9712299
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 458-7236

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Tuberculosis Screening for Jails and Other Correctional Facilities

25 TAC §§97.171, 97.173, 97.177, 97.178, 97.190, 97.191

The Texas Department of Health (department) proposes amendments to §§97.171, 97.173, 97.177, 97.178, 97.190, and new §97.191, concerning the screening and treatment for tuberculosis (TB) in jails and other correctional facilities. Specifically, these amendments and new section are required by Chapter 89, Texas Health and Safety Code, which was

revised by Chapter 348 (Senate Bill 939) 75th Legislature, Regular Session, and to clarify and improve reporting of treatment of TB in these facilities. An amendment to §97.171 reflects the enlarged scope of the law and coverage of additional correctional facilities. An amendment to §97.173 reflects the decreased length of confinement before the law requires screening. An amendment to §97.177 requires the isolation of symptomatic inmates in TB respiratory isolation facilities. An amendment to §97.178 reflects the use of a more detailed reporting form for reporting TB to the department. An amendment to §97.190 reflects the effective date of the new law. New §97.191 restates the requirement of Texas Health and Safety Code §89.102, that the department be notified when an inmate who is receiving treatment for TB is released.

Dr. Michael F. Kelley, Bureau Chief, Bureau of Communicable Disease Control, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications to state or local government as a result of implementing these sections as proposed. It is impossible to estimate the additional cost of screening because the number of additional inmates who must be screened cannot be determined accurately. These increased costs will be offset by the reduction in treatment costs effected by the early diagnosis and treatment of TB.

Dr. Kelley also has determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the sections will be a reduction in transmission of TB due to the earlier identification of persons with TB infection or disease who may then be treated so that they will not transmit TB to other persons. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

Comments may be submitted to Charles E. Wallace, MPH, Director, Tuberculosis Elimination Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, telephone (512) 458-7447. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

These sections constitute the Texas Department of Health's recommendation to the Texas Commission on Jail Standards and Texas Department of Criminal Justice required by §89.072 of the amended Texas Health and Safety Code, and the minimum standards for counties, judicial districts, and private entities required by §89.073. They also constitute the screening guidelines authorized by the Texas Health and Safety Code §89.011 and §89.073.

The amendments and new section are proposed under Texas Health and Safety Code §89.073 which require the Board of Health to adopt substantive rules to govern the submission of facility standards. Rules on communicable disease are also authorized by the Texas Health and Safety Code, §81.004; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The amendments and new section affect the Texas Health and Safety Code, Chapter 89.

§97.171. Purpose.

These sections establish regulations for screening and treatment for tuberculosis of employees, volunteers and inmates in county jails and other correctional facilities that have bed capacities of 100 or more **, jails that house inmates transferred from a county that has a jail with a capacity of 100 or more beds, and jails that house inmates from another state**.

§97.173. Screening.

Screening for tuberculosis (TB) in institutional settings usually involve skin testing for tuberculous infection and additional evaluation of those who are infected. In some correctional facilities, it may be more practical to screen with chest x-rays to identify individuals with lung abnormalities suggestive of pulmonary tuberculosis. While the chest x-ray method is more expensive, it can be an acceptable technique to identify and segregate tuberculosis suspects.

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

(4) Scope. Skin test screening for tuberculosis shall be performed on employees and volunteers as well as inmates of county jails and correctional facilities as follows.

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

(C) Inmates.

(i) With the exception of those inmates who meet the criteria in clauses (iii), (iv) or (v) of this subparagraph, all inmates who reside (or are expected to reside) in the facility for **seven** [14] days or longer shall be screened according to this section. A certificate or similar document may be used to document results. The recommended certificate is located in §97.179 of this title (relating to Tuberculosis Record).

(ii)-(v) (No change.)

(5)-(6) (No change.)

§97.177. Prevention of Disease.

(a) Respiratory isolation of inmates.

(1) To prevent the spread of tuberculous (TB) infection in the facility, it is important to recognize and isolate inmates **(in appropriate TB respiratory isolation facilities)** who have symptoms suggestive of TB disease. Officers and health care staff shall suspect TB in inmates with a persistent cough (more than two week's duration), especially in the presence of other symptoms or signs compatible with TB, such as weight loss, night sweats, bloody sputum, anorexia or fever. These inmates should be evaluated promptly for TB. The inmate should not leave **appropriate TB respiratory** isolation until TB is excluded or the inmate is on therapy and documented to be noninfectious.

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

(b) (No change.)

§97.178. Reporting.

(a) Cases.

(1) (No change.)

(2) This information shall be reported using the Texas Department of Health Report of Case and Patient Services (TB-400) Form as follows. This form is available from local health departments, Texas Department of Health regional offices, or the TB

Elimination Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756.

Figure 1: 25 TAC, §97.178 (a)(2) [Figure 1: 25 TAC, §97.178 (a)(2)]

(b) No change.) .

§97.190. Approval of Local Jail Screening Standards.

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

(e) The local standards shall be adopted by **January 1, 1998** [March 15, 1994].

§97.191. Continuity of Care.

A correctional facility regardless of size that houses adult or youth inmates, must assure continuity of care for those inmates receiving treatment for tuberculosis who are being released. A facility must contact the department prior to the inmate being released, if possible. If that is not possible, the facility must make the contact immediately upon the inmate's release from custody. This section must be implemented by all correctional facilities in the state by September 1, 1997.

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

Issued in Austin, Texas, on September 16, 1997.

TRD-9712367

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: October 27, 1997

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

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Chapter 99. Occupational Conditions [Diseases] Reporting

25 TAC §99.1

The Texas Department of Health (department) proposes an amendment to §99.1 concerning occupational condition reporting. The proposed amendment replaces the word "disease" with "condition" throughout the rule to be consistent with House Bill 2311, adopted by the 75th Legislature. Next, the proposed amendment will lower the blood lead reporting level from 40 micrograms of lead per deciliter of blood (40 μ g/dL) to 25 μ g/dL. The amendment also adds a division name and a mailing address.

House Bill 2311, as adopted by the 75th Legislature, amends the Occupational Disease Reporting Law (Health and Safety Code, §§84.001 - 84.003) and was proposed as a result of the opposition by several lead industries to the department's proposed amendment to lower the occupational blood lead reporting level from 40 micrograms of lead per deciliter of blood (40 μ g/dL) to 25 μ g/dL published in the September 27, 1996, issue of the *Texas Register* (21 TexReg 9225). Since the lead industries objected to identifying an elevated blood lead level as an occupational disease, the proposed rule was withdrawn effective March 27, 1997 and published in the April 11, 1997, issue of the *Texas Register* (22 TexReg 3395). Several meetings involving department staff and representatives of lead industries in Texas were held, and an amendment to the Occupational Disease Reporting Act was developed. The resulting House Bill 2311 effectively changed the word "disease" to "condition" throughout Chapter 84.

The proposed amendment will lower the blood lead reporting level mandated by the Occupational Condition Reporting Act from 40 micrograms of lead per deciliter of blood (40 μ g/dL) to 25 μ g/dL. This lower level is consistent with the level recommended by the Centers for Disease Control and Prevention's *Healthy People 2000: National Health Promotion and Disease Prevention Objectives*, and will allow the department to track progress on meeting the Healthy People 2000 objectives for Texas.

Over the past eleven years, since this original rule was approved, it has become increasingly clear through scientific study that the adverse health effects of lead can be demonstrated at levels of exposure that at one time were considered "safe". Over this same period of time, levels of lead exposure at which adverse health effects are detected have become progressively lower. As a result of these scientific findings, lead levels of concern to public health agencies have also decreased.

In 1990, the Centers for Disease Control and Prevention compiled a document, *Healthy People 2000: National Health Promotion and Disease Prevention Objectives,* which contained a national strategy for improving the health of the Nation over the next decade by addressing major illnesses, injuries, and infectious diseases. One of these objectives (objective 10.8) is to "Eliminate exposures which result in workers having blood lead concentrations greater than 25 μ g/dL of whole blood". Because the department's current reporting for elevated blood lead levels in adults is set at 40 μ g/dL, the department is not able to determine if progress toward this Healthy People 2000 objective is being made in Texas.

Most other states are able to contribute important information regarding the progress toward this Healthy People 2000 objective. Currently, 44 states require reporting of adult blood lead levels. Four of these states, including Texas, require reporting adult blood lead levels of 40 μ g/dL or greater. These four states, in addition to the six states who do not require reporting blood lead levels at all, are not able to evaluate progress toward the Healthy People 2000 objective. The majority of states, however, (40/50, 80%) are able to contribute important information toward evaluating the Healthy People 2000 progress. This includes 15 states (34% of states requiring reporting) that require reporting blood lead levels greater than or equal to 25 μ g/dL, and 25 states have reporting levels set at less than 25 μ g/dL, including 8 states (18%) that require reporting the results of all blood lead tests done, regardless of the level.

In an effort to further protect Texas workers from effects of lead exposure, the proposed amendment will require the reporting of blood lead levels 25 μ g/dL and higher. This reporting will give the department a more complete picture of occupational lead exposure in Texas workers. The data will be evaluated for new but previously unreported exposures so that occupational specific preventive measures can be developed for worker education and protection.

Patricia Schnitzer, Ph.D., Director, Environmental and Occupational Epidemiology Program, has determined that for the first

five year period the section is in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

Patricia Schnitzer has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section as proposed will be improved knowledge of the prevalence of lead exposure in adults and focused efforts to reduce lead exposure to workers. There is no anticipated effect on small businesses. The economic costs to persons who are required to comply with the section as proposed is expected to be less than $100 per year as the infrastructure for reporting already exists. There will be no impact on local employment.

Comments on the proposal may be submitted to Patricia Schnitzer, Ph.D., Director, Environmental and Occupational Epidemiology Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3180, (512) 458-7269. Comments will be accepted for 30 days from the date of publication of this proposal in the *Texas Register*.

The amendment is proposed under the Health and Safety code, Chapter 84 of the Health and Safety Code §84.003 which requires the Texas Board of Health (board) to adopt rules necessary to implement the reporting of elevated blood lead levels; and §12.001 which allows the board to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The amendment will affect Chapter 84 (Chapter 931, 69th Legislature, 1985) of the Health and Safety Code.

§99.1. General Provisions.

(a) Purpose. This section implements the Texas Occupational **Conditions** [Disease] Reporting Act, **Health and Safety Code, Chapter 84,** [House Bill 2091, 69th Legislature, 1985,] which authorizes the Texas Board of Health to adopt rules concerning the reporting and control of occupational **conditions** [diseases].

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

(1) Case - A person in whom an occupational **condition** [disease] is diagnosed by a physician based upon clinical evaluation, interpretation of laboratory and/or roentgenographic findings, and an appropriate occupational history.

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

(5) Occupational **conditions** [diseases] - Those diseases and abnormal health conditions **or laboratory findings** that are caused by or are related to conditions in the workplace.

(6) Reportable occupational **condition** [disease] - Any occupational disease or condition for which an official report is required. See subsection (d) of this section.

(7) Report of an occupational **condition** [disease] - The notification to the appropriate authority of the occurrence of a specific occupational disease in a human, including all information required by the procedures established by the Board of Health.

(8) Suspected case - A case in which an occupational **condition** [disease] is suspected, but the final diagnosis is not yet made.

(c) Reporting requirements.

(1) It is the duty of every physician holding a license to practice in the State of Texas to report promptly to the local health authority each patient she or he shall examine and who has or is suspected of having any reportable occupational **condition** [disease]. The local health authority may authorize a staff member to transmit reports.

(2) It is the duty of every person who is in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields microscopical, cultural, serological, chemical, or other evidence suggestive of a reportable **condition** [disease] to report promptly that information to the local health authority.

(3) (No change.)

(4) The local health authority shall collect the reports and transmit the information at weekly intervals to the **Noncommunicable Disease Epidemiology and Toxicology Division**, Bureau of Epidemiology, Texas Department of Health**, 1100 West 49th Street, Austin, Texas 78756**. Transmission may be made by mail, courier, or electronic transfer.

(A) If by mail or courier, the reports shall be placed in a sealed envelope addressed to the attention of the **Noncommunicable Disease Epidemiology and Toxicology Division**, Bureau of Epidemiology, Texas Department of Health, **1100 West 49th Street, Austin, Texas 78756,** and marked "Confidential Medical Records."

(B) (No change.)

(5) When **an** [a case of] occupational **condition** [disease] is reported to a local health authority, and the person diagnosed as having the **condition or** disease resides outside his or her area of local health jurisdiction, the local health authority receiving the report shall notify the appropriate local health authority where the person or persons reside. The department shall assist the local health authority in providing such notifications if requested.

(d) List of reportable occupational **conditions** [diseases]. Occupational **conditions** [diseases] reportable by name, address, age, sex, race/ethnicity, method of diagnosis, and relevant occupation(s) and employer(s) of the case, and identity of the reporter, are: asbestosis, silicosis, blood lead levels at or above **25** [40] micrograms lead/100 milliliters of blood in persons 15 years of age or older, and acute occupational pesticide poisoning.

(e) General control measures for reportable occupational **conditions** [diseases]. The commissioner or his or her duly authorized representative shall, as circumstances may require, proceed as follows:

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

(f) (No change.)

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

Issued in Austin, Texas, on September 17, 1997.

TRD-9712378
Susan K. Steeg
General Counsel

Texas Department of Health
Earliest possible date of adoption: October 27,1997
For further information, please call: (512) 458–7236

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Chapter 128. Permits for Contact Lens Dispensers

25 TAC §§128.1-128.9

The Texas Department of Health (department) proposes new §§128.1 - 128.9, concerning the implementation of the applicable provisions of the Texas Contact Lens Prescription Act, Texas Civil Statutes, Article 4552-A, relating to the issuance of a contact lens prescription, a patient's right of access to that prescription, and the regulation of persons filling contact lens prescriptions. Specifically, the sections cover definitions; permit application procedures and requirements; renewal of permits; name and address changes; violations, complaints and disciplinary actions; petition for rulemaking; display of permit; and electronic storage of contact lens prescriptions. House Bill 196, 75th Legislature, 1997, establishes that before an optician may dispense contact lenses to a person in this state, the optician must obtain a contact lens dispensing permit from the department by January 1, 1998, and sets an annual permit fee.

Bernie Underwood, C.P.A., Chief of Staff, Associate ship for Health Care Quality and Standards, has determined that for the first five-year period the sections are in effect, there will be fiscal implications as a result of administering the sections as proposed. The annual permit fees are projected to generate revenues of $60,000 per year for state government; however, there was no legislative appropriation made to the department for these funds. There will be no fiscal implications for local governments.

Ms. Underwood also has determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the sections will be to protect the public health by requiring that contact lenses only be dispensed by opticians who hold a valid contact lens dispensing permit, followed by regulation of those opticians who hold a permit. The annual permit fees were established in the Texas Contact Lens Prescription Act and are as follows: the annual permit cost to small businesses with ten or more locations will be $100; the annual permit cost to small businesses with nine or less locations will be $100 per location; an employee of a corporation or business entity with a permit will not be required to obtain a separate permit; the annual permit cost for an optician who has registered with the department will be $10; and the annual permit cost for an optician who has not registered with the department will be $25. There will be no impact on local employment.

Comments on the proposal may be submitted to Debbie Bradford, Director of Programs, Professional Licensing and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3189, (512) 834-6628. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The new sections are proposed under Texas Civil Statutes, Article 4552-A, which provides the Board of Health (board) with the authority to adopt rules; and Health and Safety Code, §12.001, which provides the board with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

The new sections affect Texas Civil Statutes, 4552-A.

§128.1. Introduction.

(a) Purpose. This chapter implements the applicable provisions of the Texas Contact Lens Prescription Act, Texas Civil Statutes, Article 4552-A, relating to the issuance of a contact lens prescription, a patient's right of access to that prescription, and the regulation of persons filling contact lens prescriptions.

(b) Construction. These sections cover definitions; permit application procedures and requirements; renewal of permits; name and address changes; procedures for violations, complaints, and disciplinary actions; petition for rulemaking; display of permit; and electronic storage of contact lens prescriptions.

§128.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words and terms defined in the Texas Contact Lens Prescription Act shall have the same meaning in this chapter that they are assigned in the Act.

Act - the Texas Contact Lens Prescription Act, Texas Civil Statutes, Article 4552-A.

Administrator - the department employee designated as the administrator of the permitting activities authorized by the Act.

Applicant - a person or entity who applies for a permit under the Act.

Board - the Texas Board of Health.

Commissioner - the Commissioner of the Texas Department of Health.

Department - the Texas Department of Health.

Optician - a person, other than a physician, optometrist, therapeutic optometrist, or pharmacist who is in the business of dispensing contact lenses.

Permit - a contact lens dispensing permit issued under the Act to an optician, a corporation, or other business entity that fills a contact lens prescription in this state or sells, delivers, or dispenses contact lenses to any person in this state.

§128.3. Application Requirements and Procedures.

(a) Contact lenses may only be dispensed by the following persons: a physician, optometrist, or therapeutic optometrist; a pharmacist; or an optician, a corporation, or other business entity that holds a valid contact lens dispensing permit issued under the Act.

(b) An employee of a corporation or business entity with a permit issued under the Act is not required to obtain a separate permit.

(c) A corporation or other business entity that dispenses contact lenses to a person in this state must obtain a contact lens dispensing permit. A corporation or other business entity that has nine or fewer locations is required to obtain a permit for each location. A corporation or other business entity with ten or more locations may obtain a single permit for the entity and its employees.

(d) An applicant for a permit must submit all required information on official application forms prescribed by the department and submit the required permit fee.

(e) The application form shall contain the following information:

(1) specific information regarding personal data, full legal name, date of birth, social security number, information regarding other licenses, registrations, permits, and certifications held by applicant, and information regarding misdemeanor and felony convictions of applicant;

(2) trade names and addresses of all locations in which the optician intends to conduct business;

(3) if applicant is a business entity, specific information regarding type of ownership, registered address, and names and addresses of all officers, directors, registered agents and major shareholders;

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

(5) a statement that the applicant has read the Act and these rules;

(6) a statement that the applicant, if issued a permit, shall return the permit to the board upon revocation or suspension of the permit or other disciplinary action against the permit holder;

(7) a statement that the applicant understands that fees and materials submitted in the permitting process are nonrefundable and nonreturnable;

(8) a statement that the applicant agrees to comply with all state and federal laws and regulations regarding the sale, delivery, or dispensing of contact lenses;

(9) a statement that the information contained in the application is truthful and complete; and

(10) the signature of the applicant which has been dated and notarized.

(f) Application processing. The department shall comply with the following procedures in processing applications for permits and applications for permit renewal.

(1) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. The contact lens dispensing permit may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(A) letter of acceptance of application for a permit - 30 working days;

(B) issuance of permit renewal after receipt of documentation of all renewal requirements - 20 working days; and

(C) letter of denial of permit - 30 working days.

(2) Reimbursement of fees.

(A) In the event an application is not processed in the time periods stated in paragraph (1) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the administrator. If the administrator does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(B) Good cause for exceeding the time period is considered to exist if the number of applications for permits and permit renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the board in the application process caused the delay; or any other condition exists giving the department good cause for exceeding the time period.

(3) Appeal. If a request for reimbursement under paragraph (2) of this subsection is denied by the administrator, the applicant may appeal to the commissioner for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the commissioner at the address of the department that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The administrator shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The program administrator shall provide written notice of the commissioner's decision to the applicant. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(4) Contested cases. The time periods for contested cases related to the denial of permits or permit renewals are not included within the time periods stated in paragraph (1) of this subsection. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the department is final and appealable. A hearing may be completed within one to four months, but may extend for a longer period of time depending on the particular circumstances of the hearing.

§128.4. Renewal of Permit.

(a) Purpose. The purpose of this section is to set out the rules governing permit renewal.

(b) General.

(1) When issued, a permit is valid for one year commencing on the date of issuance of the initial permit.

(2) A permit holder must renew the permit annually.

(3) The renewal date of a permit shall be the last day of the month in which the permit was originally issued.

(4) Each permit holder is responsible for renewing the permit before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification from the department prior to the expiration date of the permit shall not excuse failure to file for timely renewal.

(5) The department shall not renew a permit if renewal is prohibited by the Education Code, §57.491 (relating to Loan Default Ground for Nonrenewal of Professional or Occupational License).

(6) The department shall not renew a permit if renewal is prohibited by a court order or attorney general's order issued pursuant to the Family Code, Chapter 232 (relating to Suspension of License for Failure to Pay Child Support), as set out in §1.301 of this title (relating to Suspension of License for Failure to Pay Child Support).

(c) Permit renewal procedures.

(1) At least 30 days prior to the expiration date of a permit, the department shall send notice to the permit holder's address in the department's records a permit renewal form. The renewal form shall give notice of the expiration date of the permit and the amount of the renewal fee required. The permit holder must complete and return the renewal form and fee to the department.

(2) The permit renewal form shall require the applicant to provide the preferred mailing address, primary employment address and telephone number, trade names and addresses of all locations in which the optician intends to conduct business, and misdemeanor or felony convictions.

(3) A permit holder has renewed the permit when the permit holder has mailed the fully completed renewal form and the required renewal fee to the department prior to the expiration date of the permit. The postmark date shall be considered the date of mailing.

(4) The department shall issue a renewed permit to a permit holder who has met all requirements for renewal.

(5) A permit holder whose check for the renewal fee is not honored by the financial institution shall remit to the department a money order or cashier's check within 30 days of the date of the permit holder's receipt of the department's notice. If proper payment is not received, the permit shall not be renewed. If a renewed permit has already been issued, it shall be ineffective.

(6) If a permit holder fails to timely renew his or her permit because the permit holder is or was on active duty with the armed forces of the United States of America serving outside the state of Texas, the permit holder may renew the permit pursuant to this subsection.

(A) Renewal of the permit may be requested by the permit holder, the permit holder's spouse, or an individual having power of attorney from the permit holder. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(B) Renewal may be requested before or after expiration of the permit. Permit holders who renew in accordance with this subsection shall be excused from paying late fees and penalties.

(C) A copy of the official orders or other official military documentation showing that the permit holder is or was on active duty serving outside the state of Texas shall be filed with the department along with the renewal form.

(D) A copy of the power of attorney from the permit holder shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.

(d) Expiration of permit. A permit holder whose permit has expired may not fill a contact lens prescription in this state or sell, deliver, or dispense contact lenses to any person in this state.

§128.5. Changes of Name or Address.

(a) The purpose of this section is to set out the responsibilities and procedures for name and address changes.

(b) The permit holder shall notify the department of changes in name or preferred mailing address within 30 days of such change(s).

(c) Notification of changes shall be made in writing and mailed to the department and shall include the former and present name, permit number, former and present mailing address, and a copy of the legal name change document, if applicable.

(d) Before a replacement permit will be issued by the department, the permit holder shall return any previously issued document(s).

(e) It is the responsibility of the permit holder to comply with the provisions of this section. Notice of complaints, violations, disciplinary action, or other correspondence sent to the address in the department's records are deemed received by the permit holder.

§128.6. Violations, Complaints, and Disciplinary Actions.

(a) Purpose. The purpose of this section is to set out procedures concerning complaints alleging violations of the Act or these rules and to set out the department actions against a permit holder when violations have occurred.

(b) Filing of complaints.

(1) Any person may complain to the department alleging that a person has violated the Act or these rules.

(2) A person wishing to file a complaint against a permit holder or other person shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the administrator's office. The mailing address is Contact Lens Dispensing Permit Program, 1100 West 49th Street, Austin, Texas 78756-3183, Telephone: (512) 834-4515.

(3) Upon receipt of a complaint, the administrator shall send to the complainant an acknowledgment letter and the department's complaint form, which the complainant must complete and return to the administrator before further action can be taken. If the complaint is made by a visit to the administrator's office, the form may be given to the complainant at that time; however, it must be completed and returned to the department before further action can be taken.

(4) Anonymous complaints shall be investigated by the department provided that the complainant provides sufficient information.

(c) Investigation of complaints.

(1) The administrator is responsible for handling complaints.

(2) The department shall make the initial investigation and report the findings to the administrator.

(3) If the administrator determines that the complaint does not come within the department's jurisdiction, the administrator shall

advise the complainant and, if possible, refer the complainant to the appropriate governmental agency for handling such a complaint.

(4) The administrator, on behalf of the board, shall, at least as frequently as quarterly, notify the complainant and the respondent of the status of the complaint until its final disposition.

(5) The administrator may recommend that the permit be revoked, suspended, or denied or that the permit be placed on probation or that other appropriate action as authorized by law be taken.

(6) If the administrator determines that there are insufficient grounds to support the complaint, the administrator shall dismiss the complaint and give written notice of the dismissal to the permit holder or person against whom the complaint has been filed and the complainant.

(d) Department actions.

(1) The board may deny a permit application or permit renewal application or suspend or revoke the permit, or place the permit on probation for a violation of the Act. The board may also impose an administrative penalty of not more than $1000 for a violation of the Act. Administrative penalties shall be assessed in accordance with the procedures set forth in the Opticians' Registry Act, Texas Civil Statutes, Article 4551-1, §10A.

(2) Prior to institution of formal proceedings to revoke, suspend, or place on probation or impose an administrative penalty, the department shall give written notice to the permit holder by certified mail, return receipt requested, of the facts or conduct alleged to warrant the proposed action, and the permit holder shall be given an opportunity, as described in the notice, to show compliance with all requirements of the Act and these rules.

(3) If disciplinary action of a permit holder is proposed, the department shall give written notice by certified mail, return receipt requested, that the permit holder must request, in writing, a formal hearing within thirty days of receipt of the notice, or the right to a hearing shall be waived and the action shall be taken.

(e) Formal hearings.

(1) A formal hearing shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001, and Chapter 1 of this title (relating to Texas Board of Health).

(2) Copies of the formal hearing procedures are indexed and filed in the administrator's office, Professional Licensing and Certification Division, 1100 West 49th Street, Austin, Texas 78756-3183, and are available for public inspection during regular working hours.

§128.7. Petition for Rulemaking.

The board's procedures for the submission, consideration, and disposition of a petition to adopt a rule are set out in §1.81 of this title (relating to Petition for the Adoption of a Rule).

§128.8. Display of permit.

(a) A permit holder shall prominently display the contact lens dispensing permit in his or her primary place of employment or business and shall make the department's address available upon request to any person who wishes to file a complaint.

(b) A business entity that holds one permit for multiple business locations shall display the permit in one of the locations and shall make the permit number and the department's address available upon request at any location to any person who wishes to file a complaint.

§128.9. Electronic Storage of Contact Lens Prescription.

A contact lens prescription required to be maintained under the Act may be scanned into a computer and the original paper prescription destroyed not sooner than 90 days after the prescription has been completely filled.

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

Issued in Austin, Texas, on September 16, 1997.

TRD-9712369
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 458-7236

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Chapter 143. Medical Radiologic Technologists

25 TAC §143.19

The Texas Department of Health (department) proposes an amendment to §143.19, concerning the regulation of persons performing radiologic procedures. The amendment establishes one new hardship exemption criteria and procedures, and amends one current exemption related to bone densitometry.

The amendment will make a total of 12 hardship exemptions. The exemption is from having to employ a certified medical radiologic technologist or a person who has completed the training requirements for non-certified technicians or the alternate training requirements for Registered Nurses or Physician Assistants. The amendment applies to employees performing only bone densitometry who have completed a training course provided by the International Society for Clinical Densitometry. The new hardship exemption will be a one-time opportunity which applies to employees enrolled in and attending a department approved training program on or before December 31, 1997. Additional minor changes were made to correctly cross-reference other sections mentioned in the rule.

The amendment to §143.19 will implement Acts 1995, 74th Legislature, Chapter 613 (House Bill 1200), which amended the Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m.

Bernie Underwood, CPA, Chief of Staff Services, Health Care Quality and Standards, has determined that for the first five year period that the section is in effect, there will be fiscal implications as a result of enforcing or administering the sections.

The effect on the department for the first five year period the section is in effect will be as follows. For fiscal year (FY) 1998, there will be no increase in revenue and an increase in costs of $40,000. For FY 1999, there will be no increase in revenue and an increase in costs of $1,000. For FY 2000 - 2002, there will be no increase in revenue for each year with an increase in costs of $2,000 for each year. There will be no fiscal implications on

local governments anticipated as a result of administering the sections proposed. The cost during the first year is due to the fact that the hardship exemption for persons enrolled in training by December 31, 1997, is a one-time only opportunity. The hardship ceases to exist on December 31, 1998.

The cost of administering §143.19 cannot be recovered because the department has no statutory authority to collect fees for hardship exemptions.

Ms. Underwood also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of the proposed amendment to §143.19 is to provide a procedure for approving bona-fide hardship exemptions from the regulations related to House Bill 1200, which should minimize the effect on access to care.

Physicians, hospitals, and federally qualified health centers may apply for a hardship exemption. There is no anticipated cost to applicants who submit a hardship exemption application. The anticipated effect on local employment will be that additional time will be allowed for non-certified technicians to complete the training requirements, if the applicant applies for exemption in §143.19(c)(4)(K). A person or entity with an approved hardship exemption may not employ a person who is not a practitioner or certified medical radiologic technologist to perform a dangerous or hazardous procedure listed in §143.16.

Comments on the proposal may be submitted to Donna Flippin, MHSM, Administrator, Medical Radiologic Technologist Certification Program, Professional Licensing and Certification Division, 1100 West 49th Street, Austin, Texas, 78756-3183; Telephone: (512) 834-6617; FAX (512) 834-6677. Comments will be accepted for 30 days following publication of these rules in the *Texas Register*.

The amendment is proposed under the Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m, §2.05(e) which provide the Texas Board of Health (board) with the authority to adopt rules necessary to implement the Act; §2.05(j) concerning hardship criteria determined by department rule; and the Texas Health and Safety Code §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The amendment affects the Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m.

§143.19. Hardship Exemptions.

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

(c) Required application materials.

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

(4) The application shall be accompanied by one or more of the following:

(A)-(F) (No change.)

(G) if the equipment operated is a bone densitometry unit(s) which utilizes x-radiation, a sworn affidavit from the applicant indicating the name of the person operating the equipment and proof that the person **is a certified densitometry technologist in good standing with the International Society for Clinical Densitometry (ISCD) or** has completed at least 20 hours of training as follows:

(i)-(ii) (No change.)

(H) (No change.)

(I) if the applicant employs, for the purpose of performing radiologic procedures, a person registered in accordance with rules adopted under §2.08 of the Act on or before January 1, 1998, a sworn affidavit indicating the name(s) of the person(s) and proof that the person(s) was registered on or before January 1, 1998. Such affidavit shall be on a form attesting that the training under §143.17 **of this title (relating to Mandatory Training Programs for Non-Certified Technicians)** or §143.20 of this title **(relating to Alternate Training Requirements)**causes a fiscal hardship for the applicant. The affidavit shall include a statement that the person(s) performing radiologic procedures is adequately supervised and trained for the procedures being performed. If the applicant is a practitioner or FQHC, the person who will perform radiologic procedures must be registered in accordance with rules adopted under §2.08 of the Act at the time of application for the hardship exemption. If the person who will perform radiologic procedures is not an RN, the name of the practitioner for whom the radiologic procedures are performed, as named on the current registration permit, shall match the name or location of the applicant for whom the hardship is granted; [or]

(J) if the applicant is a hospital accredited by the Joint Commission on the Accreditation of Health Care Organizations or which participates in the federal Medicare cost reimbursement program, an original letter on hospital letterhead stating the name(s) of the person(s) performing radiologic procedures in compliance with §2.07(d) of the Act on or before January 1, 1998. The letter shall be accompanied by a sworn affidavit from the applicant attesting that the training under §143.17 or §143.20 of this title causes a fiscal hardship for the applicant. The affidavit shall include a statement that the person(s) performing radiologic procedures is adequately supervised and trained for the procedures being performed **; or**

(K) if the applicant employs for the purpose of performing radiologic procedures, a person enrolled on or before December 31, 1997, in a training program approved by the department under §143.17 of this title or §143.20 of this title. Applications under this hardship postmarked after October 31, 1998 will not be processed. This subparagraph and all letters of exemption issued under this subparagraph shall expire on December 31, 1998. The following items must be submitted:

(i) **a sworn affidavit indicating the name(s) of the person(s) enrolled in training on or before December 31, 1997, and attending classes at the time of application;**

(ii) **an original verification statement from a department approved training program indicating that the person(s) named in the hardship application was enrolled on or before December 31, 1997, and was currently attending classes. The enrollment and attendance verification must be dated within 15 days of the date of application under this section to the department; and**

(iii) **proof that the person(s) was registered in accordance with rules adopted under §2.08 of the Act at the time of enrollment or at the time of application under this section, if the applicant is a practitioner or FQHC.**

(5)-(6) (No change.)

(d)-(g) (No change.)

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

Issued in Austin, Texas, on September 16, 1997.

TRD-9712368
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 458-7236

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Chapter 289. Radiation Control

The Texas Department of Health (department) proposes the repeal of §289.123, and proposes new §289.260, concerning licensing of uranium recovery and byproduct material disposal facilities. The section proposed for repeal adopts by reference Part 43, titled "Licensing of Uranium Recovery Facilities" of the *Texas Regulations for Control of Radiation* (TRCR). The proposed new section incorporates language from Part 43 that has been rewritten in Texas Register format and includes addition and revision of several subsections of the section. The repeal and new section are part of the renumbering phase in the process of rewriting the department's radiation rules in the Texas Register format. The new section reflects the renumbering.

The new section incorporates requirements for expeditious reclamation of uranium mill tailings impoundments, including reclamation schedules and milestones. Requirements for decommissioning of licensed facilities are expanded and requirements for timeliness of decommissioning are added. In addition, the new section clarifies the need for the licensee to submit an updated closure plan at the time of decommissioning. These requirements are items of compatibility with the United States Nuclear Regulatory Commission and as an agreement state, Texas must adopt them. References to other sections of this chapter are clarified to reflect the Texas Register format. Other subsections of the proposed section are changed to clarify and more adequately specify the requirements for uranium recovery and byproduct material disposal facilities. The proposed revisions are a result of Senate Bill 1857, 75th Legislature, which transferred the jurisdiction for the regulation of uranium recovery and byproduct material disposal facilities from the Texas Natural Resource Conservation Commission (TNRCC) to the department. TNRCC adopted the items of compatibility on May 27, 1997, prior to the transfer of jurisdiction.

Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, has determined that for the first five-year period the sections will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections as proposed.

Ms. McBurney also has determined that for each year of the first five years the proposed sections will be in effect, the public benefit anticipated as a result of enforcing the sections will be to ensure that the radiation safety requirements for uranium recovery and byproduct material disposal facilities will continue to be an effective means for protecting the public, workers, and the environment from unnecessary exposure to radiation. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be presented to Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, Telephone (512) 834-6688. Public comments will be accepted for 30 days following publication of this proposal in the *Texas Register.* In addition, a public hearing will be held at 9:00 a.m., Thursday, October 9, 1997, in Conference Room N218, Texas Department of Health, Bureau of Radiation Control, located at the Exchange Building, 8407 Wall Street, Austin, Texas.

Texas Regulations for Control of Radiation

25 TAC §289.123

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

The repeal is proposed under the Health and Safety Code, Chapter 401, which provides the Texas Board of Health (board) with authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

The repeal affects Health and Safety Code, Chapter 401.

§289.123. Licensing of Uranium Recovery Facilities.

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

Issued in Austin, Texas, on September 17, 1997.

TRD-9712383
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: October 27,1997
For further information, please call: (512) 458–7236

♦ ♦ ♦

25 TAC §289.260

The new section is proposed under the Health and Safety Code, Chapter 401, which provides the Texas Board of Health (board) with authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

The new section affects Health and Safety Code, Chapter 401.

§289.260. Licensing of Uranium Recovery and Byproduct Material Disposal Facilities.

(a) Purpose. This section provides for the specific licensing of the receipt, possession, use, or disposal of radioactive material in uranium recovery facilities and other operations which accept

for disposal byproduct material. No person shall engage in such activities except as authorized in a specific license issued pursuant to this section unless otherwise provided for in §289.252 of this title (relating to Licensing of Radioactive Material).

(b) Scope. In addition to the requirements of this section, all licensees, unless otherwise specified, are subject to the requirements of §289.112 of this title (relating to Hearing and Enforcement Procedures), §289.114 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections), §289.201 of this title (relating to General Provisions), §289.202 of this title (relating to Standards for Protection Against Radiation), §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.251 of this title (relating to Exemptions, General Licenses, and General License Acknowledgments), §289.252 of this title, and §289.257 of this title (relating to Packaging and Transportation of Radioactive Material).

(c) Definitions. The following words and terms when used in this part shall have the following meaning unless the context clearly indicates otherwise.

(1) Aquifer - A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs. Any saturated zone created by uranium or thorium recovery operations would not be considered an aquifer unless the zone is or potentially is:

(A) hydraulically interconnected to a natural aquifer;

(B) capable of discharge to surface water; or

(C) reasonably accessible because of migration beyond the vertical projection of the boundary of the land transferred for long-term government ownership and care in accordance with subsection (r) of this section.

(2) As expeditiously as practicable considering technological feasibility - As quickly as possible considering the physical characteristics of the byproduct material and the site, the limits of "available technology" (as defined in this subsection), the need for consistency with mandatory requirements of other regulatory programs, and "factors beyond the control of the licensee" (as defined in this subsection). The phrase permits consideration of the cost of compliance only to the extent specifically provided for by use of the term "available technology."

(3) Available technology - Technologies and methods for emplacing a final radon barrier on byproduct material piles or impoundments. This term shall not be construed to include extraordinary measures or techniques that would impose costs that are grossly excessive as measured by practice within the industry (or one that is reasonably analogous), (e.g., by way of illustration only, unreasonable overtime, staffing, or transportation requirements, etc., considering normal practice in the industry; laser fusion of soils; etc.), provided there is reasonable progress toward emplacement of the final radon barrier. To determine grossly excessive costs, the relevant baseline against which costs shall be compared is the cost estimate for tailings impoundment closure contained in the licensee's approved reclamation plan, but costs beyond these estimates shall not automatically be considered grossly excessive.

(4) Byproduct material - Tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by such solution extraction operations do not constitute "byproduct material" within this definition.

(5) Capable fault - As used in this section, "capable fault" has the same meaning as defined in Section III(g) of Appendix A of Title 10 Code of Federal Regulations (CFR) Part 100.

(6) Closure - The post-operational activities to decontaminate and decommission the buildings and site used to produce byproduct materials and reclaim the tailings and/or disposal area, including groundwater restoration, if needed.

(7) Closure plan - The plan approved by the agency to accomplish closure. The closure plan consists of a decommissioning plan and may also include a reclamation plan.

(8) Commencement of construction - Any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site, but does not include necessary borings to determine site characteristics or other preconstruction monitoring to establish background information related to the suitability of a site, or to the protection of the environment.

(9) Compliance period - The period of time that begins when the agency sets secondary groundwater protection standards and ends when the owner or operator's license is terminated and the site is transferred to the state or federal government for long-term care, if applicable.

(10) Dike - An embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(11) Disposal area - The area containing byproduct materials to which the requirements of subsection (q)(16)-(q)(27) of this section apply.

(12) Existing portion - As used in subsection (q)(9)(A) of this section, "existing portion" is that land surface area of an existing surface impoundment on which significant quantities of byproduct materials had been placed prior to September 30, 1983.

(13) Factors beyond the control of the licensee - Factors proximately causing delay in meeting the schedule in the applicable reclamation plan for the timely emplacement of the final radon barrier notwithstanding the good faith efforts of the licensee to complete the barrier in compliance with subsection (q)(24) of this section. These factors may include but are not limited to:

(A) physical conditions at the site;

(B) inclement weather or climatic conditions;

(C) an act of God;

(D) an act of war;

(E) a judicial or administrative order or decision, or change to the statutory, regulatory, or other legal requirements applicable to the licensee's facility that would preclude or delay the performance of activities required for compliance;

(F) labor disturbances;

(G) any modifications, cessation or delay ordered by state, federal, or local agencies;

(H) delays beyond the time reasonably required in obtaining necessary government permits, licenses, approvals, or consent for activities described in the reclamation plan proposed by the licensee that result from government agency failure to take final action after the licensee has made a good faith, timely effort to submit legally sufficient applications, responses to requests (including relevant data requested by the agencies), or other information, including approval of the reclamation plan; and

(I) an act or omission of any third party over whom the licensee has no control.

(14) Final radon barrier - The earthen cover (or approved alternative cover) over byproduct material constructed to comply with subsection (q)(16)-(q)(27) of this section (excluding erosion protection features).

(15) Fund - The Radiation and Perpetual Care Fund.

(16) Groundwater - Water below the land surface in a zone of saturation. For purposes of this section, groundwater is the water contained within an aquifer as defined in paragraph (1) of this subsection.

(17) Hazardous constituent - Subject to subsection (q)(10)(E) of this section, "hazardous constituent" is a constituent which meets all three of the following tests:

(A) The constituent is reasonably expected to be in or derived from the byproduct material in the disposal area;

(B) The constituent has been detected in the groundwater in the uppermost aquifer; and

(C) The constituent is listed in 10 CFR Part 40, Appendix A, Criterion 13.

(18) Leachate - Any liquid, including any suspended or dissolved components in the liquid, that has percolated through or drained from the byproduct material.

(19) Licensed site - The area contained within the boundary of a location under the control of persons generating or storing byproduct materials under a license.

(20) Liner - A continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment which restricts the downward or lateral escape of byproduct material, hazardous constituents, or leachate.

(21) Maximum credible earthquake - That earthquake which would cause the maximum vibratory ground motion based upon an evaluation of earthquake potential considering the regional and local geology and seismology and specific characteristics of local subsurface material.

(22) Milestone - An action or event that is required to occur by an enforceable date.

(23) Operation - The period of time during which a byproduct material disposal area is being used for the continued placement of byproduct material or is in standby status for such placement. A disposal area is in operation from the day that byproduct material is first placed in it until the day final closure begins.

(24) Point of compliance - The site-specific location in the uppermost aquifer where the groundwater protection standard must be met. The objective in selecting the point of compliance is to provide the earliest practicable warning that an impoundment is releasing hazardous constituents to the groundwater. The point of compliance is selected to provide prompt indication of groundwater contamination on the hydraulically downgradient edge of the disposal area.

(25) Principal activities - Activities authorized by the license which are essential to achieving the purpose(s) for which the license is issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(26) Reclamation plan - For the purposes of subsection (q)(16)-(q)(27) of this section, "reclamation plan" is the plan detailing activities to accomplish reclamation of the byproduct material disposal area in accordance with the technical criteria of this section. The reclamation plan must include a schedule for reclamation milestones that are key to the completion of the final radon barrier, including as appropriate, but not limited to, wind blown tailings retrieval and placement on the pile, interim stabilization (including dewatering or the removal of freestanding liquids and recontouring), and final radon barrier construction. Reclamation of byproduct material must also be addressed in the closure plan. The detailed reclamation plan may be incorporated into the closure plan.

(27) Security (surety) - The following are examples of "security":

(A) cash deposits;

(B) surety bonds;

(C) certificates of deposit;

(D) deposits of government securities;

(E) irrevocable letters of credit; or

(F) other security acceptable to the agency.

(28) Surface impoundment - A natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well.

(29) Unrefined and unprocessed ore - Ore in its natural form before any processing, such as grinding, roasting, beneficiating, solution extracting, or refining.

(30) Uppermost aquifer - The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(31) Uranium recovery - Any uranium extraction or concentration activity that results in the production of "byproduct material" as it is defined in paragraph (4) of this subsection. As used in this definition, "uranium recovery" has the same meaning as "uranium milling" in 10 CFR 40.4.

(d) Filing application for specific licenses.

(1) Applications for specific licenses shall be filed in eight copies on a form prescribed by the agency. Applications for issuance of licenses shall include an environmental report that includes the results of a one-year preoperational monitoring program.

Applications for renewal of licenses shall include an environmental report that includes the results of the operational monitoring program.

(2) The agency may at any time after the filing of the original application, and before the expiration of the license, require further statements or data to enable the agency to determine whether the application should be denied or whether a license should be granted, modified, or revoked.

(3) Each application shall be signed by the applicant or licensee or a person legally authorized to act for and on the applicant's or licensee's behalf.

(4) An application for a license may include a request for one or more activities.

(5) In any application, the applicant may incorporate by reference, information contained in previous applications, statements, or reports filed with the agency, provided that the reference is clear and specific.

(6) Applications and documents submitted to the agency will be made available for public inspection except that the agency may withhold any document or part thereof from public inspection if the applicant or licensee states in writing that disclosure of its content is not required in the public interest and would adversely affect the interest of a person concerned. Exceptions to agency decisions regarding disclosure are subject to the Texas Public Information Act, Government Code, Chapter 552.

(7) An application for a license shall contain written specifications relating to the uranium recovery facility operations, and the disposition of the byproduct material.

(8) Each application must clearly demonstrate how the requirements of subsections (d)-(h), and (o)-(r) of this section have been addressed. Failure to clearly demonstrate how these requirements have been addressed shall be grounds for refusing to accept an application for filing.

(9) Each application for a specific license, other than a license exempted from §289.204 of this title, shall be accompanied by the fee prescribed in §289.204 of this title.

(10) Each application shall be accompanied by TRC form 12-1L.

(11) Applications for new licenses shall be processed in accordance with the following time periods.

(A) The first period is a time from receipt of an application by the Division of Licensing, Registration and Standards to the date of issuance or denial of the license or a written notice outlining why the application is incomplete or unacceptable. This time period is 180 days.

(B) The second period is a time from receipt of the last item necessary to complete the application to the date of issuance or denial of the license. This time period is 180 days.

(C) These time periods are exclusive of any time period incident to hearings and post-hearing activities required by the Government Code, Chapters 2001 and 2002.

(12) Notwithstanding the provisions of §289.204(e)(1) of this title, reimbursement of application fees may be granted in the following manner.

(A) In the event the application is not processed in the time periods as stated in paragraph (11) of this subsection, the applicant has the right to request of the Director of the Radiation Control Program full reimbursement of all application fees paid in that particular application process. If the Director does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

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

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

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

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

(C) If the request for full reimbursement authorized by subparagraph (A) of this paragraph is denied, the applicant may then request a hearing by appeal to the Commissioner of Health for a resolution of the dispute. The appeal will be processed in accordance with the Formal Hearing Procedures, §1.21-1.34 of this title (relating to the Texas Board of Health).

(e) General requirements for the issuance of specific licenses. A license application will be approved if the agency determines that:

(1) the applicant and all personnel who will be handling the radioactive material are qualified by reason of training and experience to use the material in question for the purpose requested in accordance with these requirements in such a manner as to protect public health and safety and the environment;

(2) the applicant's proposed equipment, facilities, and procedures are adequate to protect public health and safety and the environment;

(3) the issuance of the license will not be inimical to public health and safety nor have a long-term detrimental impact on the environment;

(4) the applicant has demonstrated financial capability to conduct the proposed activity including all costs associated with decommissioning, decontamination, disposal, reclamation, and long-term care and maintenance; and

(5) the applicant satisfies all applicable special requirements in this section.

(f) Special requirements for specific license application for uranium recovery and byproduct material disposal facilities. In addition to the requirements set forth in subsection (e) of this section, a specific license will be issued if the applicant submits to the agency a satisfactory application as described herein and meets the following other conditions specified.

(1) An application for a license shall include an environmental report that addresses the following:

(A) description of the proposed project or action;

(B) area/site characteristics including ecology, geology, topography, hydrology, meteorology, historical and cultural landmarks, and archaeology;

(C) radiological and nonradiological impacts of the proposed project or action, including waterway and groundwater impacts and any long-term impacts;

(D) environmental effects of accidents;

(E) byproduct material disposal, decommissioning, decontamination, and reclamation and impacts of these activities; and

(F) site and project alternatives.

(2) The applicant shall provide a closure plan for decontamination, decommissioning, restoration, and reclamation of buildings and the site to levels that would allow unrestricted use and for reclamation of the byproduct material disposal areas in accordance with the technical requirements of subsection (q) of this section.

(3) Unless otherwise exempted, the applicant shall not commence construction at the site until the agency has issued the license. Commencement of construction prior to issuance of the license shall be grounds for denial of a license.

(4) Prior to issuance of the license, the applicant shall propose, for approval by the agency, an acceptable form and amount of financial security consistent with the requirements of subsection (o) of this section.

(5) The applicant shall provide procedures describing the means employed to meet the requirements of subsections (h)(6), (h)(7), and (q)(15) of this section during the operational phase of any project.

(6) An application for a license shall contain specifications for the emissions control and disposition of the byproduct material.

(7) An application for disposal of byproduct material from others shall include information on the chemical and radioactive characteristics of the wastes to be received, detailed procedures for receiving and documenting incoming waste shipments, and detailed waste acceptance criteria.

(g) Issuance of specific licenses.

(1) Upon a determination that an application meets the requirements of the Texas Radiation Control Act (Act) and the requirements of the agency, the agency may issue a specific license authorizing the activity in such form and containing such conditions and limitations as it deems appropriate or necessary.

(2) The agency may incorporate in any license at the time of issuance or amendment, or thereafter by appropriate requirement or order, such additional requirements and conditions as it deems appropriate or necessary in order to:

(A) protect public health and safety or the environment;

(B) require such reports and the keeping of such records, and to provide for such inspections of activities under the license as may be appropriate or necessary; and

(C) prevent loss or theft of material subject to this section.

(h) Specific terms and conditions of license.

(1) Each license issued in accordance with this section shall be subject to the applicable provisions of the Act, now or hereafter in effect, and to all applicable rules and orders of the agency.

(2) No license issued in accordance with this section and no right to possess or utilize radioactive material authorized by any license issued in accordance with this part shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the agency shall, after securing full information, find that the transfer is in accordance with the provisions of the Act, now and hereafter in effect, and to applicable requirements and orders of the agency, and shall give its consent in writing.

(3) Each person licensed by the agency in accordance with this section shall confine use and possession of the licensed material to the locations and purposes authorized in the license.

(4) Each licensee shall notify the agency, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title 11 (Bankruptcy) of the United States Code (11 U.S.C.) by or against:

(A) a licensee;

(B) an entity (as that term is defined in 11 U.S.C. 101(14)) controlling a licensee or listing the license or licensee as property of the estate; or

(C) an affiliate (as that term is defined in 11 U.S.C. 101(2)) of the licensee.

(5) The notification required by paragraph (4) of this subsection must indicate:

(A) the bankruptcy court in which the petition for bankruptcy was filed;

(B) a copy of the bankruptcy petition; and

(C) the date of filing of the petition.

(6) Daily inspection of any byproduct material retention systems shall be conducted by the licensee. General qualifications for such individuals conducting such inspections shall be approved by the agency. Records of the inspections shall be maintained for review by the agency.

(7) In addition to the applicable requirements of §289.202(ww)-(yy) of this title and §289.252(r) of this title, the licensee shall immediately notify the agency of the following:

(A) any failure in a byproduct material retention system which results in a release of byproduct material into unrestricted areas;

(B) any release of radioactive material which exceeds the concentrations for water listed in Table II, Column 2, of §289.202(ggg)(2) of this title and which extends beyond the licensed boundary;

(C) any spill which exceeds 20,000 gallons and which exceeds the concentrations for water listed in Table II, Column 2, of §289.202(ggg)(2) of this title; or

(D) any release of solids which exceeds the contamination limits in §289.202)(ddd) of this title and that extends beyond the licensed boundary.

(8) In addition to the applicable requirements of §289.202(ww)-(yy) of this title and §289.252(r) of this title, the licensee shall notify the agency within 24 hours of the following:

(A) any spill that extends:

(i) beyond the wellfield monitor well ring;

(ii) more than 400 feet (ft) from an injection or production well pipe artery to or from a recovery plant; or

(iii) more than 200 ft from a recovery plant; or

(B) any spill which exceeds 2,000 gallons and which exceeds the concentrations for water listed in Table II, Column 2, of §289.202(ggg)(2) of this title.

(i) Expiration and termination of licenses and decommissioning of sites, separate buildings, or outdoor areas.

(1) Except as provided in paragraph (4) of this subsection and subsection (j)(2) of this section, each specific license shall expire at the end of the day, in the month and year stated in the license.

(2) Each licensee shall notify the agency immediately, in writing, and request termination of the license when the licensee decides to terminate all activities involving materials authorized under the license. This notification and request for termination of the license must include the reports and information specified in paragraphs (6) and (17) of this subsection. The licensee is subject to the provisions of paragraphs (4)-(18) of this subsection, as applicable.

(3) No less than 90 days before the expiration date specified in a specific license, the licensee shall either:

(A) submit an application for license renewal under subsection (j) of this section; or

(B) notify the agency in writing, under paragraph (2) of this subsection, if the licensee decides to discontinue all activities involving radioactive material.

(4) Each specific license continues in effect, beyond the expiration date if necessary, with respect to possession of source material until the agency notifies the licensee in writing that the license is terminated. During this time, the licensee shall:

(A) limit actions involving source material to those related to decommissioning; and,

(B) continue to control entry to restricted areas until they are suitable for release in accordance with agency requirements.

(5) Within 60 days of the occurrence of any of the following, each licensee shall provide notification to the agency in writing and either begin decommissioning its site or any separate buildings or outdoor areas that contain residual radioactivity in accordance with the closure plan in subsection (f)(2) of this section, so that the buildings or outdoor areas are suitable for release in accordance with agency requirements, if:

(A) the license has expired in accordance with paragraph (1) of this subsection; or

(B) the licensee has decided to permanently cease principal activities, as defined in subsection (c)(25) of this section, at the entire site or in any separate building or outdoor area; or

(C) no principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with agency requirements.

(6) Coincident with the notification required by paragraph (5) of this subsection, the licensee shall maintain in effect all decommissioning financial security established by the licensee in accordance with subsection (o) of this section in conjunction with a license issuance or renewal or as required by this section. The amount of the financial security must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established in accordance with paragraph (12)(F) of this subsection.

(A) Any licensee who has not provided financial security to cover the detailed cost estimate submitted with the closure plan shall do so on or before (six months from the effective date of the rule).

(B) Following approval of the closure plan, a licensee may reduce the amount of the financial security, with the approval of the agency, as decommissioning proceeds and radiological contamination is reduced at the site.

(7) In addition to the provisions of paragraph (6) of this subsection, each licensee shall submit an updated closure plan to the agency within 12 months of the notification required by paragraph (5) of this subsection. The updated closure plan shall meet the requirements of subsections (f)(2) and (o) of this section. The updated closure plan shall describe the actual conditions of the facilities and site and the proposed closure activities and procedures.

(8) The agency may grant a request to delay or postpone initiation of the decommissioning process if the agency determines that such relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification in accordance with paragraph (5) of this subsection. The schedule for decommissioning set forth in paragraph (5) of this subsection may not commence until the agency has made a determination on the request.

(9) A decommissioning plan must be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the agency and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases;

(A) Procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(B) Workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(C) Procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(D) Procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(10) The agency may approve an alternate schedule for submittal of a decommissioning plan required in accordance with paragraph (5) of this subsection if the agency determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(11) The procedures listed in paragraph (9) of this subsection may not be carried out prior to approval of the decommissioning plan.

(12) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(A) a description of the conditions of the site, separate buildings, or outdoor area sufficient to evaluate the acceptability of the plan;

(B) a description of planned decommissioning activities;

(C) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(D) a description of the planned final radiation survey;

(E) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate decommissioning; and

(F) a justification for the delay based on the criteria in paragraph (16) of this subsection for decommissioning plans calling for completion of decommissioning later than 24 months after plan approval.

(13) The proposed decommissioning plan will be approved by the agency if the information therein demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of workers and the public will be adequately protected.

(14) Except as provided in paragraph (16) of this subsection, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

(15) Except as provided in paragraph (16) of this subsection, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

(16) The agency may approve a request for an alternate schedule for completion of decommissioning of the site or separate buildings or outdoor area, and the license termination if appropriate, if the agency determines that the alternative is warranted by the consideration of the following:

(A) whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(B) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period; and

(C) other site-specific factors that the agency may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, groundwater treatment activities, monitored natural groundwater restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(17) As the final step in decommissioning, the licensee shall:

(A) certify the disposition of all licensed material, including accumulated byproduct material;

(B) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in some other manner. The licensee shall, as appropriate;

(i) report levels of gamma radiation in units of microroentgen per hour (μ R/hr) (millisieverts per hour (mSv/hr)) at 1 meter (m) from surfaces, and report levels of radioactivity, including alpha and beta, in units of disintegrations per minute (dpm) or microcuries (μ Ci) (megabecquerels (MBq)) per 100 square centimeters (cm^2) removable and fixed for surfaces, μ Ci (MBq) per milliliter for water, and picocuries (pCi) (becquerels (Bq)) per gram (g) for solids such as soils or concrete; and

(ii) specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(18) Specific licenses, including expired licenses, will be terminated by license amendment when the agency determines that:

(A) source material and byproduct material has been properly disposed;

(B) reasonable effort has been made to eliminate residual radioactive contamination, if present;

(C) a radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with agency requirements;

(D) other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with agency requirements;

(E) records required by §289.251(l)(4)(C) of this title have been received;

(F) the licensee has paid any outstanding fees required by §289.204 of this title and has resolved any outstanding notice(s) of violation issued to the licensee;

(G) the licensee has met the applicable technical and other requirements for closure and reclamation of a byproduct material disposal site; and

(H) the United States Nuclear Regulatory Commission (NRC) has made a determination that all applicable standards and requirements have been met.

(19) Specific licenses for uranium recovery are exempt from paragraphs (5)(C), (7), and (8) of this subsection with respect to reclamation of byproduct material impoundments and/or disposal areas. Timely reclamation plans for byproduct material disposal

areas must be submitted and approved in accordance with subsection (q)(16)-(q)(27) of this section.

(20) The agency may terminate a specific license upon written request submitted by the licensee to the agency in accordance with this subsection.

(21) A licensee may request that a subsite or a portion of a licensed site be released for unrestricted use before full license termination as long as release of the area of concern will not adversely impact the remaining unaffected areas and will not be recontaminated by ongoing authorized activities. When the licensee is confident that the area of concern will be acceptable to the agency for release for unrestricted use, a written request for release for unrestricted use and agency confirmation of closeout work performed must be submitted to the agency. The request should include a comprehensive report, accompanied by survey and sample results that show contamination is less than the limits specified in §289.202(ddd) of this title and an explanation of how ongoing authorized activities will not adversely affect the area proposed to be released. Upon confirmation by the agency that the area of concern is releasable for unrestricted use, the licensee may apply for a license amendment, if required.

(j) Renewal of license.

(1) Request for renewal of specific licenses shall be filed in accordance with subsection (d) of this section with the exception of subsection (d)(9) of this section.

(2) In any case in which a licensee, not less than 90 days prior to expiration of the existing license, has filed a request in proper form for renewal or for a new license authorizing the same activities, such existing license shall not expire until the application has been finally determined by the agency.

(k) Amendment of licenses at request of licensee. Requests for amendment of a license shall be filed in accordance with subsection (d) of this section, except that the requirements of subsection (d)(1), (d)(7), and (d)(8) of this section may be waived at the discretion of the agency. Such requests shall also specify how the licensee desires the license to be amended and the basis for such amendment.

(l) Agency action on applications to renew or amend. In considering a request by a licensee to renew or amend the license, the agency will apply the appropriate criteria set forth in subsections (e) and (f) of this section.

(m) Transfer of material.

(1) No licensee shall transfer radioactive material except as authorized in accordance with this section.

(2) Except as otherwise provided in a license and subject to the provisions of paragraphs (3) and (4) of this subsection, any licensee may transfer radioactive material:

(A) to the agency after receiving prior approval from the Agency;

(B) to the United States Department of Energy;

(C) to any person exempt from the licensing requirements of the Act and these requirements or exempt from the licensing requirements of the NRC or an agreement state, to the extent permitted by these exemptions;

(D) to any person authorized to receive such material under terms of a general license or its equivalent, or a specific license or equivalent licensing documents, issued by the agency, any agreement state, or to any person otherwise authorized to receive such material by the federal government or any agency thereof, the agency, or any agreement state;

(E) to any person abroad pursuant to an export license issued under Title 10, Chapter 1, CFR Part 110; or

(F) as otherwise authorized by the agency in writing.

(3) Before transferring radioactive material to a specific licensee of the agency, the NRC, an agreement state, or to a general licensee who is required to register with the agency, the NRC, or an agreement state prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(4) The following methods for the verification of paragraph (3) of this subsection are acceptable:

(A) the transferor may possess and have read a current copy of the transferee's specific license or registration certificate;

(B) the transferor may possess a written certification by the transferee that the transferee is authorized by the license or certificate of registration to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date;

(C) for emergency shipments, the transferor may accept oral certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date, provided that the oral certification is confirmed in writing within 10 days; or

(D) when none of the methods of verification described in subparagraph (A) of this paragraph are readily available or when a transferor desires to verify that information received by one of these methods is correct or up-to-date, the transferor may obtain and record confirmation from the agency, or the NRC, that the transferee is licensed to receive the radioactive material.

(5) Preparation for shipment and transport of radioactive material shall be in accordance with the provisions of §289.257 of this title.

(n) Modification and revocation of licenses.

(1) The terms and conditions of all licenses shall be subject to amendment, revision, or modification. A license may be suspended or revoked by reason of amendments to the Act, or by reason of rules or orders issued by the agency.

(2) Any license may be revoked, suspended, or modified, in whole or in part:

(A) for any material false statement in the application or any statement of fact required under provisions of the Act; or

(B) because of conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to issue a license on an original application; or

(C) for violation of, or failure to observe applicable terms and conditions of the Act, or of the license, or of any requirement or order of the agency.

(3) Except in cases of willful violation of the Act or these requirements or cases in which protection of the public health and safety or the environment require otherwise, no license shall be modified, suspended, or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the licensee in writing and the licensee shall have been afforded an opportunity to demonstrate or achieve compliance with all lawful requirements.

(4) The agency may terminate a specific license upon written request submitted by the licensee to the agency in accordance with subsection (i) of this section.

(5) Each specific license revoked by the agency expires at the end of the day on the date of the Agency's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by agency order.

(o) Financial security requirements.

(1) Financial security for decontamination, decommissioning, reclamation, restoration, disposal, and any other requirements of the agency shall be established by each licensee prior to the commencement of operations to assure that sufficient funds will be available to carry out the decontamination and decommissioning of buildings and the site and for the reclamation of any byproduct material disposal areas. The amount of funds to be ensured by such security arrangements must be based on agency-approved cost estimates in an agency-approved closure plan for:

(A) decontamination and decommissioning of buildings and the site to levels which allow unrestricted use of these areas upon decommissioning; and

(B) the reclamation of byproduct material disposal areas in accordance with technical criteria delineated in subsection (q) of this section.

(2) The licensee shall submit this plan in conjunction with an environmental report that addresses the expected environmental impacts of the licensee's operation, decommissioning and reclamation, and evaluates alternatives for mitigating these impacts.

(3) The security must also cover the payment of the charge for long-term surveillance and control for byproduct material disposal areas required by subsection (p)(3) of this section.

(4) In establishing specific security arrangements, the licensee's cost estimates must take into account total costs that would be incurred if an independent contractor were hired to perform the decommissioning and reclamation work. In order to avoid unnecessary duplication and expense, the agency may accept financial securities that have been consolidated with financial or security arrangements established to meet requirements of other federal or state agencies and/or local governing bodies for such decommissioning, decontamination, reclamation, and long-term site surveillance and control, provided such arrangements are considered adequate to satisfy these requirements and that the portion of the security that covers the decommissioning and reclamation of the buildings, site, and byproduct material disposal areas, and the long-term funding charge is clearly identified and committed for use in accomplishing these activities.

(5) The licensee's security mechanism will be reviewed annually by the agency to assure that sufficient funds would be available for completion of the reclamation plan if the work had to be performed by an independent contractor. The amount of security liability should be adjusted to recognize any increases or decreases resulting from inflation, changes in engineering plans, activities performed, and any other conditions affecting costs.

(6) Regardless of whether reclamation is phased through the life of the operation or takes place at the end of operations, an appropriate portion of security liability must be retained until final compliance with the reclamation plan is determined. This will yield a security that is at least sufficient at all times to cover the costs of decommissioning and reclamation of the areas that are expected to be disturbed before the next license renewal. The term of the security mechanism must be open ended unless it can be demonstrated that another arrangement would provide an equivalent level of assurance. This assurance would be provided with a security instrument that is written for a specified period of time (e.g., 5 years) yet which must be automatically renewed unless the security notifies the agency and the licensee some reasonable time (e.g., 90 days) prior to the renewal date of their intention not to renew. In such a situation the security requirement still exists and the licensee would be required to submit an acceptable replacement security within a brief period of time to allow at least 60 days for the agency to collect.

(7) Proof of forfeiture must not be necessary to collect the security so that in the event that the licensee could not provide an acceptable replacement security within the required time, the security shall be automatically collected prior to its expiration. The conditions described above would have to be clearly stated on any security instrument which is not open-ended, and must be agreed by all parties.

(8) Self-insurance, or any arrangement that essentially constitutes self insurance (e.g., a contract with a state or federal agency), will not satisfy the security requirement since this provides no additional assurance other than that which already exists through license requirements.

(p) Long-term care and maintenance requirements.

(1) Unless otherwise provided by the agency, each licensee licensed in accordance with this part for disposal of byproduct material shall make payments into the Radiation and Perpetual Care Fund in amounts specified by the agency. The agency shall make such determinations on a case-by-case basis.

(2) The final disposition of byproduct material should be such that the need for ongoing active maintenance is eliminated to the maximum extent practicable.

(3) A minimum charge of $250,000 (1978 dollars) or more, if demonstrated as necessary by the agency, shall be paid into the Radiation and Perpetual Care Fund to cover the costs of long-term care and maintenance. The total charge shall be paid prior to the termination of a license. With agency approval, the charge may be paid in installments. The total or unpaid portion of the charge shall be covered during the term of the license by additional security meeting the requirements of subsection (o) of this section. If site surveillance, control, or maintenance requirements at a particular site are determined, on the basis of a site-specific evaluation, to be significantly greater (e.g., if fencing or monitoring is determined to be necessary), the agency may specify a higher charge. The total charge must be such that, with an assumed 1.0%

annual real interest rate, the collected funds will yield interest in an amount sufficient to cover the annual costs of site care, surveillance, and where necessary, maintenance. Prior to actual payment, the total charge will be adjusted annually for inflation. The inflation rate to be used is that indicated by the change in the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics.

(4) The requirements of this subsection shall apply only to those sites whose ownership is subject to being transferred to the state or the federal government. The total amount of funds collected by the agency in accordance with this subsection shall be transferred to the federal government if title and custody of the byproduct material disposal site is transferred to the federal government upon termination of the license.

(q) Technical requirements.

(1) Byproduct material handling and disposal systems shall be designed to accommodate full-capacity production over the lifetime of the facility. When later expansion of systems or operations may be likely, capability of the disposal system to be modified to accommodate increased quantities without degradation in long-term stability and other performance factors shall be evaluated.

(2) In selecting among alternative byproduct material disposal sites or judging the adequacy of existing sites, the following site features which would assure meeting the broad objective of isolating the tailings and associated contaminants without ongoing active maintenance shall be considered:

(A) remoteness from populated areas;

(B) hydrogeologic and other environmental conditions conducive to continued immobilization and isolation of contaminants from usable groundwater sources; and

(C) potential for minimizing erosion, disturbance, and dispersion by natural forces over the long term.

(3) The site selection process must be an optimization to the maximum extent reasonably achievable in terms of these site features.

(4) In the selection of disposal sites, primary emphasis shall be given to isolation of the byproduct material, a matter having long-term impacts, as opposed to consideration only of short-term convenience or benefits (e.g., minimization of transportation of land acquisition costs). While isolation of byproduct material will also be a function of both site and engineering design, overriding consideration shall be given to siting features.

(5) Byproduct material should be disposed of in a manner such that no active maintenance is required to preserve conditions of the site.

(6) The applicant's environmental report shall evaluate alternative sites and disposal methods and shall consider disposal of byproduct material by placement below grade. Where full below grade burial is not practicable, the size of retention structures, and size and steepness of slopes associated with exposed embankments shall be minimized by excavation to the maximum extent reasonably achievable or appropriate given the geologic and hydrologic conditions at a site. In these cases, it must be demonstrated that an above grade disposal program will provide reasonably equivalent isolation of the byproduct material from natural erosional forces.

(7) To avoid proliferation of small waste disposal sites and thereby reduce perpetual surveillance obligations, byproduct material from in situ extraction operations, such as residues from solution evaporation or contaminated control processes, and wastes from small remote above ground extraction operations must be disposed of at existing large mill tailings disposal sites; unless, considering the nature of the wastes, such as their volume and specific activity, and the costs and environmental impacts of transporting the wastes to a large disposal site, such offsite disposal is demonstrated to be impracticable or the advantages of onsite burial clearly outweigh the benefits of reducing the perpetual surveillance obligations.

(8) The following site and design requirements shall be adhered to whether byproduct material is disposed of above or below grade:

(A) the upstream rainfall catchment areas must be minimized to decrease erosion potential by flooding which could erode or wash out sections of the byproduct material disposal area;

(B) the topographic features shall provide good wind protection;

(C) the embankment and cover slopes shall be relatively flat after final stabilization to minimize erosion potential and to provide conservative factors of safety assuring long term stability. The objective should be to contour final slopes to grades which are as close as possible to those which would be provided if byproduct material was disposed of below grade. Slopes shall not be steeper than 5 horizontal to 1 vertical (5h:1v), except as specifically authorized by the agency. Where steeper slopes are proposed, reasons why a slope steeper than 5h:1v would be as equally resistant to erosion shall be provided, and compensating factors and conditions which make such slopes acceptable shall be identified;

(D) a full self-sustaining vegetative cover shall be established or rock cover employed to reduce wind and water erosion to negligible levels;

(E) where a full vegetative cover is not likely to be self-sustaining due to climatic conditions, such as in semi-arid and arid regions, rock cover shall be employed on slopes of the impoundment system. The agency will consider relaxing this requirement for extremely gentle slopes, such as those which may exist on the top of the pile;

(F) the following factors shall be considered in establishing the final rock cover design to avoid displacement of rock particles by human and animal traffic or by natural processes, and to preclude undercutting and piping:

(i) shape, size, composition, gradation of rock particles (excepting bedding material, average particles size shall be at least cobble size or greater);

(ii) rock cover thickness and zoning of particles by size; and

(iii) steepness of underlying slopes.

(G) individual rock fragments shall be dense, sound, and resistant to abrasion, and must be free from cracks, seams, and other defects that would tend to unduly increase their destruction by erosion and weathering action. Local rock materials are permissible provided the characteristics under local climatic conditions indicate

similar long-term performance as a protective layer. Weak, friable, or laminated aggregate may not be used;

(H) rock covering of slopes may not be required where top covers are very thick (on the order of 10 m or greater); impoundment slopes are very gentle (on the order of 10h:1v or less); bulk cover materials have inherently favorable erosion resistance characteristics; and there is negligible drainage catchment area upstream of the pile, and there is good wind protection;

(I) all impoundment surfaces shall be contoured to avoid areas of concentrated surface runoff or abrupt or sharp changes in slope gradient. In addition to rock cover on slopes, areas toward which surface runoff might be directed shall be well protected with substantial rock cover (riprap). In addition to providing for stability of the impoundment system itself, overall stability, erosion potential, and geomorphology of surrounding terrain shall be evaluated to assure that there are no ongoing or potential processes, such as gully erosion, which would lead to impoundment instability;

(J) the impoundment shall not be located near a capable fault that could cause a maximum credible earthquake larger than that which the impoundment could reasonably be expected to withstand; and

(K) the impoundment should be designed to incorporate features that will promote deposition. Design features that promote deposition of sediment suspended in any runoff which flows into the impoundment area might be utilized. The object of such a design feature would be to enhance the thickness of cover over time.

(9) Groundwater protection. The following groundwater protection requirements and those in paragraphs (10) and (11) of this subsection and subsection (s) of this section apply during operations and until closure is completed. Groundwater monitoring to comply with these standards is required by paragraphs (28) and (29) of this subsection.

(A) The primary groundwater protection standard is a design standard for surface impoundments used to manage byproduct material. Unless exempted under paragraph (9)(C) of this subsection, surface impoundments (except for an existing portion) shall have a liner that is designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil, groundwater, or surface water at any time during the active life (including the closure period) of the impoundment. If the liner is constructed of materials that may allow wastes to migrate into the liner during the active life of the facility, impoundment closure shall include removal or decontamination of all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate. For impoundments that will be closed with the liner material left in place, the liner shall be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility.

(B) The liner required by subparagraph (A) of this paragraph shall be:

(i) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(ii) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(iii) installed to cover all surrounding earth likely to be in contact with the wastes or leachate.

(C) The applicant or licensee will be exempted from the requirements of subparagraph (A) of this paragraph if the agency finds, based on a demonstration by the applicant or licensee, that alternate design and operating practices, including the closure plan, together with site characteristics will prevent the migration of any hazardous constituents into groundwater or surface water at any future time. In deciding whether to grant an exemption, the agency will consider:

(i) the nature and quantity of the wastes;

(ii) the proposed alternate design and operation;

(iii) the hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the impoundment and groundwater or surface water; and

(iv) all other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(D) A surface impoundment shall be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations, overfilling, wind and wave actions, rainfall, or run-off; from malfunctions of level controllers, alarms, and other equipment; and from human error.

(E) When dikes are used to form the surface impoundment, the dikes shall be designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. In ensuring structural integrity, it shall not be presumed that the liner system will function without leakage during the active life of the impoundment.

(10) Byproduct materials shall be managed to conform to the following secondary groundwater protection requirements:

(A) hazardous constituents, as defined in subsection (c)(17) of this section, entering the groundwater from a licensed site must not exceed the specified concentration limits in the uppermost aquifer beyond the point of compliance during the compliance period.

(B) specified concentration limits are those limits established by the agency as indicated in subparagraph (G) of this paragraph.

(C) the agency will also establish the point of compliance and compliance period on a site-specific basis through license conditions and orders.

(D) when the detection monitoring established under paragraphs (28) and (29) of this section indicates leakage of hazardous constituents from the disposal area, the agency will perform the following:

(i) identify hazardous constituents;

(ii) establish concentration limits;

(iii) set the compliance period; and

(iv) may adjust the point of compliance if needed in accordance with developed data and site information regarding the flow of groundwater or contaminants.

(E) even when constituents meet all three tests in the definition of hazardous constituent, the agency may exclude a detected constituent from the set of hazardous constituents on a site-specific basis if it finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to exclude constituents, the agency will consider the following:

(i) potential adverse effects on groundwater quality, considering the following:

(I) physical and chemical characteristics of the waste in the licensed site, including its potential for migration;

(II) hydrogeological characteristics of the licensed site and surrounding land;

(III) quantity of groundwater and the direction of groundwater flow;

(IV) proximity of groundwater users and groundwater withdrawal rates;

(V) current and future uses of groundwater in the area;

(VI) existing quality of groundwater, including other sources of contamination and cumulative impact on the groundwater quality;

(VII) potential for human health risks caused by human exposure to waste constituents;

(VIII) potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(IX) persistence and permanence of potential adverse effects.

(ii) potential adverse effects on quality of hydraulically- connected surface water, considering the:

(I) volume and physical and chemical characteristics of the byproduct material in the licensed site;

(II) hydrogeological characteristics of the licensed site and surrounding land;

(III) quantity and quality of groundwater and the direction of groundwater flow;

(IV) patterns of rainfall in the region;

(V) proximity of the licensed site to surface waters;

(VI) current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(VII) existing quality of surface water, including potential impacts from other sources of contamination and the cumulative impact on surface water quality;

(VIII) potential for human health risks caused by human exposure to waste constituents;

(IX) potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(X) persistence and permanence of the potential adverse effects.

(F) In making any determinations under subparagraphs (E) and (H) of this paragraph about the use of groundwater in the area around the facility, the agency will consider any identification of underground sources of drinking water and exempted aquifers made by the Environmental Protection Agency and the Texas Natural Resource Conservation Commission (Commission).

(G) At the point of compliance, the concentration of a hazardous constituent shall not exceed the following:

(i) the agency approved background concentration in the groundwater of the constituents listed in 10 CFR 40, Appendix A, Criterion 13;

(ii) the respective value given in subsection (s) of this section if the constituent is listed in the table and if the background level of the constituent is below the value listed; or

(iii) an alternate concentration limit established by the agency.

(H) Alternate concentration limits to background concentration or to the drinking water limits in subsection (s) of this section that present no significant hazard may be proposed by licensees for agency consideration. Licensees shall provide the basis for any proposed limits including consideration of practicable corrective actions, evidence that limits are as low as reasonably achievable, and information on the factors the agency must consider. The agency will establish a site-specific alternate concentration limit for a hazardous constituent, as provided in subparagraph (G) of this paragraph, if it finds that the proposed limit is as low as reasonably achievable, after considering practicable corrective actions, and that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In making the present and potential hazard finding, the agency will consider the factors listed in subparagraph (D) of this paragraph.

(11) If the groundwater protection standards established under subparagraph (D) of this paragraph are exceeded at a licensed site, a corrective action program must be put into operation as soon as is practicable, and in no event later than 18 months after the agency finds that the standards have been exceeded. The licensee shall submit the proposed corrective action program and supporting rationale for agency approval prior to putting the program into operation, unless otherwise directed by the agency. The licensee's proposed program must address removing or treating in place any hazardous constituents that exceed concentration limits in groundwater between the point of compliance and downgradient licensed site boundary. The licensee shall continue corrective action measures to the extent necessary to achieve and maintain compliance with the groundwater protection standard. The agency will determine when the licensee may terminate corrective action measures based on data from the groundwater monitoring program and other information that provides reasonable assurance that the groundwater protection standard will not be exceeded.

(12) In developing and conducting groundwater protection programs, applicants and licensees shall also consider the following:

(A) where synthetic liners are used, a leakage-detection system shall be installed immediately below the liner to ensure detection of any major failures. This is in addition to the groundwater monitoring program conducted as provided in paragraph (29) of this subsection. Where clay liners are proposed or relatively thin, in situ clay soils are to be relied upon for seepage control, tests shall be conducted with representative tailings solutions and clay materials to confirm that no significant deterioration of permeability or stability properties will occur with continuous exposure of clay to byproduct material solutions. Tests shall be run for a sufficient period of time to reveal any effects that may occur;

(B) mill process designs which provide the maximum practicable recycle of solutions and conservation of water to reduce the net input of liquid to the byproduct material impoundment;

(C) dewatering of byproduct material solutions by process devices and/or in situ drainage systems. At new sites, byproduct material solutions shall be dewatered by a drainage system installed at the bottom of the impoundment to lower the phreatic surface and reduce the driving head of seepage, unless tests show byproduct material solutions are not amenable to such a system. Where in situ dewatering is to be conducted, the impoundment bottom shall be graded to assure that the drains are at a low point. The drains shall be protected by suitable filter materials to assure that drains remain free-running. The drainage system shall also be adequately sized to assure good drainage; and

(D) neutralization to promote immobilization of hazardous constituents.

(13) Technical specifications shall be prepared for installation of seepage control systems. A quality assurance, testing, and inspection program, which includes supervision by a qualified engineer or scientist, shall be established to assure that specifications are met. If adverse groundwater impacts or conditions conducive to adverse groundwater impacts occur due to seepage, action shall be taken to alleviate the impacts or conditions and restore groundwater quality to levels consistent with those before operations began. The specific seepage control and groundwater protection method, or combination of methods, to be used shall be worked out on a site-specific basis.

(14) In support of a byproduct material disposal system proposal, the applicant/licensee shall supply the following information:

(A) the chemical and radioactive characteristics of the waste solutions;

(B) the characteristics of the underlying soil and geologic formations particularly as they will control transport of contaminants and solutions. This shall include detailed information concerning extent, thickness, uniformity, shape, and orientation of underlying strata. Hydraulic gradients and conductivities of the various formations shall be determined. This information shall be gathered by borings and field survey methods taken within the proposed impoundment area and in surrounding areas where contaminants might migrate to groundwater. The information gathered on boreholes shall include both geologic and geophysical logs in sufficient number and degree of sophistication to allow determining significant discontinuities, fractures, and channeled deposits of high hydraulic conductivity. If field survey methods are used, they should be in addition to and calibrated with borehole logging. Hydrologic parameters such as permeability shall not be determined on the basis of laboratory analysis of samples alone. A sufficient amount of field testing (e.g., pump tests) shall be conducted to assure actual field properties are adequately understood. Testing shall be conducted to make possible estimates of chemisorption attenuation properties of underlying soil and rock; and

(C) location, extent, quality, capacity, and current uses of any groundwater at and near the site.

(15) If ore is stockpiled, methods shall be used to minimize penetration of radionuclides and other substances into underlying soils.

(16) In disposing of byproduct material, licensees shall place an earthen cover over the byproduct material at the end of the facility's operations and shall close the waste disposal area in accordance with a design which provides reasonable assurance of control of radiological hazards to the following:

(A) be effective for 1,000 years to the extent reasonably achievable and, in any case, for at least 200 years; and

(B) limit releases of radon-222 from uranium byproduct materials and radon-220 from thorium byproduct materials to the atmosphere so as not to exceed an average release rate of 20 picocuries per square meter per second (pCi/m^2s) to the extent practicable throughout the effective design life determined in accordance with subparagraph (A) of this paragraph. This average applies to the entire surface of each disposal area over a period of at least 1 year, but a period short compared to 100 years. Radon will come from both byproduct materials and cover materials. Radon emissions from cover materials should be estimated as part of developing a closure plan for each site. The standard, however, applies only to emissions from byproduct materials to the atmosphere.

(17) In computing required byproduct material cover thicknesses, moisture in soils in excess of amounts found normally in similar soils in similar circumstances shall not be considered. Direct gamma exposure from the byproduct material should be reduced to background levels. The effects of any thin synthetic layer shall not be taken into account in determining the calculated radon exhalation level. Cover shall not include materials which contain elevated levels of radium. Soils used for near-surface cover must be essentially the same, as far as radioactivity is concerned, as that of surrounding surface soils. If non-soil materials are proposed as cover materials, the licensee shall demonstrate that such materials will not crack or degrade by differential settlement, weathering, or other mechanisms over the long term.

(18) As soon as reasonably achievable after emplacement of the final cover to limit releases of radon-222 from uranium byproduct material and prior to placement of erosion protection barriers of other features necessary for long-term control of the tailings, the licensee shall verify through appropriate testing and analysis that the design and construction of the final radon barrier is effective in limiting releases of radon-222 to a level not exceeding 20 pCi/m^2s averaged over the entire pile or impoundment using the procedures described in Appendix B, method 115 of 40 CFR Part 61, or another method of verification approved by the agency as being at

least as effective in demonstrating the effectiveness of the final radon barrier.

(19) When phased emplacement of the final radon barrier is included in the applicable reclamation plan, as defined in subsection (c)(26) of this section, the verification of radon-222 release rates required in paragraph (30) of this subsection must be conducted for each portion of the pile or impoundment as the final radon barrier for that portion is emplaced.

(20) Within 90 days of the completion of all testing and analysis relevant to the required verification in paragraph (30)(C) and (30)(D) of this subsection, the uranium recovery licensee shall report to the agency the results detailing the actions taken to verify that levels of release of radon-222 do not exceed 20 pCi/m^2s when averaged over the entire pile or impoundment. The licensee shall maintain records documenting the source of input parameters, including the results of all measurements on which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. These records shall be maintained until termination of the license and shall be kept in a form suitable for transfer to the custodial agency at the time of transfer of the site to the state or federal government in accordance with subsection (r) of this section.

(21) Near-surface cover materials may not include waste, rock, or other materials that contain elevated levels of radium. Soils used for near-surface cover must be essentially the same, as far as radioactivity is concerned, as surrounding surface soils. This is to ensure that surface radon exhalation is not significantly above background because of the cover material itself.

(22) The design requirements for longevity and control of radon releases apply to any portion of a licensed and/or disposal site unless such portion contains a concentration of radium in land averaged over areas of 100 square meters (m^2), that, as a result of byproduct material, does not exceed the background level by more than:

(A) 5 picocuries per gram (pCi/g) of radium-226, or in the case of thorium byproduct material, radium-228, averaged over the first 15 centimeters (cm) below the surface; and

(B) 15 pCi/g of radium-226, or in the case of thorium byproduct material, radium-228, averaged over 15-cm thick layers more than 15 cm below surface.

(23) The licensee shall also address the nonradiological hazards associated with the waste in planning and implementing closure. The licensee shall ensure that disposal areas are closed in a manner that minimizes the need for further maintenance. To the extent necessary to prevent threats to human health and the environment, the licensee shall control, minimize, or eliminate post-closure escape of nonradiological hazardous constituents, leachate, contaminated rainwater, or waste decomposition products to groundwater or surface waters or to the atmosphere.

(24) For impoundments containing uranium byproduct materials, the final radon barrier must be completed as expeditiously as practicable considering technological feasibility after the pile or impoundment ceases operation in accordance with a written reclamation plan, as defined in subsection (c)(26) of this section, approved by the agency, by license amendment. (The term "as expeditiously as practicable considering technological feasibility" includes "factors beyond the control of the licensee.) Deadlines for completion of the final radon barrier and applicable interim milestones must be established as license conditions. Applicable interim milestones may include, but are not limited to, the retrieval of windblown byproduct material and placement on the pile and the interim stabilization of the byproduct material (including dewatering or the removal of freestanding liquids and recontouring). The placement of erosion protection barriers or other features necessary for long-term control of the byproduct material must also be completed in a timely manner in accordance with a written reclamation plan approved by the agency by license amendment.

(25) The agency may approve by license amendment a licensee's request to extend the time for performance of milestones related to emplacement of the final radon barrier if, after providing an opportunity for public participation, the agency finds that the licensee has adequately demonstrated in the manner required in paragraph (18) of this subsection that releases of radon-222 do not exceed an average of 20 pCi/m^2s. If the delay is approved on the basis that the radon releases do not exceed 20 pCi/m^2s, a verification of radon levels, as required by paragraph (18) of this subsection, must be made annually during the period of delay. In addition, once the agency has established the date in the reclamation plan for the milestone for completion of the final radon barrier, the agency may by license amendment extend that date based on cost if, after providing an opportunity for public participation, the agency finds that the licensee is making good faith efforts to emplace the final radon barrier, the delay is consistent with the definition of "available technology," and the radon releases caused by the delay will not result in a significant incremental risk to the public health.

(26) The agency may authorize by license amendment, upon licensee request, a portion of the impoundment to accept uranium byproduct material, or such materials that are similar in physical, chemical, and radiological characteristics to the uranium mill tailings and associated wastes already in the pile or impoundment, from other sources during the closure process. No such authorization will be made if it results in a delay or impediment to emplacement of the final radon barrier over the remainder of the impoundment in a manner that will achieve levels of radon-222 releases not exceeding 20 pCi/m^2s averaged over the entire impoundment. The verification required in paragraph (18) of this subsection may be completed with a portion of the impoundment being used for further disposal if the agency makes a final finding that the impoundment will continue to achieve a level of radon-222 release not exceeding 20 pCi/m^2s averaged over the entire impoundment. After the final radon barrier is complete except for the continuing disposal area, only byproduct material will be authorized for disposal, and the disposal will be limited to the specified existing disposal area. This authorization by license amendment will only be made after providing opportunity for public participation. Reclamation of the disposal area, as appropriate, must be completed in a timely manner after disposal operations cease in accordance with paragraph (16) of this subsection. These actions are not required to be complete as part of meeting the deadline for final radon barrier construction.

(27) The licensee's closure plan shall provide reasonable assurance that institutional control will be provided for the length of time found necessary by the agency to ensure the requirements of paragraph (16) of this subsection are met.

(28) Prior to any major site construction, a preoperational monitoring program shall be conducted for one full year to provide complete baseline data on the site and its environs. Throughout the

construction and operating phases of the project, an operational monitoring program shall be conducted to measure or evaluate compliance with applicable standards and rules; to evaluate performance of control systems and procedures; to evaluate environmental impacts of operation; and to detect potential long-term effects.

(29) The licensee shall establish a detection monitoring program needed for the agency to set the site-specific groundwater protection standards in paragraph (10)(D) of this subsection. For all monitoring under this paragraph, the licensee or applicant will propose, as license conditions for agency approval, which constituents are to be monitored on a site-specific basis. The data and information shall provide a sufficient basis to identify those hazardous constituents which require concentration limit standards and to enable the agency to set the limits for those constituents and compliance period. They may provide the basis for adjustments to the point of compliance. The detection monitoring program must be in place when specified by the agency in orders or license conditions. Once groundwater protection standards have been established in accordance with paragraph (10)(D) of this subsection, the licensee shall establish and implement a compliance monitoring program. In conjunction with a corrective action program, the licensee shall establish and implement a corrective action monitoring program to demonstrate the effectiveness of the corrective actions. Any monitoring program required by this paragraph may be based on existing monitoring programs to the extent the existing programs can meet the stated objective for the program.

(30) Systems shall be designed and operated so that all airborne effluent releases are as low as is reasonably achievable. The primary means of accomplishing this shall be by means of emission controls. Institutional controls, such as extending the site boundary and exclusion area, may be employed to ensure that offsite exposure limits are met, but only after all practicable measures have been taken to control emissions at the source.

(A) During operations and prior to closure, radiation doses from radon emissions from surface impoundments of byproduct materials must be kept as low as is reasonably achievable.

(B) Checks shall be made and logged hourly of all parameters which determine the efficiency of emission control equipment operation. It shall be determined whether or not conditions are within a range prescribed to ensure that the equipment is operating consistently near peak efficiency. Corrective action shall be taken when performance is outside of prescribed ranges. Effluent control devices shall be operative at all times during drying and packaging operations and whenever air is exhausting from the uranium dryer stack. Drying and packaging operations shall terminate when controls are inoperative. When checks indicate the equipment is not operating within the range prescribed for peak efficiency, actions shall be taken to restore parameters to the prescribed range. When this cannot be done without shutdown and repairs, drying and packaging operations shall cease as soon as practicable. Operations may not be restarted after cessation due to off-normal performance until needed corrective actions have been identified and implemented. All such cessations, corrective actions, and re-starts shall be reported to the agency in writing within 10 days of the subsequent restart.

(C) To control dusting from byproduct material, that portion not covered by standing liquids shall be wetted or chemically stabilized to prevent or minimize blowing and dusting to the maximum extent reasonably achievable. This requirement may be relaxed if byproduct material are effectively sheltered from wind, as in the case of below-grade disposal. Consideration shall be given in planning byproduct material disposal programs to methods for phased covering and reclamation of byproduct material impoundments. To control dusting from diffuse sources, applicants/licensees shall develop written operating procedures specifying the methods of control which will be utilized.

(D) Uranium recovery facility operations producing or involving thorium byproduct material shall be conducted in such a manner as to provide reasonable assurance that the annual dose equivalent does not exceed 25 millirems (mrem) to the whole body, 75 mrem to the thyroid, and 25 mrem to any other organ of any member of the public as a result of exposures to the planned discharge of radioactive materials to the general environment, radon-220 and its daughters excepted.

(E) Byproduct materials must be managed so as to conform to the applicable provisions of 40 CFR 440, as codified on January 1, 1983.

(31) Licensees/applicants may propose alternatives to the specific requirements in subsections (o)-(r) of this section. The alternative proposals may take into account local or regional conditions including geology, topography, hydrology, and meteorology.

(32) The agency may find that the proposed alternatives meet the Agency's requirements if the alternatives will achieve a level of stabilization and containment of the sites concerned and a level of protection for the public health and safety and the environment from radiological and nonradiological hazards associated with the sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by the requirements of subsections (o)-(r) of this section and the standards promulgated by the Environmental Protection Agency in 40 CFR Part 192, Subparts D and E.

(33) All site-specific licensing decisions based on the criteria in subsections (o)-(r) of this section, or alternatives proposed by licensees/applicants shall take into account the risk to the public health and safety and the environment with due consideration to the economic costs involved and any other factors the agency determines to be appropriate.

(34) Any proposed alternatives to the specific requirements in subsections (o)-(r) of this section must meet the requirements of 10 CFR 150.31(d).

(35) No new site shall be located in a 100-year floodplain or wetland as defined in "Floodplain Management Guidelines for Implementing Executive Order 11988."

(r) Land ownership of byproduct material disposal sites.

(1) These criteria relating to ownership of byproduct material and their disposal sites apply to all licenses terminated, issued, or renewed after November 8, 1981.

(2) Unless exempted by the NRC, title to land (including any affected interests therein) which is used for the disposal of byproduct material or which is essential to ensure the long-term stability of the disposal site and title to the byproduct material shall be transferred to the State of Texas or the United States prior to the termination of the license. Material and land transferred shall be transferred without cost to the State of Texas or the United States. In cases where no ongoing site surveillance will be required, surface land ownership transfer requirements may be waived. For licenses

issued before November 8, 1981, the NRC may take into account the status of the ownership of such land and interests therein, and the ability of a licensee to transfer title and custody thereof to the State.

(3) Any uranium recovery facility license must contain such terms and conditions as the agency determines necessary to assure that, prior to termination of the license, the licensee will comply with ownership requirements of this subsection for sites used for tailings disposal.

(4) For surface impoundments only, the applicant/licensee shall demonstrate a serious effort to obtain severed mineral rights and shall, in the event that fee simple title including all mineral rights cannot be obtained, provide notification in local public land records of the fact that the land is being used for the disposal of radioactive material and is subject to a NRC license prohibiting the disruption and disturbance of the tailings.

(5) If the NRC, subsequent to title transfer, determines that use of the surface or subsurface estates, or both, of the land transferred to the state or federal government will not endanger the public health and safety or the environment, the NRC may permit the use of the surface or subsurface estates, or both, of such land in a manner consistent with the provisions of this section. If the NRC permits such use of such land, it will provide the person who transferred such land with the first refusal with respect to such use of such land.

(s) Maximum values for use in groundwater protection. The following is a list of the maximum concentration values to be used for groundwater protection.
Figure 1: 25 TAC §289.260(s)

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

Issued in Austin, Texas, on September 17, 1997.

TRD-9712382
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: October 27,1997
For further information, please call: (512) 458–7236

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Chapter 289. Radiation Control

The Texas Department of Health (department) proposes the repeal of §289.126, and proposes new §289.204, concerning fees for certificates of registration, radioactive material(s) licenses, emergency planning and implementation, and other regulatory services. The section proposed for repeal adopts by reference Part 12, titled "Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services" of the *Texas Regulations for Control of Radiation* (TRCR). The proposed new section incorporates language from Part 12 that has been rewritten in Texas Register format and includes addition and revision of several subsections of the section. The repeal and new section are part of the renumbering phase in the process of rewriting the department's radiation rules in the Texas Register format. The new section reflects the renumbering.

Other than Texas Register formatting changes, the substantive language in §289.204(a) - (b) and (d) - (j) remains unchanged. Therefore, the only comments being accepted are on the addition and revision of §289.204(c), (k), (l), (m), and (n).

New definitions are added to §289.204(c) to clarify terms used in the schedule of fees for uranium recovery and byproduct disposal facility licenses. The revision to §289.204(k) implements the provisions of House Bill 2170, 75th Legislature, which change the amount a licensee or registrant is required to pay for a late fee to 20% of the amount of the annual license or registration fee, not to exceed $10,000 annually for each licensee or registrant. A new subsection §289.204(l) is added to specify the annual fees, adjustments to annual fees, and one-time fee adjustments for uranium recovery and byproduct disposal facility licenses. The fees are necessary to recover the costs of regulating these licenses. The revision of §289.204(c) and addition of §289.204(l), (m), and (n) are proposed as a result of Senate Bill 1857, 75th Legislature which transferred the jurisdiction for the regulation of uranium recovery and byproduct material disposal facilities from the Texas Natural Resource Conservation Commission (TNRCC) to the department.

Mrs. Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, has determined that for the first five-year period the sections will be in effect, there will be no fiscal implications for local government as a result of enforcing or administering the sections as proposed. There are no fiscal implications for state government.

Mrs. McBurney also has determined that for each year of the first five years the proposed sections will be in effect, the public benefit anticipated as a result of enforcing the sections will be to ensure that regulation of the uranium recovery and byproduct material disposal industry continues to be an effective means for protecting the public, workers, and the environment from unnecessary exposure to radiation by recovering the costs of such regulation. There will be no effect on small businesses. The economic costs to persons who are required to comply with the section as proposed will range from $21,637 annually for a uranium recovery facility licensee in post-closure with no authorized noncontiguous properties and no authorization for byproduct material disposal, to $242,356 for a facility submitting a new application for a conventional uranium recovery facility. There is no anticipated impact on local employment.

Comments on the proposal may be presented to Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, Telephone (512) 834-6688. Public comments will be accepted for 30 days following publication of this proposal in the *Texas Register.* In addition, a public hearing will be held at 11:00 a.m., Monday, October 13, 1997, in Conference Room N218, Texas Department of Health, Bureau of Radiation Control, located at the Exchange Building, 8407 Wall Street, Austin, Texas.

Texas Regulations for Control of Radiation

25 TAC §289.126

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

The repeal is proposed under the Health and Safety Code, Chapter 401, which provides the Texas Board of Health (board) with authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

The repeal affects Health and Safety Code, Chapter 401.

§289.126. Fees for Certificates of Registration, Radioactive Material(s), Emergency Planning and Implementation, and Other Regulatory Services.

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

Issued in Austin, Texas, on September 17, 1997.

TRD-9712379
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: October 27,1997
For further information, please call: (512) 458–7236

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General

25 TAC §289.204

The new section is proposed under the Health and Safety Code, Chapter 401, which provides the Texas Board of Health (board) with authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

The new section affects Health and Safety Code, Chapter 401.

§289.204. Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services.

(a) Purpose. The requirements in this section establish fees for licensing, registration, emergency planning and implementation, and other regulatory services, and provide for their payment.

(b) Scope. Except as otherwise specifically provided, the requirements in this section apply to any person who is the following:

(1) an applicant for, or holder of:

(A) a radioactive material license issued in accordance with §289.127 of this title (relating to Licensing of Naturally Occurring Radioactive Material (NORM)), §289.252 of this title (relating to Licensing of Radioactive Material); §289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities), or §289.260 of this title (relating to Licensing of Uranium Recovery and Byproduct Material Disposal Facilities); or

(B) a general license acknowledgment issued in accordance with §289.251 of this title (relating to Exemptions, General Licenses, and General License Acknowledgments); or

(C) a certificate of registration for radiation machines and/or services, or sources of laser radiation, issued in accordance with §289.122 of this title (relating to Registration of Radiation Machines and Services), or §289.2 of this title (relating to Control of Laser Radiation Hazards); or

(2) the holder of a fixed nuclear facility construction permit or operating license issued by the United States Nuclear Regulatory Commission (NRC) in accordance with 10 CFR Part 50; or

(3) the operator of any other fixed nuclear facility.

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

(1) Contiguous properties - Those locations adjacent to an existing licensed or permitted area.

(2) Decontamination services - Providing deliberate operations to reduce or remove residual radioactivity from equipment, facilities, and land owned, possessed, or controlled by other persons to a level that permits release of equipment, facilities, and land for unrestricted use and/or termination of a license.

(3) Emergency planning and implementation - The development and application of those capabilities necessary for the protection of the public and the environment from the effects of an accidental or uncontrolled release of radioactive materials, including the equipping, training and periodic retraining of response personnel.

(4) Fixed nuclear facility - The following are considered fixed nuclear facilities:

(A) any nuclear reactor(s) at a single site;

(B) any facility designed or used for the assembly or disassembly of nuclear weapons; or

(C) any other facility using special nuclear material for which the agency conducts off-site environmental surveillance and/or emergency planning and implementation to protect the public health and safety or the environment.

(5) Post-closure - The time period after which closure activities have been completed by the conventional mill licensee and prior to transfer of land ownership of tailings disposal sites to the State of Texas or the United States of America and termination of the license or after which confirmatory surveys have been conducted by the agency of an in-situ facility and before termination of the license or site.

(d) Exemptions. No application or annual fee shall be required for a general license issued in accordance with §289.251 of this title that does not require a general license acknowledgment.

(e) Payment of fees.

(1) Each application for a license, general license acknowledgment, or certificate of registration for which a fee is prescribed in subsections (f), (h), or (i) of this section shall be accompanied by a nonrefundable fee equal to the appropriate annual fee. An application for a license covering more than one fee category shall be accompanied by the prescribed fee for the highest fee category. An application for a certificate of registration shall be accompanied by a fee for all applicable categories. No application will be accepted for filing or processed prior to payment of the full amount specified.

(2) A nonrefundable fee, in accordance with subsection (f) of this section shall be paid annually for each radioactive material

license and/or for each general license acknowledgment. The fee shall be paid in full each year on or before the last day of the expiration month of the license or general license acknowledgment. For example, if the license or general license acknowledgment expires May 31, 1994, annual fees are due on or before May 31 of each calendar year. In the case of a single license that authorizes more than one category of use, only one fee shall be paid. The category assigned the higher fee will apply.

(3) A nonrefundable fee, in accordance with subsections (f) or (i) of this section, shall be paid annually for each certificate of registration for radiation machines and/or services, sources of laser radiation. The fee consists of a base fee for all registrants plus a fee where specified for each machine possessed or registrable service offered.

(4) In the case of a certificate of registration that authorizes more than one category of use, the category listed in subsection (i) of this section and assigned the higher fee will apply.

(5) The annual fee for a certificate of registration for radiation machines and services listed in subsection (i) of this section shall not exceed $4,000 per year. The annual fee for a certificate of registration for sources of laser radiation other than laser light shows shall not exceed $400 per year.

(6) An application for an amendment to a license that results in a change to a category with a higher fee shall result in a fee being charged equal to the pro-rated difference between the fee for the current category and the one to which the amended license will escalate. The prorated costs shall be based on monthly intervals and will be charged from the first day of the month the amendment is effective until the end of the current billing period. For example, if a nuclear medicine license amendment to change its classification from Diagnostic Only to Diagnostic/Therapy becomes effective June 1, 1994, and the expiration month of the license is December, the licensee will be billed $235, calculated in the following method: $1,040 - 570 = $470; $470 x 1/2 = $235, where 1/2 = 6 months/ 12 months. The agency will bill the licensee.

(7) Each application for reciprocal recognition of an out-of-state license in accordance with §289.252(s) of this title, an out-of-state registration in accordance with §289.122 of this title, or an out-of-state laser registration in accordance with §289.2 of this title shall be accompanied by the applicable annual fee, provided that no such fee has been submitted within 12 months of the date of commencement of the proposed activity.

(8) Each holder of a fixed nuclear facility construction permit or operating license or an operator of any other fixed nuclear facility shall submit an annual fee for services received. This fee shall recover for the State of Texas the actual expenses arising from environmental surveillance and emergency planning and implementation activities. Payment shall be made within 90 days following the date of invoice.

(9) Fee payments shall be in cash or by check or money order made payable to the Texas Department of Health. The payments may be made by personal delivery to the central office, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas, or mailed to the Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3189.

(f) Schedule of annual fees for radioactive material licenses. The following schedule contains the annual fees for radioactive material licenses:
Figure 1: 25 TAC §289.204(f)

(g) Other fee assessments.

(1) Each time a manufacturer submits a request for initial evaluation of a unique sealed source, a one-time fee of $2,435 shall be paid.

(2) Each time a manufacturer submits a request for initial evaluation of a unique device, a one-time fee of $4,870 shall be paid.

(3) No request for evaluation will be processed prior to payment of the full amount specified.

(h) Schedule of fees for certification of mammography systems. The following schedule contains the fees for certification of mammography systems:
Figure 2: 25 TAC §289.204(h)

(i) Schedule of annual fees for certificates of registration for radiation machines, lasers, and services. The following schedule contains the annual fees for certificates of registration for radiation machines, lasers, and services:
Figure 3: 25 TAC §289.204(i)

(j) Annual fees for environmental surveillance and emergency planning and implementation. Fees shall be set annually by the agency for each facility. Fees for fixed nuclear facilities shall be the actual expenses for environmental surveillance and emergency planning and implementation activities. Costs of activities benefiting more than one facility shall be prorated.

(k) Failure to pay prescribed fees.

(1) In any case where the agency finds that an applicant for a license or certificate of registration has failed to pay the fee prescribed in this section, the agency will not process that application until such fee is paid.

(2) In any case where the agency finds that a licensee or registrant has failed to pay a fee prescribed by this section by the due date, the licensee or registrant shall pay an annual late payment fee of 20% of the annual fee prescribed in this subsection and subsections (f), (h), and (i), of this section, in addition to the annual license and registration fee. The annual late payment fee shall not exceed $10,000 for each licensee or registrant who fails to pay the fees prescribed by this section.

(3) In any case where the agency finds that a licensee or registrant has failed to pay a fee prescribed by this section by the due date, the agency may implement compliance procedures as provided in §289.112 of this title (relating to Hearing and Enforcement Procedures).

(4) In any case where the agency finds that a fixed nuclear facility has failed to pay fees for environmental surveillance or emergency planning and implementation within 90 days following date of invoice, the agency may issue an order to show cause why those services should not be terminated.

(l) Schedule of fees for uranium recovery and byproduct disposal facility licenses. The following schedule contains the fees for uranium recovery and byproduct disposal facility licenses:
Figure 4: 25 TAC §289.204(l)

(m) Adjustments to annual fees for uranium recovery and byproduct disposal facility licenses.

(1) If additional noncontiguous uranium recovery facility sites are authorized under the same license, the appropriate annual fee shall be increased by 25% for each additional site for an operational year and 50% for closure only.

(2) If an authorization for disposal of byproduct material is added to a license, the appropriate annual fee shall be increased by 25%.

(n) One-time fee adjustments for uranium recovery and byproduct disposal facility licenses. For the addition of the following items after an environmental assessment has been completed on a facility, a one-time fee corresponding to the item shall be paid:

(1) $20,354 for in situ wellfield on noncontiguous property;

(2) $50,888 for in situ satellite;

(3) $7,979 for wellfield on contiguous property;

(4) $36,048 for non-vacuum dryer; or

(5) $50,888 for disposal (including processing, if applicable) of byproduct material.

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

Issued in Austin, Texas, on September 17, 1997.

TRD-9712380
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: October 27,1997
For further information, please call: (512) 458–7236

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Part II. Texas Department of Mental Health Mental Retardation

Chapter 408. Standards and Quality Assurance

Subchapter D. Additional Mandatory Standards for Selected Mental Retardation Community-Based Providers

25 TAC §§408.101–408.106

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

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeal of §§408.101-408.106 of Chapter 408, Subchapter D, governing additional mandatory standards for selected providers of community-based mental retardation supports and services.

The proposed repeal would accommodate Senate Bill 1247 of the 75th Legislature which amends the Home and Community Support Services Act to clarify that programs funded and monitored by TDMHMR, and serving only individuals enrolled in a TDMHMR program, satisfy the requirements for licensure under this act.

Don Green, chief financial officer, has determined that for each year of the first five-year period the proposal is in effect there will be no fiscal impact to state or local governments.

Sue Dillard, director, Quality Management, has determined that for each year of the first five years the proposal is in effect the public benefit anticipated will be the department's compliance with state law and the elimination of unnecessary standards. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There will be no effect on small business.

Questions about the content of the proposal may be directed to Steve Riggle, HCS program, Texas Department Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668.

Comments on the proposal should be submitted to Linda Logan, director, Policy Development, Texas Department Mental Health and Mental Retardation, P.O. Box 12668, Austin, TX 78711-2668, within 30 days of publication.

The sections are proposed under the Health and Safety Code, §532.015(a), which provides TDMHMR with broad rulemaking authority; and under §534.052, which gives the board rulemaking authority for community-based mental health and mental retardation services provided by community centers and other contract providers.

The section affects Texas Health and Safety Code, Chapter 32, §142.009(k) and §532.052.

§408.101. Purpose.

§408.102. Applications.

§408.103. Definitions.

§408.104. Additional Mandatory Standards.

§408.105. References.

§408.106. Distribution.

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

Issued in Austin, Texas, on October 27, 1997.

TRD-9712352
Ann Utley
Chairman, Texas MHMR Board
Texas Department of Mental Health Mental Retardation
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 206-4516

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Part VIII. Interagency Council on Early Childhood Intervention

Chapter 621. Early Childhood Intervention

Early Childhood Intervention Service Delivery

25 TAC §621.23

The Interagency Council on Early Childhood Intervention proposes amendments to §621.23 (Service Delivery Requirements for Comprehensive Services). This revision in this section is no longer relevant. Chapter 1 funds are no longer available.

Ms. Donna Samuelson, Deputy Executive Director, Interagency Council on Early Childhood Intervention has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules. There will be no effect on small business.

Ms. Samuelson also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be to reflect current requirements.

Comments on the proposed amendments may be submitted to Donna Samuelson, Deputy Executive Director, Interagency Council on Early Childhood Intervention, 4900 North Lamar, Austin, Texas 78751.

The amendments are proposed under the Human Resources Code, Chapter 73 which authorizes the Interagency Council on Early Childhood Intervention to establish rules regard ing services provided for children with developmental delays.

The amendments implement §§73.001-73.021 of the Human Resources Code.

§621.23. Service Delivery Requirements for Comprehensive Services.

Programs that receive Early Childhood Intervention (ECI) funds for comprehensive services must have written policies and procedures which are implemented and evaluated in each of the following areas.

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

(5) Individualized family service plan (IFSP). An IFSP must be developed for each child eligible for comprehensive services and the child's family. Services must be delivered in conformity with an IFSP.

(A)- (K) (No change).

(L) Reimbursement for comprehensive service.

(i)- (iv) (No change).

[(v) All programs will be required to apply for Chapter 1 funds.]

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

Issued in Austin, Texas, on September 9, 1997.

TRD-9712635

Donna Samuelson

Deputy Executive Director

Interangency Council on Early Childhood Intervention

Earliest possible date of adoption: October 27, 1997

For further information, please call: (512) 424–6754

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TITLE 28. INSURANCE

Part II. Texas Workers' Compensation Commission

Chapter 102. Practice and Procedures

28 TAC §102.2

The Texas Workers' Compensation Commission (the commission) proposes an amendment to §102.2, concerning the acceptance of gifts, grants, and donations. The amendment is proposed to reflect changes in the Texas Government Code regarding the acceptance of gifts by state agencies.

Recent legislation (Senate Bill 145, 75th Legislature, 1997) amended the Texas Government Code by adding Chapter 575 regarding the acceptance of gifts by state agencies. This new Chapter 575 defines "gift" and "state agency" and allows gifts of $500 or more to be accepted by a state agency that has a governing board only if the agency has the authority to accept gifts and a majority of the board, in an open meeting, approves accepting the gift. Chapter 575 also requires that the minutes of the board accepting a gift include the name of the donor, a description of the gift, and a statement of the purpose of the gift. Texas Labor Code §402.062 specifically authorizes the Commission to accept gifts, grants, or donations.

The proposed amendment to §102.2 would reflect the requirements of new Chapter 575 of the Government Code. Proposed amendments to subsection (a) change the entity which may accept gifts, donations and grants from the Executive Director to the Commission and specifies that approval must be by a majority vote of the Commission at a public meeting.

Janet Chamness, Associate Director of Finance, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Ms. Chamness also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule will be implementation of requirements in the Texas Government Code.

There will be no anticipated economic costs to persons who are required to comply with the rule as proposed. There will be no costs of compliance for small businesses.

Comments on the proposal or requests for public hearing must be submitted to Elaine Crease by 5:00 p.m. on Wednesday, October 8, 1997, at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491. A public hearing has been scheduled for October 8, 1997, in Room 910 at the Central Office of the Commission at the address given previously in this request for comments. Interested parties should contact the Executive Communication Division at (512) 440-5690 for further information on the public hearing.

The amendment is proposed under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act, the Texas Labor Code, §402.062, which allows the Commission to accept gifts, grants, or donations as provided by rules adopted by the Commission; and the Texas Government Code, Chapter 575, as added by Senate Bill 145, 75th Legislature, 1997, which provides procedures for acceptance of gifts by state agencies and prohibits acceptance of a gift from a person who is a party to a contested cases before the agency within 30 days of a final decision.

The proposed amendment affects the following statutes: the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act, the Texas Labor Code, §402.062, which allows the Commission to accept gifts, grants, or donations as provided by rules adopted by the Commission; and the Texas Government Code, Chapter 575, as added by Senate Bill 145, 75th Legislature, 1997, which provides procedures for acceptance of gifts by state agencies and prohibits acceptance of a gift from a person who is a party to a contested cases before the agency within 30 days of a final decision.

§102.2. Gifts, Grants, and Donations.

(a) **The** [On behalf of the] commission[, the Executive Director] may accept gifts, grants, and donations made to the Texas Workers' Compensation Commission [or the Texas Crime Victims' Compensation Fund]. **If the value of the gift is more than $500, the commission must approve acceptance of a gift, or donation by a majority vote at a public meeting. The minutes of the public meeting shall include the name of the donor, a description of the gift or donation, and a statement of the purpose of the gift or donation.**

(b) The Executive Director shall forward all money **or financial instruments** received as a gift, grant, or donation to the Comptroller of Public Accounts, for deposit in the appropriate commission fund.

(c) The Executive Director shall, where appropriate, convert non-monetary gifts, grants, and donations to cash.

(d) (No change.)

(e) **On behalf of the commission, the** [The] Executive Director **may accept gifts, grants, or donations of less than $500 made to the Workers' Compensation Commission and** shall report all gifts, grants, and donations received **to** [at the next regular meeting of] the commission.

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

Issued in Austin, Texas, on September 12, 1997.

TRD-9712198
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 440-3700

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Chapter 108. Fees

28 TAC §108.1

The Texas Workers' Compensation Commission (the commission) proposes an amendment to §108.1, concerning charges for copies of public information. The amendment is proposed to implement statutory changes relating to charges to access Texas Workers' Compensation Commission information. House Bill 3279, 75th Legislature, 1997, amended the Texas Labor Code §402.081 to provide that the Texas Workers' Compensation Commission may charge a reasonable fee to recover costs for making available information that contains confidential information that must be redacted before it is made available. House Bill 3279 further provides that when a request is for the inspection of information of 10 or fewer pages and a copy is not requested, the commission may charge only the cost of making a copy of the page from which the information must be redacted. Current §108.1 references the Government Code and the General Services Commission rules; it does not reference the Texas Labor Code. The proposed amendment to §108.1(a) adds a reference to the Texas Labor Code to clarify that statutory charge provisions for charges for copies of or access to public information are not limited to those in the Government Code.

The proposed amendment to 108.1(c) would clarify calculation of charges for requests for commission information which are not specified elsewhere. Where no fee is provided in the Government Code, the Labor Code or the General Service Commission rules, the proposed amendment to subsection (c) provides for charging the actual cost, including the costs of materials, labor and overhead, to provide the information.

Janet Chamness, Associate Director of Finance, has determined that for the first five-year period the proposed rule is in effect there will be minimal fiscal implications for state or local governments as a result of enforcing or administering the rule. A minimal cost to the commission will be necessary to account for the fees charged and collected under the new statute but these costs will be offset by the recoupment of the costs to redact confidential information.

Ms. Chamness also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of implementing the section will be compliance with the new legislation, continued efficient resource utilization and facilitated access to official records. The commission will be able to recover costs associated with providing access to public records which contain confidential information. The commission will continue to provide copies of public information to those requesting copies in an efficient manner and the cost burden will be born by the person requesting the service. House Bill 3279 does not affect claimants who seek access to or copies of their own claim files. Compliance costs which would result from adoption of this rule are the direct outgrowth of the legislative directive contained in House Bill 3279 and not the result of the proposal and adoption of this rule. Persons who seek access to information which is greater than 10 pages long and contains confidential information which must be redacted will experience an increase in the costs to review such information. The increased costs will depend upon the amount of information for which access is requested.

The costs of compliance for small businesses will depend on the length of information requested. There will be no greater cost of compliance for small businesses as compared to large businesses.

Comments on the proposal or requests for public hearing must be submitted to Elaine Crease by 5:00 p.m. on Wednesday, October 8, 1997, at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491. A public hearing has been scheduled for October 8, 1997, in Room 910 at the Central Office of the Commission at the address given previously in this request for comments. Interested parties should contact the Executive Communication Division at (512) 440-5690 for further information on the public hearing.

The amendment is proposed pursuant to the Texas Labor Code, §401.021, which sets out the application of other acts (including the open records law) to the Texas Labor Code; the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code §402.081, as amended by House Bill 3279, 75th Legislature, 1997, which provides for a reasonable fee to be charged for confidential information when access to commission records is requested; the Texas Labor Code §402.083, which provides for confidentiality of claim file information; the Texas Labor Code, §402.086, which provides for transfer of confidentiality of released claim file information; the Texas Labor Code, §402.091, which sets out penalties for failure to maintain confidentiality; the Texas Labor Code, §402.092, which provides for the confidentiality of information in commission investigation files; the Texas Government Code, §552.230 and §552.262, which authorize each state agency to promulgate rules of procedure for the inspection and obtaining copies of public information and to specify the charges the agency will make for obtaining copies of public information.

The proposed amendment affects the following statutes: the Texas Labor Code §401.021, which sets out the application of other acts (including the open records law) to the Texas Labor Code; the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code §402.081, as amended by House Bill 3279, 75th Legislature, 1997, which establishes the custodian of the commission records, sets out time and manner of record retention, and provides for a reasonable fee to be charged for confidential information when access to commission records is requested; the Texas Labor Code §402.082, which establishes the information to be maintained by the commission; the Texas Labor Code §402.083, which provides for confidentiality of claim file information; the Texas Labor Code §402.084 which makes provision for the release of information; the Texas Labor Code §402.085, which sets out exceptions to the prohibition of release of claim information; the Texas Labor Code §402.086, which provides for transfer of confidentiality of released claim file information; the Texas Labor Code §§402.087, 402.088, and 402.089, which allow release of information on prior injuries; the Texas Labor Code §402.091, which sets out penalties for failure to maintain confidentiality; the Texas Labor Code §402.092, which provides for the confidentiality of information in commission investigation files; and the Texas Government Code, Chapter 552, which establishes the definition of public information, exceptions to public information, the procedures for obtaining public information and charges for obtaining copies of establishment of public information.

§108.1. Charges For Copies of Public Information.

(a) The charge to any person requesting access to public information or copies of public information from the commission will be the charges established by the Government Code, Chapter 552, [and] the General Services Commission rules, 1 TAC §111.61 et seq., as amended, **and the Texas Labor Code** [to the extent that they do not conflict with the Government Code].

(b) (No change.)

(c) **All other requests** [Requests] for public information**, including those** for which the Government Code**, Texas Labor Code** or the General Services Commission have not established a charge will be charged at the actual cost**, including costs of materials, labor and overhead,** to the commission to provide the item.

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

Issued in Austin, Texas, on September 12, 1997.

TRD-9712199
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 440-3700

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Chapter 114. Self-Insurance

28 TAC §114.4

The Texas Workers' Compensation Commission (the commission) proposes an amendment to §114.4, concerning self-insurance security requirements. The amendment is proposed to implement statutory changes resulting from the abolishment of the office of state treasurer.

Recent legislation (House Bill 2841, 75th Legislature, 1997) amended the Texas Labor Code §407.065 to conform the statute to reflect the abolishment of the office of state treasurer. The reference to the state treasurer at §407.065 of the Texas Labor Code was changed to the comptroller. House Bill 2841, §22.04, provides that conformance of the statutes to reflect the abolishment of the office of the state treasurer takes effect on September 1, 1997. The amendment to §114.4 is proposed to implement this requirement.

The proposed amendment to §114.4 would change the words "State Treasurer" to "Comptroller of Public Accounts" to conform it to the amended statute. This change will clarify where security deposits of self-insured entities are to be deposited.

Janet Chamness, Associate Director of Finance, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule. A minimal cost to the commission will be necessary to conform

certain agreements between the office of the state treasurer and the commission to the new statute.

Ms. Chamness also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule will be to implement statutory changes reflecting the abolishment of the office of state treasurer as adopted by the Legislature in House Bill 2841 and to clarify which governmental body will be assuming the duties of the former state treasurer.

There will be no anticipated economic costs to persons who are required to comply with the rule as proposed. There will be no costs of compliance for small businesses.

Comments on the proposal must be submitted to Elaine Crease by 5:00 p.m. on Wednesday, October 8th, 1997, at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491. A public hearing has been scheduled for October 8, 1997, in Room 910 at the Central Office of the Commission at the address given previously in this request for comments. Interested parties should contact the Executive Communication Division at (512) 440- 5690 for further information on the public hearing.

The amendment is proposed under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code, §407.061, which sets out general requirements to be eligible for a certificate of authority to self-insure; the Texas Labor Code §407.062, which sets out financial strength and liquidity requirements; the Texas Labor Code §407.064, which sets out general security requirements for self-insureds; the Texas Labor Code §407.065, as amended by House Bill 2841, 75th Legislature, 1997, which sets out specific security requirements for self-insureds; Articles III, IV, VII and XV of the Texas Constitution, as amended by S.J.R. 1, 74th Legislature, which was approved by the voters, effective September 1, 1996, abolishing the constitutional office of state treasurer; and S.B. 20, the implementing legislation for S.J.R. 1, which transferred all powers and duties of the state treasurer to the comptroller of public accounts.

This proposed amendment to §114.4 affects the following statutes: Texas Labor Code, §402.061, which authorizes the commission to adopt rules as necessary to administer the Act; the Texas Labor Code, §403.001, which requires money collected under the Texas Workers' Compensation Act to be deposited in the general revenue fund of the state treasurer; the Texas Labor Code, §404.003, which requires the maintenance tax collected and paid by self-insurers to fund the Research and Oversight Council on workers' Compensation to be deposited in the state treasury; the Texas Labor Code, §407.065, as amended by House Bill 2841, 75th Legislature, 1997, which requires the certified self-insurer to deposit security with the comptroller and provides that the comptroller may accept such security for withdrawal or deposit only on the written order of the director of self-insurance regulation; the Texas Labor Code, §407.101, which provides that the workers' compensation self-insurance fund is a fund in the state treasury and that the commission shall deposit application fees in the state treasury; and the Texas Labor Code, §407.104, which requires the self-insurance regulatory fee to be deposited in the state treasury to the credit of the workers' compensation self-insurance fund.

§114.4. Security Requirements.

(a) Security may be one or a combination of any of the following:

(1) (No change.)

(2) Security deposit of cash, bonds or other evidence of indebtedness issued, assumed or guaranteed by the United States of America or the State of Texas. Any such securities shall be deposited with the **Comptroller of Public Accounts** [State Treasurer] pursuant to a trust agreement prescribed by the director; or

(3) (No change.)

(b)-(g) (No change.)

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

Issued in Austin, Texas, on September 12, 1997.

TRD-9712200
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 440-3700

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Chapter 125. Education and Training of Ombudsman

28 TAC §125.1, §125.2

The Texas Workers' Compensation Commission (the commission) proposes amendments to §125.1 and §125.2, concerning education and training of ombudsmen. These amendments are proposed to reflect changes to the statutory educational requirements in amendments to the Texas Labor Code, §409.042(b)(4).

Recent legislation (House Bill 3522, 75th Legislature, 1997) amended the Texas Labor Code, §409.042(b)(4) to require an ombudsman to have at least one year of demonstrated experience in workers' compensation. This legislative change is meant to ensure that the Commission could secure a qualified applicant pool of candidates for any available ombudsman position. The statutory changes also require the Commission to review the language contained in other adopted rules to ensure that the language is consistent.

The proposed amendments change the definition of ombudsman in §125.1 to reflect the effective date of the legislative change and the number of years of workers' compensation experience required to qualify for an ombudsman position. Proposed amendments to §125.2 would delete subsection (f) because this provision is now unnecessary due to the change in experience requirements in the Texas Labor Code, §409.042(b)(4).

Janet Chamness, Associate Director of Finance, has determined that for the first five-year period the proposed rule is in

effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Ms. Chamness also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated will include the following. The removal of the strict three year requirement will increase the ombudsman applicant pool and allow greater latitude in the selection of individuals for these positions. It will also decrease the likelihood of delays in selection of qualified ombudsmen and the need to post positions repeatedly in order to secure an adequate applicant pool. This change will help ensure qualified ombudsman are available to assist unrepresented injured workers or other parties in the informal and formal dispute resolution process.

The deletion of §125.2(f) will remove unnecessary and outdated language which could be confusing to those reading the rule.

There will be no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal must be submitted to Elaine Crease by 5:00 p.m. on Wednesday, October 8th, 1997, at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491. A public hearing has been scheduled for October 8, 1997, in Room 910 at the Central Office of the Commission at the address given previously in this request for comments. Interested parties should contact the Executive Communication Division at (512) 440- 5690 for further information on the public hearing.

The amendments are proposed pursuant to the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code, §409.041, which mandates the commission to maintain an ombudsman program to assist injured workers and persons claiming death benefits and sets out the responsibilities of an ombudsman, including the requirement to meet with an unrepresented claimant privately for a minimum of 15 minutes prior to any formal or informal hearing; and the Texas Labor Code, §409.042, which requires each field office to employ at least one ombudsman, sets qualifications for ombudsmen, mandates the commission to adopt training guidelines and continuing education requirements for ombudsmen, and sets out minimum requirements for training.

These proposed amendments affect the following statutes: the Texas Labor Code, §§409.041, 409.042, 409.043, and 409.044.

§125.1. Definitions.

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

Ombudsman - A commission employee who has been designated by the director to perform some or all of the duties described in the Texas Labor Code, §409.041. Employees designated as ombudsmen on or after September 1, [1995] **1997** shall have at least **one year** [three years] demonstrated experience in the field of workers' compensation.

§125.2. Ombudsman Training Program/Continuing Education.

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

[(f) A person serving as an ombudsman immediately before September 1, 1995 shall be allowed to continue to serve as an ombudsman regardless of whether he or she has three years of demonstrated experience in the field of workers' compensation or has successfully completed each phase of the Ombudsman Training Program; however, he or she must comply with the provisions of subsection (d) of this section and complete the Ombudsman Training Program as required by the director.]

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

Issued in Austin, Texas, on September 12, 1997.

TRD-9712201
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 440-3700

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Chapter 126. General Provisions Applicable to All Benefits

28 TAC §126.11

The Texas Workers' Compensation Commission (the commission) proposes new §126.11, concerning Extension of the Date of Maximum Medical Improvement for Spinal Surgery. The rule is proposed to reflect changes to the definition of maximum medical improvement, the application process for extending the date of maximum medical improvement in certain circumstances, and the dispute resolution process for disputing such extensions, contained in amendments to §401.011 and §408.104 of the Texas Labor Code.

Recent legislation (House Bill 3522, 75th legislature, 1997) amended the Texas Labor Code §401.001(30) and §408.104, effective January 1, 1998, to allow for an extension of the date of maximum medical improvement after the expiration of the 104-week period if the injured employee has had spinal surgery or has been approved for spinal surgery under §408.026 of the Texas Labor Code within 12 weeks before the expiration of the 104-week period. This legislation specifically requires the commission to adopt rules regarding the procedure for requesting these extensions of the date of maximum medical improvement and the process for disputing the approval or denial of such extensions. Prior to this amendment, the injured worker reached maximum medical improvement no later than 104 weeks after the date income benefits began to accrue regardless of the existence or need for spinal surgery during the 104-week time frames.

The previous limitation of the 104-week period dramatically impacts the receipt of temporary income benefits in cases where the injured employee has not secured the appropriate medical or surgical intervention within the first two years after the date income benefits began to accrue. This could occur due to delay by the parties or the exhaustion of conservative medical treatment near the expiration of the 104-week period. When an injured employee reaches maximum medical improvement,

the doctor is required to assign an impairment rating. If the injured employee had recently undergone surgery, it is possible that the impairment rating would not be accurate due to the unstable condition of the spine after recent spinal surgery. The amendment to the legislation allows the commission to extend the temporary income benefit period to be able to secure an impairment rating after the medical condition is stable.

Subsection (a) of proposed new §126.11 describes the situations where an extension may be granted and defines what is meant by an approval for spinal surgery. The commission may approve an extension only one time during the course of a claim. This is an administrative change in the date of maximum medical improvement from 104 weeks after the date income benefits began to accrue to a specific date in the future.

Proposed subsections (b), (c) and (d) outline the general process that must be followed in requesting an extension of the date of maximum medical improvement. The application process includes a requirement to attempt to secure specific information from the injured employee's treating doctor or surgeon. This information relates to medical opinions regarding recovery times and other conditions or factors that may impact the date that the condition may become medically stable. These processes also require that the parties be notified of any requests for extensions of the date of maximum medical improvement before the request is submitted to the commission.

Proposed subsection (e) defines when the request for the extension may be submitted to the commission. Since the legislation limits the approval of extensions to those cases that are either approved for surgery or that have had surgery within the 12 weeks prior to the expiration of 104 weeks from the date income benefits began to accrue, a person may not submit a request before this 12 week period has begun. The proposed rule's 110-week limitation on submitting requests allows the parties an additional six weeks to secure the treating doctor's or surgeon's information or address other potential delays. Proposed subsection (f) lists the various items that the commission must consider in determining whether to approve or deny an extension.

Proposed subsection (g) outlines the process for disputing an approval or denial of an extension of the date of maximum medical improvement and provides that the standard of review will be whether there was an abuse of discretion in making the determination. This subsection requires the parties to request a benefit review conference to attempt to informally resolve the dispute prior to a formal hearing. The parties may dispute the approval of an extension, the denial of an extension, or the length of time granted in an approved extension. Proposed subsection (h) states that if a dispute is not timely filed, the parties waive their right to dispute the order. Further, any timely disputed order will be binding pending further resolution of the issue, thereby requiring the insurance carrier to continue to pay temporary income benefits pursuant to an order extending the date of maximum medical improvement as long as disability exists.

Proposed subsection (i) addresses the situation where a doctor certifies that an injured employee has reached maximum medical improvement between the date the order granting an extension is issued and the date of maximum medical improvement contained in the extension order. This section requires such disputes to be resolved in the normal fashion, by the selection of a designated doctor whose report will be entitled to presumptive weight.

Proposed subsection (j) addresses the situation where an extension is granted but surgery is not performed. The Legislative Committee Bill Analysis indicates that it was the intent of HB3522 to provide extensions of maximum medical improvement when spinal surgery is performed. In the event that surgery is not performed (possibly through a finding of non-concurrence through the appeals process or some other reason), any order granting an extension becomes null and void. This is important because the extension must be to a date certain and any delays in securing the surgery will result in the medical condition being unstable on the extended date of maximum medical improvement.

Proposed subsection (k) clarifies the application of the statutory provision and the new section of the rules. The effective date for the legislative change is January 1, 1998 and applies only to a claim for workers' compensation benefits based on a compensable injury that occurs on or after the effective date.

Janet Chamness, Associate Director of Finance, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule. It is anticipated that the costs associated with processing these requests can be absorbed in the existing fiscal structure.

Ms. Chamness also has determined that there will be certain public benefits or costs to the adoption of this rule. Insurance carriers will be required to continue to pay temporary income benefits from the date income benefits began to accrue through the date the commission has extended the date of maximum medical improvement and the injured employee has disability as a result of the injury. However, this is offset by the fact that a change in this section would not alter the statutory limit of 401 weeks of potential entitlement to income benefits. Realistically, the impact would be that the injured employees with an impairment rating of 15% or more may not have to prove entitlement to supplemental income benefits at a stage where they would not be medically stable. The extension of temporary income benefits will increase the amount paid in temporary income benefits, but may reduce the amount paid in supplemental income benefits. In cases where the injured employee is determined to have less than a 15% impairment rating, the changes will result in the payment of additional temporary income benefits. However, it is anticipated that the impairment ratings in those cases or in cases where no spinal surgery was performed will still involve an impairment rating based on the pathological deficits which lead to the recommendation of surgery. The insurance carriers would be able to convert any additional temporary income benefits paid to impairment income benefits. There is a possibility that with these extensions, the insurance carrier may have an increased cost in the amount paid in temporary income benefits that are not able to be recouped when these benefits are converted to impairment income benefits. The benefit to the injured worker will include the ability to receive additional temporary income benefits after the expiration of the 104 week period while their medical condition becomes more stable. Finally, it is anticipated

that various parties may experience additional costs associated with the adjudication of disputes under this section (similar to current costs related to the resolution and adjudication of other benefit disputes).

Comments on the proposal must be submitted to Elaine Crease by 5:00 p.m. on Wednesday, October 8th, 1997, at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491. A public hearing has been scheduled for October 8, 1997, in Room 910 at the Central Office of the Commission at the address given previously in this request for comments. Interested parties should contact the Executive Communication Division at (512) 440- 5690 for further information on the public hearing.

The new rule is proposed under the Texas Labor Code, §401.011(30), which sets out the definition of maximum medical improvement; the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code, §408.026, which sets out the spinal surgery second opinion process; the Texas Labor Code, §408.083, which sets out the provisions for termination of temporary income benefits, impairment income benefits, and supplemental income benefits; the Texas Labor Code, §408.101, which defines eligibility for temporary income benefits; and the Texas Labor Code, §408.102, which sets the duration of temporary income benefits; the Texas Labor Code, §408.104, which sets out when the commission may approve extensions of the date of maximum medical improvement and specifically provides for the adoption of rules regarding the process for applying for and disputing such extensions of the date of maximum medical improvement.

Proposed new §126.11 affects the following statutes: the Texas Labor Code, §401.011(30), which sets out the definition of maximum medical improvement; the Texas Labor Code, §408.026, which sets out the spinal surgery second opinion process; the Texas Labor Code, §408.083, which sets out the provisions for termination of temporary income benefits, impairment income benefits, and supplemental income benefits; the Texas Labor Code, §408.101, which defines eligibility for temporary income benefits; and the Texas Labor Code, §408.102, which sets the duration of temporary income benefits; and the Texas Labor Code §408.104, which is the new provision adopted by the legislature regarding the extension of the date of maximum medical improvement for spinal surgery cases.

§126.11. Extension of the Date of Maximum Medical Improvement for Spinal Surgery.

(a) The commission may approve an extension of the date of maximum medical improvement, subject to subsection (f) of this section, if the injured employee has had spinal surgery or has been approved for spinal surgery 12 weeks or less before the expiration of 104 weeks from the date income benefits began to accrue. Approval for spinal surgery is either the notification from the spinal surgery section of the commission or a decision from the appeal process finding the insurance carrier liable for the reasonable costs of spinal surgery. Any extension of the date of maximum medical improvement ordered by the commission must be to a specific and certain date.

(b) Upon application by either the injured employee or the insurance carrier, the commission may by order extend the date of maximum medical improvement past the period of 104 weeks from the date income benefits began to accrue as described in the Texas Labor Code, §401.001(30)(B). The request shall be made in the form and manner prescribed by the commission. The commission shall issue an order approving or denying the request for an extension of the date of maximum medical improvement within 10 days of the date the request is received by the commission.

(c) Prior to submission to the commission of a request for an extension of the date of maximum medical improvement, the requestor shall request from the treating doctor or surgeon the information listed in subsection (f) of this section. The request shall also be sent to the injured employee, the injured employee's representative, and the insurance carrier by first class mail on the same day it is submitted to the treating doctor or surgeon. The treating doctor or surgeon shall provide to the requesting party the information requested in subsection (f) of this section within 10 days of the date the request is received. If the requesting party has not received the information from the treating doctor or surgeon within 14 days, the request may be submitted to the commission without this information.

(d) After the actions in subsection (c) of this section have been completed, a request for an extension of the date of maximum medical improvement shall be delivered to the commission office managing the claim by personal delivery or first class mail. If the information from the treating doctor or surgeon is absent when the request is received, commission staff may invoke the provisions of §102.9 of this title (relating to Submission of Information Requested by the Commission) to secure any necessary information.

(e) A request for an extension of the date of maximum medical improvement shall be submitted no earlier than 12 weeks before the expiration of 104 weeks after the date income benefits began to accrue. The commission shall deny any request for an extension of the date of maximum medical improvement that is received by the commission on or after the expiration of 110 weeks from the date income benefits began to accrue.

(f) In making the determination to approve or deny a request for an extension of the date of maximum medical improvement, the commission shall consider:

(1) typical recovery times for the specific spinal surgery procedure;

(2) projected date and information regarding when the condition may be medically stable as provided by the treating doctor or the surgeon;

(3) case specific information regarding any extenuating circumstances that may impact recovery times as provided by the treating doctor or the surgeon;

(4) information from any source regarding intentional or non-intentional delays in securing the surgery or medical treatment for the compensable injury; and

(5) any pending, unresolved disputes regarding the date of maximum medical improvement.

(g) An injured employee or an insurance carrier may dispute the approval, denial, or the length of the extension granted by the commission order requesting a benefit review conference in

accordance with §141.1 of this title (relating to Requesting and Setting a Benefit Review Conference) no later than 10 days after the date the order is received. Any proceedings and further appeals shall be conducted in accordance with Chapters 140 - 143 of this title (relating to Dispute Resolution/General Provisions, Benefit Review Conference, Benefit Contested Case Hearing, and Review by the Appeals Panel). Further, any disputes in the formal dispute resolution process regarding such orders shall be reviewed under an abuse of discretion standard. Any agreement which resolves a dispute regarding extension of the date of maximum medical improvement in accordance with this section shall be in writing and approved by the Commission. Approval shall not be granted if any party rescinds the agreement by notifying the Commission within three working days of signing the agreement.

(h) If a request for benefit review conference is not received by the commission within 15 days after the date the order granting or denying the extension was mailed or delivered to the parties by the commission, the parties waive their right to dispute the commission order. In the event that an order is timely disputed, the order shall remain binding pending final resolution of the dispute.

(i) If the injured employee is certified by a doctor to have reached maximum medical improvement between the date the extension order was issued and the extended date of maximum medical improvement specified in the order, any dispute regarding the date of maximum medical improvement shall be resolved through the selection of a designated doctor consistent with the provisions of the Texas Labor Code, §408.122 relating to Eligibility for Impairment Income Benefits; Designated Doctor, and §130.6 of this title (relating to Designated Doctor; General Provisions).

(j) In the event that the extension of the date of maximum medical improvement is granted based on a finding of liability for spinal surgery within the 12 week period and a party appeals the concurrence finding to a benefit contested case hearing, any extension of the date of maximum medical improvement ordered by the commission shall be conditional pending final decision under the commission's jurisdiction of the liability for spinal surgery. If spinal surgery is not performed within six weeks after the date the final decision of the commission is issued, the order for the extension of the date of maximum medical improvement shall be null and void.

(k) This section applies only to compensable claims with a date of injury on or after January 1, 1998.

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

Issued in Austin, Texas, on September 12, 1997.

TRD-9712202
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 440-3700

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Chapter 129. Income Benefits - Temporary Income Benefits

28 TAC §129.3

The Texas Workers' Compensation Commission (the commission) proposes an amendment to §129.3, concerning information included with the first payment of temporary income benefits. This proposed amendment is proposed to reflect current ombudsman policy.

The proposed amendment to §129.3 changes paragraph (6) by adding language which clarifies that ombudsman assistance is provided to employees who have been notified of a benefit review conference or a benefit contested case hearing. In addition, a sentence has been added to paragraph (6) to clarify how employees can obtain answers to questions other than those about a pending proceeding.

As part of its review of current rules regarding the ombudsman program, the Commission saw a need to revise §129.3 to reflect the scope of the ombudsman program. Ombudsman assistance is not generally provided until after a dispute has been scheduled for a benefit review conference or a benefit contested case hearing. An injured employee who seeks information concerning matters other than a pending proceeding should not contact an ombudsman but should contact other TWCC employees who can answer these questions. The language change is necessary to ensure that accurate information is provided to injured employees regarding the most efficient way of contacting the Commission in the event that they have any questions regarding their injury.

Janet Chamness, Associate Director of Finance, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Ms. Chamness also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated will be more accurate information regarding the scope of the ombudsman program and when ombudsman assistance is provided. Costs to insurance carriers required to comply with the rule will be minimal costs involved in revising notices sent to employees with the first payment of income benefits.

Comments on the proposal must be submitted to Elaine Crease by 5:00 p.m. on Wednesday, October 8th, 1997, at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491. A public hearing has been scheduled for October 8, 1997, in Room 910 at the Central Office of the Commission at the address given previously in this request for comments. Interested parties should contact the Executive Communication Division at (512) 440- 5690 for further information on the public hearing.

This amendment is proposed pursuant to the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code, §409.041, which mandates the commission to maintain an ombudsman program to assist injured workers and persons claiming death benefits and sets out the responsibilities of an ombudsman, including the requirement to meet with an unrepresented claimant privately for a minimum of 15 minutes prior to any formal or informal hearing; and the Texas Labor Code, §409.042, which requires each field office to employ at least one ombudsman, sets qualifications for ombudsmen,

mandates the commission to adopt training guidelines and continuing education requirements for ombudsmen, and sets out minimum requirements for training.

This proposed amendment affects the following statutes: the Texas Labor Code, §§409.041, 409.042, 409.043, and 409,044.

§129.3. Information Included with the First Payment of Temporary Income Benefits.

The insurance carrier shall enclose with the first payment a notice to the employee. The notice shall be on a form prescribed by the commission. The notice shall state:

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

(6) that the commission provides an **ombudsman at no cost** [ombudsman] to assist employees **who have been notified of a benefit review conference or a benefit contested case hearing** [at no cost] and that the ombudsman may be reached by calling 1-800-252-7031 or the local office of the commission. **Employees who have questions, other than those about a pending proceeding, should contact the local field office at 1-800-252-7031, and will be assisted by the appropriate commission personnel.**

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

Issued in Austin, Texas, on September 12, 1997.

TRD-9712203

Susan Cory

General Counsel

Texas Workers' Compensation Commission

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For further information, please call: (512) 440-3700

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Chapter 133. General Medical Provisions

Subchapter B. Required Reports

28 TAC §133.103

The Texas Workers' Compensation Commission (the commission) proposes an amendment to §133.103, concerning Specific Medical Reports. The amendment is proposed to correct references to other rules and statutes referred to in the §133.103.

Section 133.103 requires a treating doctor to submit specific medical reports, when certain listed conditions exist, to the carrier and the injured employee's representative and specifies the information required to be in the report. The proposed amendment to §133.103 merely updates the references to other rules and statutes. In subsection (b) the reference to §133.201, which was repealed, has been changed to §133.206, which sets out the spinal surgery second opinion process. The Commission has received complaints that some insurance carriers were not reimbursing health care providers for completion of the TWCC-63 form (Recommendation for Spinal Surgery) because §133.103(b) did not specifically reference the current spinal surgery rule (§133.206). The proposed amendment addresses this complaint by correcting the reference to the spinal surgery rule.

In subsections (c) and (d) references to the Texas Workers' Compensation Act, §4.16 have been changed to §408.004 to reflect the codification of this section into the Texas Labor Code.

Janet Chamness, Associate Director of Finance, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Ms. Chamness also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule will be to clarify the sections of the TWCC rules and statutes which are referred to in §133.103. Those referring to the rule will now be able to easily find related rules and sections of the statute.

There will be no anticipated economic costs to persons who are required to comply with the rule as proposed because the payment for completion of the TWCC-63 form is already required. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

Comments on the proposal must be submitted to Elaine Crease by 5:00 p.m. on Wednesday, October 8th, 1997, at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491. A public hearing has been scheduled for October 8, 1997, in Room 910 at the Central Office of the Commission at the address given previously in this request for comments. Interested parties should contact the Executive Communication Division at (512) 440- 5690 for further information on the public hearing.

The amendment is proposed under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; Texas Labor Code, §408.025, which authorizes the Commission to adopt by rule requirements for reports and records from health care providers; the Texas Labor Code, §408.026, which establishes when an insurance carrier is liable for costs relating to spinal surgery and requires that the Commission adopt rules necessary to effectuate the statute; and the Texas Labor Code §408.027, which establishes the procedure for payment to health care providers.

This proposed amendment affects the following statutes: Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; Texas Labor Code, §408.025, which authorizes the Commission to adopt by rule requirements for reports and records from health care providers, including the regulation of charges for furnishing reports and records; the Texas Labor Code §408.026, which establishes when an insurance carrier is liable for costs relating to spinal surgery and requires that the Commission adopt rules necessary to effectuate the statute; the Texas Labor Code §408.027, which establishes the procedure for payment to health care providers, including the regulation of charges for furnishing reports and records; the Texas Labor Code §408.123, which provides for certification of maximum medical improvement and evaluation of impairment rating; and the Texas Labor Code §413.053, which requires the Commission by rule to establish standards of reporting and billing governing both form and content.

§133.103. Specific Medical Reports.

(a) (No change.)

(b) The treating doctor **or surgeon** shall submit a notification of recommendation for spinal surgery in the form and manner prescribed under **§133.206** [§133.201] of this title (relating to [Notification of Recommendation for] Spinal Surgery **Second Opinion Process**).

(c) Reports of evaluation for permanent medical impairment or for maximum medical improvement, including those performed in accordance with the Act, **§408.004** [§4.16] shall be completed in the form and manner prescribed under §130.1 of this title (relating to **Reports of Medical Evaluation: Maximum Medical Improvement and Permanent Impairment** [Initial Determination of Eligibility for Supplemental Income Benefits]).

(d) A report generated by a required medical examination ordered under the Act **§408.004** [§4.16] on the issue of appropriateness of medical treatment shall include but not be limited to:

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

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

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Susan Cory
General Counsel
Texas Workers' Compensation Commission
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Chapter 147. Dispute Resolution - Agreements, Settlements, Commutations

28 TAC §147.11

The Texas Workers' Compensation Commission (the commission) proposes an amendment to §147.11, concerning agreements and settlements after a Commission order or an appeals panel decision. The existing rule on agreements and settlements after final Commission orders or appeals panel decisions was adopted to prevent parties from entering into settlements which do not meet the statutory criteria for such settlements and to implement new legislation enacted in 1995 by the 74th Legislature. The amendment is proposed to implement amendments to the Texas Workers' Compensation Act enacted in 1997 by the 75th legislature and to prevent the use of settlement agreements and judgments based on default or an agreement of the parties to overturn Appeals Panel decisions.

Prior to the 1997 amendments, insurance carriers often appealed cases to court solely for the purpose of obtaining reimbursement from the Subsequent Injury Fund. The parties would then settle the lawsuit or agree to a judgment or the carrier would obtain a default judgment. Often, these judgments or settlements were not in compliance with the law.

Recent legislation (House Bill 3137, 75th Legislature, 1997), addressed the problem in part by amending the Texas Labor Code, §410.256 and adding §§410.257 and 410.258 which set out the requirements for settlements reached after the issuance of an appeals panel decision (§410.256) and for judgments entered by courts on judicial review of an appeals panel decision and which require notification of the Commission of proposed judgments and settlements and authorize the Commission to intervene in a proceeding after receipt of a proposed judgment or settlement (§410.258).

The proposed amendment to §147.11(a) requires the party who filed for judicial review under Chapter 410, Subchapter F or G to file a proposed judgment or settlement with the General Counsel of the Commission by certified mail, return receipt requested not later than the 30th day before the date on which the court is scheduled to enter the judgment or approve the settlement. The current rule places the burden of filing on the insurance carrier and requires the filing to be made at least 30 days prior to the earlier of the date the document is sent to the parties for signature or the date it is sent to a court for approval. The current rule does not specify any specific manner of filing. The changes regarding who has the burden of filing, the deadline for making the filing, and the required manner of filing are made to comply with the language of the Texas Labor Code, §410.258. The proposed amendment to §147.11(a) also deletes references to the filing of agreements and refers instead only to settlements or judgments. This change is made to bring the rule into conformity with the language of the Texas Labor Code, §410.258 which uses the terms judgment and settlement.

The proposed amendment to §147.11(b) requires the insurance carrier or its representative to file with the General Counsel of the Commission a copy of a final judgment or settlement not later than the 10th day after a court approves the judgment or settlement. Most of this language is contained in paragraph (a)(2) of the current rule and was moved to a new subsection (b) for ease of understanding. As with subsection (a), the reference to agreements has been changed to a reference to a final judgment to bring the rule into conformity with the language of the Texas Labor Code, §410.258.

Proposed new §147.11(c) makes clear that, for cases filed on or after September 1, 1997, an agreement or settlement which is not filed in compliance with §147.11 is void. This subsection is added to make clear the penalty provided by the Texas Labor Code, §410.258(f) for failing to comply with the notification requirements.

Proposed new §147.11(d) provides an administrative violation for failure to comply with the rule. Most of this language is contained in subsection (b) of the current rule and was moved to facilitate other amendments to the rule. Under subsection (d), a party who violates §147.11 may be subject to an administrative penalty of up to $1000 pursuant to the Texas Labor Code, §415.0035 or up to $10,000 pursuant to Texas Labor Code, §410.021 for repeated violations.

Janet Chamness, Associate Director of Finance, has determined that for the first five-year period the proposed amendment is in effect there will be fiscal implications for state or local governments as a result of enforcing or administering the rule. It is anticipated that early notice of proposed judgments will allow the commission to intervene in cases in which the proposed settlements or judgment. This early involvement may eventually prevent the necessity of commission enforcement action,

thereby reducing state expenditures in such cases. The costs to local government as a result of enforcing or administering the rule are very minimal mailing or delivery and copying costs.

Ms. Chamness also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule will be better claim management by the commission because of timely notice of proposed settlement or judgment terms. In addition, the rule will allow commission intervention at a stage which will prevent illegal settlements or agreements which attempt to illegally affect claimant's benefits.

The Workers' Compensation system as a whole will benefit because the amount of over and underpayments in the system will be reduced as the parties are forced to comply with the law. This will in turn ensure that insurance premiums reflect actual costs in the system which encourage employers to obtain coverage. As more employers purchase coverage, more employees will be protected and ensured of receiving adequate and timely compensation for workplace injuries.

There will be minimal anticipated economic costs to persons who are required to comply with the rule as proposed. Insurance carriers and claimants will experience very minimal mailing or delivery and copying costs as a result of complying with the proposed new rule. There will be no greater costs of compliance for small businesses as compared to large businesses.

Comments on the proposal must be submitted to Elaine Crease by 5:00 p.m. on Wednesday, October 8th, 1997, at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491. A public hearing has been scheduled for October 8, 1997, in Room 910 at the Central Office of the Commission at the address given previously in this request for comments. Interested parties should contact the Executive Communication Division at (512) 440- 5690 for further information on the public hearing.

The amendment to §147.11 is proposed under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code §408.005, which sets out requirements for settlements; the Texas Labor Code §410.254, which establishes the commission's right to intervene in any judicial proceeding under Subtitle A, Title 5 of the Texas Labor Code; the Texas Labor Code §410.256, as amended by House Bill 3137, 75th Legislature, 1997, which requires settlements to be in compliance with the provisions of the Texas Workers' Compensation Act, requires court approval of settlements after judicial review of an award is sought, and makes a settlement which does not comply with this section void; the Texas Labor Code §410.257, as added by House Bill 3137, 75th Legislature, 1997, which requires court judgments to comply with the Texas Workers' Compensation Act and makes a judgment that does not comply with this section void; the Texas Labor Code §410.258, as added by House Bill 3137, 75th Legislature, 1997, which requires proposed judgments and settlements be filed with the Commission and allows the Commission to intervene as a matter of right in a court proceeding and makes a settlement which does not comply with this section void; the Texas Labor Code §415.0035, which provides additional violations by insurance carriers or health care providers and sets out penalties for violations; and the Texas Labor Code §415.021, which provides for the assessment of administrative penalties.

This proposed amendment to §147.11 affects the following statutes: the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code §408.005, which sets out requirements for settlements; the Texas Labor Code §410.254, which establishes the commission's right to intervene in any judicial proceeding under Subtitle A, Title 5 of the Texas Labor Code; the Texas Labor Code §410.256, as amended by House Bill 3137, 75th Legislature, 1997, which requires settlements to be in compliance with the provisions of the Texas Workers' Compensation Act, requires court approval of settlements after judicial review of an award is sought, and makes a settlement which does not comply with this section void; the Texas Labor Code §410.257, as added by House Bill 3137, 75th Legislature, 1997, which requires court judgments to comply with the Texas Workers' Compensation Act and makes a judgment that does not comply with this section void; the Texas Labor Code §410.258, as added by House Bill 3137, 75th Legislature, 1997, which requires proposed judgments and settlements be filed with the Commission and allows the Commission to intervene as a matter of right in a court proceeding and makes a settlement which does not comply with this section void; the Texas Labor Code §415.0035, which provides additional violations by insurance carriers or health care providers and sets out penalties for violations; and the Texas Labor Code §415.021, which provides for the assessment of administrative penalties.

§147.11. ***Notification of Commission of Proposed Judgments and Settlements*** *[Agreements and Settlements After Final Commission Order or Appeals Panel Decision]*

(a) **The party who requested judicial review under Chapter 410, Subchapter F or G shall** [If an agreement or settlement is reached after the issuance of an Appeals Panel decision or after the decision of the hearing officer becomes final in accordance with Texas Labor Code, §410.169 or §410.204, the insurance carrier or its representative must] file a copy of **any proposed judgment** [the agreement] or settlement with the **executive director of the Commission by filing it with the** General Counsel of the Commission **not later than the 30th day before the date on which the court is scheduled to enter the judgment or approve the settlement. A proposed judgment or settlement must be sent by certified mail return receipt requested.** [as follows:]

[(1) at least 30 days prior to the earlier of:]

[(A) the date the agreement or settlement is sent to the parties for signature; or]

[(B) the date the agreement or settlement is sent to a court for approval; and]

[(2) no later than 10 days after a court approves the agreement or settlement.]

(b) The insurance carrier or its representative shall file with the General Counsel of the Commission a copy of a final judgment or settlement not later than the 10th day after a court approves the agreement or settlement.

(c) For suits seeking judicial review filed under Chapter 410, Subchapter F (regarding Judicial Review General Pro-

visions) or Subchapter G (regarding Judicial Review of Issues Regarding Compensability or Income or Death Benefits), on or after September 1, 1997, a judgment or settlement which is not filed with the commission in compliance with subsections (a) and (b) of this section is void.

(d) [(b)] **A party** [An insurance carrier and/or its representative] who violates this section **may be** [is] subject to an administrative penalty**, including a penalty** of up to $1,000 pursuant to the Texas Labor Code, §415.0035 or up to $10,000 pursuant to the Texas Labor Code, §415.021 for repeated violations.

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

Issued in Austin, Texas, on September 12, 1997.

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Susan Cory
General Counsel
Texas Workers' Compensation Commission
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For further information, please call: (512) 440-3700

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Chapter 166. Accident Prevention Services

28 TAC §166.1

The Texas Workers' Compensation Commission (the commission) proposes an amendment to §166.1, concerning the definition of terms used in the accident prevention rules. The amendment is proposed to change references to "manual premium" to reflect changes in premium rating methodology adopted by the Texas Department of Insurance (TDI).

The term "manual premium" has been used in §166.1 to determine accident prevention service requirements. Manual premiums were derived using rates established by TDI and were believed to most nearly represent actual employee risk to injury or accident. As required by legislative changes, TDI has changed its premium rating methodology to a "file and use" system. TDI publishes "relativities" rates for each job classification. All insurance companies are required to file rates with TDI. Because rates are no longer standard or set by TDI, the term "manual premium" is obsolete. Insurance carriers now use the premium calculated on their filed rates as the trigger for providing required accident prevention services. Because of the discontinuation of TDI established rates (manual premiums), the premium derived from the filed rates best represents employee risk to injury or accident and therefore should be used to determine accident prevention service requirements.

To accomplish this change in terminology the proposed amendment to §166.1 would delete the words "manual" and "but before any adjustment or discounts are applied" in the definition of "Loss Ratio" and add a definition of "Premium".

Janet Chamness, Associate Director of Finance, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Ms. Chamness also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule will be a clearer definition of premium basis for determining required accident prevention services for policyholders.

There will be no anticipated economic costs to persons who are required to comply with the rule as proposed because the amendment simply corrects outdated terminology, but does not change current procedure.

There will be no difference in the costs of compliance for small businesses as compared to large businesses.

Comments on the proposal must be submitted to Elaine Crease by 5:00 p.m. on Wednesday, October 8th, 1997, at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491. A public hearing has been scheduled for October 8, 1997, in Room 910 at the Central Office of the Commission at the address given previously in this request for comments. Interested parties should contact the Executive Communication Division at (512) 440- 5690 for further information on the public hearing.

The amendment is proposed under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code, §401.011, which contains general definitions; the Texas Labor Code, §411.061, which requires an insurance company to provide accident prevention services; the Texas Labor Code, §411.062, which mandates the commission to establish qualifications for field safety representatives; and the Texas Labor Code, §§411.063 - 411.068, which require an insurance company to provide qualified accident prevention personnel and to provide notice of the accident prevention services, set certain specifications for the program, require an insurance company to annually submit information to the commission, require biennial inspections by the division, and provides for an administrative penalty for violation of the requirements.

This proposed amendment to §166.1 affects the following statutes: Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code, §401.011, which contains general definitions; the Texas Labor Code, §411.061, which requires an insurance company to provide accident prevention services; the Texas Labor Code, §411.062, which mandates the commission to establish qualifications for field safety representatives; the Texas Labor Code, §§411.063 - 411.068, which require an insurance company to provide qualified accident prevention personnel, and to provide notice of the accident prevention services, set certain specifications for the program, require an insurance company to annually submit information to the commission, require biennial inspections by the division, and provide for an administrative penalty for violation of the requirements.

§166.1. Definitions of Terms.

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

Loss Ratio - Loss ratio is the result of dividing the accumulated claims (including reserves) in a policy year by the [manual] premium

determined when the policy is written[, but before any adjustments or discounts are applied].

Premium - The premium calculated by using the insurance company's filed rate with the Texas Department of Insurance (TDI) before any adjustments or discounts are applied. This definition applies to the use of premium whenever referenced in this chapter.

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

Issued in Austin, Texas, on September 12, 1997.

TRD-9712206
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 440-3700

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 2. Rules of Practice and Procedures

31 TAC §§2.1–2.28

The General Land Office (GLO) proposes new Chapter 2 concerning general rules of practice and procedures in contested cases before the GLO to consolidate a myriad of existing procedural rules. Upon adoption of new Chapter 2, the GLO intends to repeal any conflicting rules.

Spencer Reid, General Counsel, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

Mr. Reid also has determined that for the first five-year period the rules are in effect the public benefit anticipated as a result of these new rules will be to ensure more efficient handling of contested cases before the GLO. There is no economic cost to small or large businesses and/or individuals.

Comments on the proposed rule may be submitted to Carol Milner, Texas General Land Office, Legal Services Division, 1700 North Congress, Suite 626, Austin, Texas 78701-1495, facsimile number (512) 463-6311. Comments must be submitted no later than 5 p.m. on October 27, 1997.

The new procedural rules are proposed under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirement of all available formal and informal procedures.

Texas Natural Resource Codes, Chapter 31, Chapter 40, Chapter 51, Chapter 52, and Chapter 53 are affected by the proposed new rules.

§2.1 Scope

(a) This chapter applies to contested case hearings before the General Land Office, including those referred to the State Office of Administrative Hearings, which are subject to the Administrative Procedures Act, Chapter 2001, Government Code.

(b) These rules shall be construed to insure the fair and expeditious determination of every action.

(c) These rules supplement the procedures required by the Administrative Procedure Act, Ch. 2001, Government Code.

(d) The General Land Office may adopt special rules of practice and procedure to be applicable only to certain types of proceedings which are not accommodated by these rules. When a special rule is in conflict with these rules, the special rule shall control.

(e) To the extent that any provisions of this chapter are in conflict with any statute or substantive rule of the General Land Office, the statute or substantive rule shall control.

(f) Exceptions to the procedural provisions of this chapter may be granted by the hearings examiner, upon notice and opportunity for hearing, if the hearings examiner determines that such exceptions are in the interest of justice or the efficient administration of this chapter.

§2.2 Definitions

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

Administrative Law Judge- An individual designated by the commissioner to act as hearings examiner in a contested case under the Administrative Procedures Act, or in the event the commissioner has referred a contested case to the State Office of Administrative Hearings, an individual designated by the State Office of Administrative Hearings.

Administrative Hearings Clerk - An individual designated by the commissioner to administer case filings in contested case hearings. The administrative duties of the administrative hearings clerk may be delegated as necessary.

Agency - The General Land Office.

APA - The Administrative Procedures Act (Government Code, Chapter 2001).

Authorized representative - An attorney authorized to practice law in the State of Texas or, where permitted by applicable law, a person designated by a party to represent the party.

Commissioner - the Commissioner of the General Land Office.

Contested case - shall have the same meaning as such term is defined in the Administrative Procedures Act (Government Code, Chapter 2001).

Law - Applicable state and federal law.

Party - A person named, or admitted to participate, in a contested case before the General Land Office.

Person - Any individual, representative, corporation, or other entity, including any public or nonprofit corporation, or any agency or instrumentality of federal, state, or local government.

Proposal for decision - A proposed decision issued by the hearings examiner in accordance with APA, §2001.062.

SOAH - State Office of Administrative Hearings.

§2.3 Jurisdiction

(a) The administrative law judge acquires jurisdiction over a contested case when the legal services division of the agency, or any person authorized by statute, files a request to docket a case in the form prescribed by the administrative hearings clerk, and in accordance with §2.7 of this chapter (relating to Filings).

(b) A request to docket a case shall be considered filed when the request to docket is received and file-marked by the administrative hearings clerk.

(c) A request to docket a case shall be submitted to the administrative hearings clerk, accompanied by legible copies of all pertinent documents (including, but not limited to, the original complaint, petition, or any other document describing agency action giving rise to a contested case, and a proper certificate of service).

(d) Once a contested case is docketed by the administrative hearings clerk, any party may move for appropriate relief, including, but not limited to, discovery and evidentiary rulings, continuances, and settings.

(e) The agency shall provide notice of hearing to a party, as required under the APA, §2001.051, and other applicable law.

(f) Hearings shall be conducted at the site designated by the administrative law judge in accordance with applicable law.

§2.4 Powers and Duties of the Administrative Law Judge

(a) The administrative law judge shall have the authority and duty to:

(1) establish the jurisdiction of the agency;

(2) conduct a full, fair, and impartial hearing;

(3) take action to avoid unnecessary delay in the disposition of the proceeding; and

(4) maintain order in the conduct of the hearing.

(b) The administrative law judge shall have the power to regulate the course of the hearing and conduct of the parties and their authorized representatives, including the power to:

(1) set hearing dates;

(2) convene the hearing at the time and place specified in the notice of hearing;

(3) examine and administer oaths to witnesses;

(4) remove persons whose conduct impedes the orderly progress of the hearing;

(5) restrict attendance as permitted by the Texas Rules of Civil Procedure;

(6) take testimony;

(7) designate and align parties;

(8) rule on motions and on the admissibility of evidence and amendment of pleadings;

(9) rule on discovery issues;

(10) establish discovery deadlines, limit discovery methods, compel discovery and issue sanctions for discovery violations;

(11) issue orders relating to hearing and prehearing matters, including orders imposing sanctions, if allowed by applicable law;

(12) admit or deny party status;

(13) limit irrelevant, immaterial, and unduly repetitious testimony and reasonably limit the time for presentations;

(14) grant or deny a continuance;

(15) request parties to submit legal memoranda, proposed findings of fact and conclusions of law;

(16) issue subpoenas to compel the attendance of witnesses, or the production of papers or documents;

(17) authorize the taking of depositions;

(18) set prehearing conferences and issue prehearing orders;

(19) ensure that information and testimony are introduced as conveniently and expeditiously as possible, including without limitation, limiting the time of argument and presentation of evidence and examination of witnesses without unfairly prejudicing the rights of parties to the proceedings;

(20) limit testimony to matters under the commissionerþs jurisdiction;

(21) continue any hearing from time to time and from place to place;

(22) reopen the record of a hearing, before a proposal for decision is issued, for additional evidence where necessary to ensure fairness;

(23) issue proposals for decision pursuant to the APA, §2001.062.

(24) dismiss a case for lack of prosecution; and

(25) exercise any other appropriate powers necessary or convenient to ensure fairness, due process, and the interests of justice.

§2.5 Substitution of Administrative Law Judge

(a) If for any reason an administrative law judge is unable to continue presiding over a pending hearing, or issue a proposal for decision after the conclusion of the hearing, the commissioner or SOAH (in the event a case has been referred to SOAH by the commissioner) may appoint another administrative law judge as a substitute, in accordance with law, without the necessity of duplicating any duty or function already performed by the previous administrative law judge.

(b) The commissioner or SOAH (in the event a case has been referred to SOAH by the commissioner) may, for good cause, assign a substitute or additional administrative law judge to a proceeding without the necessity of duplicating any duty or function already performed by the previous administrative law judge.

§2.6 Appearance of Parties at Hearings; Representation

(a) A person may represent himself or herself.

(b) A person may be represented by an attorney authorized to practice law in the State of Texas or other representative when authorized by law.

(c) A party's representative shall enter his or her appearance in the case by filing a notice of appearance with the administrative hearings clerk.

(d) A party's representative of record shall be copied on all notices, pleadings, and other correspondence.

(e) A party's attorney of record remains the attorney of record in the absence of a formal withdrawal, and an order approving such withdrawal must be issued by the administrative law judge.

(f) Not more than one representative for each party or aligned group of parties shall be heard on any question or in the hearing except upon leave of the administrative law judge.

(g) Party representatives shall:

(1) observe the letter and spirit of the Texas Lawyerþs Creed, as adopted by the Texas Supreme Court, and the State Bar of Texasþ Texas Disciplinary Rules of Professional Conduct, including those provisions concerning improper ex parte communications with the commissioner and the administrative law judge;

(2) advise their clients and witnesses of applicable requirements of conduct and decorum; and

(3) direct all objections, arguments, and other comments to the administrative law judge and not to other participants.

(h) Conduct and Decorum:

(1) Those who attend or participate in hearings should conduct themselves in a manner respectful of the conduct of public business, and conducive to orderly and polite discourse. All those in attendance shall comply with the administrative law judgeþs directions concerning the offer of public comment, and conduct and decorum.

(2) In a hearing before the administrative law judge, the administrative law judge shall first warn a person violating this section to refrain from the specific conduct in violation. Upon further violation of this section by the same person, the administrative law judge may exclude that person from the proceeding for such time and under such conditions as necessary to correct the situation. Violation of this section shall also be sufficient cause for the administrative law judge to recess the hearing.

(i) Consolidation and Severance of Issues and Parties:

(1) Consolidation. Consistent with notices required by law, the administrative law judge may consolidate related cases or claims if consolidation will not prejudice any party and may save time and expense or otherwise benefit the public interest and welfare.

(2) Severance. The administrative law judge may sever issues in a proceeding or hold special hearings on separate issues if doing so will not prejudice any party and may save time and expense or benefit the public interest and welfare. The administrative law judge may sever contested enforcement cases or claims involving any number of parties, upon motion by any party, where the party can show that the party would be unduly prejudiced if severance were not granted.

(j) Ex Parte Communication:

(1) No ex parte communication. Unless required for the disposition of an ex parte matter authorized by law, during the pendency of a contested case before the administrative law judge and the commissioner, no party, person, or their representatives shall communicate directly or indirectly with the administrative law judge or the commissioner concerning any issue of fact or law relative to the pending case, except on notice and opportunity for all parties to participate.

(2) Utilizing special skills of the agency. The administrative law judge may seek the special skills or knowledge of agency staff in evaluating the evidence in a contested case. The administrative law judge shall follow the following procedure:

(A) The administrative law judge shall issue an order, copied to all parties, asking the agency to assign a staff person with expertise who has not participated in the proceeding or in the processing of the matter being considered for potential consultation;

(B) All communications between the designated staff expert and the administrative law judge shall be either recorded or in writing, and all such communications submitted to or considered by the administrative law judge shall be made available as public records when the proposal for decision is issued; and

(C) During the pendency of the case before the administrative law judge and the commissioner, no party, person, or their representatives shall communicate directly or indirectly with the designated staff expert assigned to assist the administrative law judge concerning any issue of fact or law relative to the pending case, except on notice and opportunity for all parties to participate.

§2.7 Filings

(a) Original Materials.

(1) All documents shall be filed with the administrative hearings clerk at the following address: Administrative Hearings Clerk, General Land Office, 1700 North Congress, Austin, Texas 78701-1495.

(2) Submission of documents to be filed must include an original and two copies.

(3) Faxed submissions of documents will be accepted for filing provided sufficient copies are provided. The party filing a faxed document shall retain the original document and become its custodian.

(4) If the submitting party wishes a file stamped copy for the partyþs records, the party must provide one additional copy and a self-addressed stamped envelope.

(5) All documents filed with the administrative hearings clerk shall have the agencyþs assigned docket number and style of the case, if any, and a certificate of service.

(b) Discovery Materials.

(1) Discovery documents shall be served upon other counsel or the parties, but shall not be filed with the administrative hearings clerk or served on the administrative law judge, except on special order of the administrative law judge. The party responsible for service of the discovery material shall retain a true and accurate copy of the original documents and become their custodian.

(2) If relief is sought in a discovery dispute, copies of the portions of the material in dispute only shall be filed with the

administrative hearings clerk as attached exhibits with any pertinent motion.

(3) If discovery documents are to be used at trial or are necessary to a prehearing motion which might result in a final order on any issue, only the portions to be used along with a cover letter shall be supplied to the administrative hearings clerk.

(4) Service on All Parties. Pursuant to §2.6(d) of this title (relating to Appearance of Parties at Hearings; Representation), a copy of all filings shall be served on all parties.

(5) Certificate of Service. The person filing the document shall include a certificate of service that certifies compliance with this rule. If a filing does not contain a certificate of service or otherwise show service on all other parties, and the administrative hearings clerk, if applicable, the administrative hearings clerk shall:

(A) return the filing; or

(B) send notice of noncompliance to all parties, stating the filing will not be considered until all parties have been served.

(6) Time of Filing. The deadline for filing documents with the administrative hearings clerk shall be by 3:00 p.m. local time, Monday through Friday, on regular business days, unless otherwise ordered by the administrative law judge.

§2.8 Discovery

(a) Parties to a contested case hearing shall have the discovery rights provided in the APA and applicable agency statutes and rules.

(b) Requests for issuances of subpoenas or commission should be directed to the administrative hearings clerk.

(c) All discovery requests should be initially directed to the party from which discovery is being sought.

(d) All disputes with respect to any discovery matter shall be filed with the administrative hearings clerk and heard by the administrative law judge.

(e) All parties will be afforded a reasonable opportunity to file objections or move for a protective order with respect to the issuance of a subpoena or commission.

(f) Permissible forms of discovery by parties are:

(1) oral depositions of a party or nonparty;

(2) written interrogatories to a party;

(3) requests of a party for admission of facts or the genuineness or identity of documents or things;

(4) requests of a party for production, examination and copying of documents or other tangible materials; and

(5) requests of a party for entry upon and examination of real or personal property, or both.

(g) The scope of discovery shall be the same as provided by the Texas Rules of Civil Procedure and shall be subject to the constraints provided therein for privileges, objections, protective orders and duty to supplement as well as the constraints provided in APA, §§14 and 14a.

(h) Responses to discovery requests shall be made within a reasonable time period of not less than 14 days after service as directed by the party seeking discovery. The administrative law judge may shorten or lengthen such time periods as the interest of justice requires.

(i) Except as otherwise provided, requests for admission shall be governed by the applicable provisions of the Texas Rules of Civil Procedure. Each matter for which an admission is requested shall be separately stated. The matter shall be deemed to be admitted unless, within the prescribed time for responding, the party to whom the request is directed serves upon the requesting party a written answer or objection addressed to the matter. A request for admission must clearly set forth this provision for deemed admissions, in bold print or by underlining, in a conspicuous location calculated to fairly inform the opposing party of the consequences of a failure to respond within the prescribed time. The administrative law judge may permit withdrawal, or amendment of responses and deemed admissions upon a showing of good cause, if necessary in the interest of justice.

(j) The administrative law judge may issue protective orders and orders compelling discovery responses. Requests for discovery orders shall contain a statement under oath or affirmation that, after due diligence, the desired information cannot be obtained through informal means, and that good cause exists for requiring discovery. The administrative law judge may conduct in camera inspections of materials when requested by a party or when necessary to determine facts required to issue appropriate discovery orders. The request for a discovery order may be denied if the request is untimely or unduly burdensome in light of the complexity of the proceeding, if the requesting party has failed to exercise due diligence, if the discovery would result in undue cost to the parties or unnecessary delay in the proceeding, or for good cause in the interest of justice.

(k) After notice and opportunity for hearing, an order imposing sanctions, as are just, may be issued by the administrative law judge for failure to comply with a discovery order or subpoena issued pursuant to a commission for deposition or production of books, records, papers or other objects. The order imposing sanctions may:

(1) disallow any further discovery of any kind or of a particular kind by the non-complying party;

(2) require the party, the partyþs representative or both to obey the discovery order;

(3) require the party, the partyþs representative or both to pay reasonable expenses, including attorney fees, incurred by reason of the partyþs noncompliance;

(4) direct that the matters regarding which the discovery order was made shall be deemed established in accordance with the claim of the party obtaining the order;

(5) refuse to allow the non-complying party to support or oppose designated claims or defenses or prohibit the party from introducing designated matters in evidence;

(6) strike pleadings or parts thereof or abate further proceedings until the order is obeyed; or

(7) if entered by the commissioner, dismiss the action or proceeding or any part thereof or render a decision by default against the non-complying party.

§2.9 Prehearing Conferences

(a) When appropriate, the administrative law judge may hold a prehearing conference to resolve matters preliminary to the hearing. At the discretion of the administrative law judge, a prehearing conference may be held by telephone.

(b) A prehearing conference may be convened to address the following matters:

(1) notice or jurisdiction;

(2) scope or party status;

(3) venue;

(4) factual and legal issues;

(5) motions;

(6) issuance of subpoenas;

(7) discovery disputes;

(8) scheduling;

(9) stipulations;

(10) settlement conferences;

(11) requests for official notice;

(12) identification and exchange of documentary evidence;

(13) admissibility of evidence;

(14) identification and qualification of witnesses;

(15) order of presentation; and

(16) such other matters as will promote the orderly and prompt conduct of the hearing.

(c) At the discretion of the administrative law judge, all or part of the prehearing conference may be recorded or transcribed.

§2.10 Orders

(a) The administrative law judge may issue an order to regulate the conduct of the proceedings.

(b) The order shall be a part of the case record.

(c) An order may address any matter, including the following:

(1) the actions taken or to be taken at a prehearing conference;

(2) any of the subjects listed in §2.9(b) of this title (relating to Prehearing Conferences);

(3) a requirement that the parties file prehearing statements of the case describing the parties' present positions on any matter including, but not limited to, the following:

(A) the disputed issues or matters to be resolved, and a summary of the facts or arguments supporting the parties' positions in each disputed issue or matter;

(B) a list of facts or exhibits to which a party will stipulate; and

(C) a description of the discovery, if any, the party intends to engage in and an estimate of the time needed to complete discovery;

(4) a requirement that the parties discuss the prospects of settlement or stipulations and, if applicable, that they be prepared to report thereon at a prehearing conference; and

(5) any other filing requirement or deadline imposed by statute, rule or order.

§2.11 Settlement Conferences

(a) Upon request of any party and approval by the administrative law judge, or at the administrative law judgeþs discretion, a conference may be held to address settlement possibilities.

(b) Settlement discussions shall not be made a part of the case record.

§2.12 Stipulations

(a) The parties, by stipulation, may agree to any substantive matter,

(b) Stipulations related to procedural matters are not binding unless approved by the administrative law judge,

(c) A stipulation may be filed with the administration hearings clerk in the record at the hearing.

§2.13 Form of Pleadings

(a) All pleadings filed under this chapter should contain:

(1) the name of the party;

(2) the names of all other known parties;

(3) a concise statement of the facts and the law relied upon;

(4) a prayer stating the type of relief, action, or order desired;

(5) any other matter required by statute;

(6) a certificate of service; and

(7) the signature of the party or the partyþs authorized representative.

(b) All pleadings shall include the docket number assigned the case by the administrative hearings clerk.

§2.14 Motions

(a) Motions for continuance shall:

(1) be in writing, and shall set forth the specific grounds upon which the party seeks the continuance;

(2) be filed no later than five days before the date of the hearing; except upon a showing of good cause, the administrative law judge may consider a motion filed subsequent to that time or presented orally at the hearing;

(3) indicate that the movant has contacted the other party(ies) and whether there is opposition to the motion, or describe in detail the movant's attempts to contact the other party(ies);

(4) if seeking a continuance to a date certain, include a proposed date or dates (preferably a range of dates) and must indicate whether the party(ies) contacted agree on the proposed new date(s); and

(5) be served on the other party(ies) according to applicable filing and service requirements, except that a motion for continuance filed five days or fewer before the date of the hearing shall

be served by hand or facsimile on the same date it is filed with the administrative hearings clerk, or by overnight delivery on the next day, unless the motion demonstrates such service is impracticable.

(b) Responses to written motions for continuance shall be in writing, except responses to written motions for continuance filed on the date of the hearing may be presented orally at the hearing. Written responses to motions for continuance shall be filed on the earlier of:

(1) three days after receipt of the motion; or

(2) the date and time of the hearing.

(c) All other motions shall:

(1) be in writing;

(2) be filed no later than seven days before the date of the hearing; except, upon a showing of good cause, the administrative law judge may consider a motion filed subsequent to that time or presented orally at a hearing;(3) state concisely the relief requested and be accompanied by any necessary supporting documentation; and

(4) if seeking an extension of an established deadline shall:

(A) include a proposed date; and

(B) indicate that the movant has contacted the other party(ies) and whether there is opposition to the proposed date, or describe in detail the movant's attempts to contact the other party(ies).

(d) Responses to written motions other than motions for continuance shall be in writing, except responses to written motions filed on the date of the hearing may be presented orally at the hearing. Written responses to motions shall be filed on the earlier of:

(1) five days after receipt of the motion; or

(2) the date and time of the hearing.

(e) The filing or pendency of a motion does not alter or extend any time limit or deadline established by statute, rule or order.

(f) The administrative law judge may modify the deadlines imposed in this rule as necessary.

§2.15 Waiver of Right to Appear

(a) A party may waive the right to appear at the hearing unless prohibited by law.

(b) A waiver shall be in writing and filed with the administrative hearings clerk.

(c) A waiver may be withdrawn by a party no later than seven days before the scheduled hearing. The administrative law judge may permit withdrawal of a waiver subsequent to that time on a showing of good cause.

§2.16 Conduct of Hearings

(a) Each party may:

(1) call witnesses;

(2) offer evidence;

(3) cross-examine any witness called by a party; and

(4) make opening and closing statements.

(b) Once the hearing commences, all proceedings including comments and arguments of counsel shall be part of the record. The parties may be off the record only with the permission of the administrative law judge. If the discussion off the record is relevant, then the administrative law judge will summarize the discussion for the record.

(c) Objections shall be timely noted in the record.

(d) The administrative law judge may continue a hearing from time to time and from place to place. If the time and place for the proceeding to reconvene are not announced at the hearing, a notice shall be mailed stating the time and place of the reconvening of the hearing.

(e) The administrative law judge may question witnesses and/or direct the submission of supplemental data.

(f) Sanctions. On the administrative law judgeþs own motion or on motion of a party and after notice and an opportunity for a hearing, the administrative law judge may impose sanctions against a party for:

(1) filing a motion or pleading that is without legal merit, frivolous and brought:

(A) in bad faith;

(B) for the purpose of harassment; or

(C) for any improper purpose, such as to cause unnecessary delay or needless increase in the cost of the proceeding.

§2.17 Telephone Hearings

(a) The administrative law judge may, with consent of the parties, conduct all or part of the hearing by telephone, video, or other electronic means, if each participant in the hearing has an opportunity to participate in, hear, and, except when a telephone is used, see the entire proceeding.

(b) All substantive and procedural rights apply to telephone hearings, subject only to the limitations of the physical arrangement.

(c) Documentary Evidence. For a telephone hearing documentary evidence to be offered shall be mailed by the proponent to all parties and the administrative law judge at least five days before the hearing.

(d) Default. For a telephone hearing, the following, at the discretion of the administrative law judge, may be considered a failure to appear and grounds for default, if the conditions exist after the scheduled time for hearing:

(1) failure to answer the telephone;

(2) failure to free the telephone for a hearing; or

(3) failure to be ready to proceed with the hearing as scheduled.

§2.18 Evidence

(a) General. Evidence shall be admitted in accordance with the APA and the Texas Rules of Civil Evidence.

(b) Exclusion of witnesses:

(1) Upon request by any party, the administrative law judge may exclude witnesses other than parties from the hearing room, except when testifying.

(2) The administrative law judge may order the witness, parties, attorneys and all other persons present in the hearing room not to disclose to any witness excluded under this section the nature, substance, or purpose of testimony, exhibits, or other evidence introduced during the witnessþ absence.

(3) A party that is not a natural person may designate an individual to remain in the hearing room, even though the individual may be a witness.

(c) Pre-Filed Testimony. Pre-filed written testimony may be received pursuant to, and in accordance with, an order of the administrative law judge.

(d) Official Notice. The administrative law judge may take official notice of a fact that is judicially noticeable in accordance with the APA.

(e) The administrative law judge may limit testimony or any evidence which is irrelevant, immaterial, or unduly repetitious.

(f) When any papers or records in the custody and control of the agency are lost or destroyed, the parties, with the approval of the administrative law judge, may agree in writing on a brief statement of the matter contained therein or any person may at any time supply such lost records or papers as follows:

(1) Any person may make a written sworn motion before the administrative law judge stating the loss of destruction of such record or papers, accompanied by certified copies of the original, if obtainable, or by substantially correct copies.

(2) If, upon hearing, the administrative law judge is satisfied that they are substantially correct copies of the original, an order will be entered substituting such copies for the missing originals.

(3) Such substituted copies will be filed with and constitute a part of the record and have the force and effect of the originals.

§2.19 The Record

(a) Contents of record. The record in a contested case includes:

(1) all pleadings, motions, briefs, and interim orders;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings on objections;

(5) any decision, opinion, or report by the examiner presiding at the hearing;

(6) all staff memoranda or data submitted to or considered by the administrative law judge or the commissioner;

(7) proposed findings and exceptions;

(8) any findings of fact or conclusions of law; and

(9) the final order of the commissioner.

(b) Findings of fact. Findings of fact shall be based exclusively on the evidence presented and on matters officially noticed.

§2.20 Proposal for Decision

If the commissioner has not personally heard the evidence in the case or read the entire record, a decision adverse to a party other than the agency shall not be issued until after a proposal for decision has been prepared by the administrative law judge, served on all parties, and each party has been afforded the opportunity to file exceptions and present briefs to the commissioner. If any party files exceptions or presents briefs, an opportunity must be afforded to all other parties to file replies to the exceptions or briefs. A proposal for decision must contain a statement of the issues in dispute, the reasons for the proposed decision, and findings of fact and conclusions of law necessary to support the proposed decision. Such proposal for decision shall be prepared by the administrative law judge and served on all parties of record within 30 days after conclusion of the evidence in the case, unless the administrative law judge, after conclusion of the evidence in the case, specifies a longer period of time within which the proposal for decision may be issued.

§2.21 Filing of Exceptions and Replies

(a) Any party of record may, within 10 days after service of the administrative law judgeþs proposal for decision, file with the commissioner exceptions to the proposal for decision. Replies to such exceptions shall be filed within seven days after the date of the filing of exceptions. The administrative law judge may extend the time for filing of exceptions and replies. A request for extension of time within which to file exceptions or replies shall be filed with the administrative law judge and shall be served on all parties of record prior to the expiration of the relevant filing period. The administrative law judge shall rule promptly on requests for extension of time and notify all parties of such ruling.

(b) Exceptions and replies to exceptions shall concisely state, with particularity, the evidence, arguments, and legal authority relied upon.

(c) Upon the expiration of the time for filing exceptions or replies to exceptions, or after such replies and exceptions have been filed and considered, the administrative law judgeþs proposal for decision shall be considered by the commissioner, who shall render a decision and issue an order.

§2.22 Commissioner's Orders

(a) All final orders shall be in writing and shall be signed and dated by the commissioner. A final decision must include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If a party submitted proposed findings of fact, the final order shall include a ruling on each proposed finding.

(b) A party shall be notified either personally or by first class mail of any decision or order, unless otherwise provided by law. When the commissioner issues a final decision or order ruling on a motion for rehearing, the agency shall send a copy of that final decision or order by first class mail to the attorneys of record and shall keep an appropriate record of that mailing. If a party is not represented by an attorney of record, then the agency shall send a copy of a final decision or order ruling on a motion for rehearing by first class mail to that party, and the agency shall keep an appropriate record of that mailing. A party or attorney of record notified by mail of a final decision or order as required by this section shall be presumed to have been notified on the date such notice is mailed.

(c) A final decision or order of the commissioner must be rendered within 60 days from the last date for filing of exceptions

and replies to exceptions to the administrative law judgeþs proposal for decision, unless the administrative law judge, at the conclusion of the hearing, specifies a longer period of time within which the order may be issued.

§2.23 Rehearing

Except as provided in §2.27 of this title (relating to Emergency Order), a timely motion for rehearing is a prerequisite to an appeal. A motion for rehearing must be filed by a party not later than the 20th day after the date the party or the attorney of record is notified of the final decision or order as required by §2.22 of this title (relating to Commissioner's Orders). Replies to a motion for rehearing must be filed with the agency not later than the 30th day after the date that the party or the attorney of record is notified of the final decision or order as required by §2.22. If agency action is not taken within the 45-day period after the date the party or the partyþs attorney of record is notified of the final decision or order as required by §2.22, the motion for rehearing is overruled by operation of law 45 days after the date the party or the attorney of record is notified of the final decision or order required by §2.22. The commissioner may, by written order, extend the period of time for filing motions for rehearing and replies and for agency action on a motion for rehearing except that an extension may not extend the period for agency action beyond the 90th day after the date that the party or partyþs attorney of record is notified of the commissioner's order as required by §2.22. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order or in the absence of a fixed date, 90 days after the date the party or the partyþs attorney of record is notified of the final decision or order as required by §2.22.

§2.24 Judicial Review

(a) Not later than the 30th day after the date on which the commissioner's order is final, an aggrieved party may file a petition for judicial review.

(b) Judicial review of the order or decision of the commissioner shall be under the APA.

§2.25 Administrative Finality

Administrative action shall become final upon the occurrence of any of the following:

(1) issuance by the commissioner of an order and failure to file a motion for rehearing in accordance with §2.23 of this title (relating to Rehearing); or

(2) issuance by the commissioner of an order and denial of a motion for rehearing, either expressly or by operation of law; or

(3) issuance by the commissioner of an order which includes a statement that no motion for rehearing will be entertained because the threat of imminent peril to the public health, safety, or welfare requires immediate effect be given to such order.

§2.26 Effective Date of Order

The effective date of an order, unless otherwise stated, is the date of its signing by the commissioner.

§2.27 Emergency Order

If the commissioner finds that an imminent peril to public health, safety, or welfare requires immediate effect of an order, such finding shall be stated in the order. The commissioner shall also state that such order is final and effective from and after the date signed. Such an order shall be final and appealable from and after the date signed and no motion for rehearing shall be required as a prerequisite for appeal.

§2.28 Show Cause Orders and Complaints

Where permitted by law, the commissioner may, at any time after notice to all interested parties, cite any person or agency under the commissionerþs jurisdiction to appear at a public hearing and require such person or agency to show cause why it should not comply with any applicable statute, rule, regulation, or general order of the agency, with which it is allegedly in noncompliance or why the agency should not take a particular action permitted by law. All such show cause hearings shall be conducted in accordance with the provisions of this chapter.

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

Issued in Austin, Texas, on September 17, 1997.

TRD-9712438
Garry Mauro
Commissioner
General Land Office
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 305–9129

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 9. Property Tax Administration

Subchapter I. Validation Procedures

34 TAC §9.4026, §9.4028

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

The Comptroller of Public Accounts proposes the repeal of §9.4026 and §9.4028, concerning forms for appraisal of a dealer's motor vehicle inventory and forms for appraisal of a vessel and outboard motor inventory. These rules are being repealed in order to combine the substance of the two rules into new rule 34 TAC §9.4035. The new rule will make it easier for the persons affected by these rules to read and interpret them.

Mike Reissig, chief revenue estimator, has determined that repeal of the rules would have no fiscal impact on the state or on local government units.

Mr. Reissig also has determined that the repeals would benefit the public by consolidating inventory reporting forms under one rule, thereby streamlining government operations. There is no anticipated significant economic cost to the public. The repeals will have no significant fiscal impact on small businesses.

Comments on the repeals may be submitted to Larrilyn K. Russell, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

These repeals are proposed under the Tax Code, §111.002 and §111.0022 which provide the comptroller with the authority to adopt rules for the administration and enforcement of the Tax Code and programs or functions assigned to the comptroller by law.

The repeals implement the Tax Code, §§23.121, 23.122, 23.12D, and 23.12E.

§9.4026. Forms for Appraisal of a Dealer's Motor Vehicle Inventory.

§9.4028. Forms for Appraisal of a Vessel and Outboard Motor Inventory.

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

Issued in Austin, Texas, on September 17, 1997.

TRD-9712353
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 463-3699

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34 TAC §9.4035

The Comptroller of Public Accounts proposes new §9.4035, concerning special types of inventory reporting forms. The new section is being proposed to make the rules easier to use, conform to current agency practice, and reflect statutory changes made by House Bill 2116, 75th Legislature, 1997, effective May 26, 1997, and House Bill 2606, Senate Bill 759, and Senate Bill 1153, 75th Legislature, 1997, effective January 1, 1998.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no fiscal impact on the state or on local government units beyond the possible effects specified in the fiscal notes for House Bill 2606, Senate Bill 759, and Senate Bill 1153, 75th Legislature, 1997.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect it would benefit the public by expediting the accurate and uniform reporting of taxable inventories to appraisal districts, thereby promoting tax equity. There is no anticipated significant economic cost to the public. The new rule will have no significant fiscal impact on small businesses.

Comments on the proposal may be submitted to Larrilyn K. Russell, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The new section is proposed under the Tax Code, §5.07, which requires the comptroller to prescribe the contents and form for the administration of the property tax system.

The new section implements the Tax Code, §§23.121(f), 23.122(e), 23.12D(f), 23.12E(e), 23.1241(f), 23.1242(e), 23.127(f), and 23.128(e).

§9.4035. Special Types of Personal Property Inventory.

(a) A property owner subject to Tax Code, §§23.121, 23.122, 23.12D, 23.12E, 23.1241, 23.1242, 23.127, and 23.128, may use comptroller Model Forms 50-244 and 50-246 to file a dealer's motor vehicle inventory tax statement and inventory declaration; Model Forms 50-259 and 50-260 to file a dealer's vessel and outboard motor inventory tax statement and inventory declaration; Model Forms 50-267 and 50-268 to file a retailer's manufactured housing inventory tax statement and inventory declaration; and Model Forms 50-265 and 50-266 to file dealer's heavy equipment inventory tax statement and inventory declaration. Except as provided by law, all information contained on these forms is confidential.

(b) A property owner subject to this section may use an inventory tax statement form that sets out the information in the same language and sequence as the model form. A property owner may use an inventory declaration form that sets out the information in the same language and sequence as the model form.

(c) In order to assist in the accurate reporting of taxable inventories and if the form is provided by the appraisal district, the inventory tax statement and the inventory declaration shall provide both the appraisal district's and the county tax office's names, addresses, and telephone numbers.

(d) A chief appraiser shall make available to a property owner Model Forms 50-244, 50-246, 50- 259, 50-260, 50-265, 50-266, 50-267, and 50-268. A chief appraiser may make available a different form for the inventory tax statement and inventory declaration that sets out the information in the same language and sequence as the model form.

(e) In special circumstances, the chief appraiser may use forms that provide additional information, delete information required by this section, or set out the required information in different language or sequence than that required by this section if the form has been previously approved by the Comptroller of Public Accounts.

(f) The Comptroller of Public Accounts adopts the model forms listed in subsections (f)(1)-(f)(8) of this section by reference. Copies of these forms are available for inspection at the office of the *Texas Register* or can be obtained from the Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528. Copies may also be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621.

(1) Dealer's Motor Vehicle Inventory Declaration (Form 50-244);

(2) Dealer's Motor Vehicle Inventory Tax Statement (Form 50-246);

(3) Dealer's Vessel, Trailer, and Outboard Motor Inventory Declaration (Form 50-259);

(4) Dealer's Vessel, Trailer, and Outboard Motor Inventory Tax Statement (Form 50-260);

(5) Dealer's Heavy Equipment Inventory Declaration (Form 50-265);

(6) Dealer's Heavy Equipment Inventory Tax Statement (Form 50-266);

(7) Retail Manufactured Housing Inventory Declaration (Form 50-267); and

(8) Retail Manufactured Housing Inventory Tax Statement (Form 50-268).

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

Issued in Austin, Texas, on September 17, 1997.

TRD-9712354
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 463-3699

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 145. Faith Based Chemical Depdency Programs

40 TAC §§145.11, 145.21-145.25

The Texas Commission on Alcohol and Drug Abuse proposes new §§145.11 and 145.21-145.25, concerning faith-based chemical dependency treatment programs. These rules define terms used in the chapter, create an exemption from facility licensure for faith-based chemical dependency treatment programs, provide for the registration of these programs with the commission, establish requirements regarding admission and advertisement, and describe provisions for revocation of the exemption. The new sections are proposed to implement new provisions of Texas Health and Safety Code, §§464.51- 464.61, which were adopted during the 75th session of the Texas Legislature.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules.

Ms. Bleier also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will exemption from licensure for faith-based chemical dependency treatment programs. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 9001 North IH 35, Suite 105, Austin, Texas 78753. The deadline for submitting comments is October 28, 1997.

The new sections are proposed under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the proposed new rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

§145.11. Definitions.

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

Chemical dependency-The abuse of, psychological or physical dependence on, or addiction to alcohol, a toxic inhalant, or any substance designated as a controlled substance in the Texas Controlled Substances Act.

Chemical dependency treatment-A planned, structured, and organized program designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs. It includes, but is not limited to, the application of planned procedures to identify and change patterns of behavior related to or resulting from chemical dependency that are maladaptive, destructive, or injurious to health, or to restore appropriate levels of physical, psychological, or social functioning lost due to chemical dependency.

Commission-The Texas Commission on Alcohol and Drug Abuse.

Medical care-Diagnosis or treatment of a physical or mental disorder including chemical dependency treatment services of medical detoxification or medical withdrawal services.

Medical detoxification services-Chemical dependency treatment designed to systematically reduce the amount of alcohol and other toxic chemicals in a client's body, manage withdrawal symptoms, and encourage the client to seek ongoing treatment for chemical dependency.

Medical withdrawal services-See medical detoxification services.

Minor-An individual under the age of 16 whose disabilities of minority have not been removed by marriage or judicial decree.

Program-A system of care delivered to chemically dependent individuals.

Religious organization-A church, synagogue, mosque, or other religious institution:

(A) the purpose of which is the propagation of religious beliefs; and

(B) that is exempt from federal income tax by being listed as an exempt organization under the Internal Revenue Code (26 United States Code), Section 501(a).

Site-A single identifiable location owned, leased, or controlled by an organization where any element of chemical dependency treatment is offered or provided.

§145.21. Exemption for Faith-Based Programs.

(a) A chemical dependency treatment program is exempt from licensure under Chapter 148 of this title (relating to Facility Licensure) if it:

(1) is conducted by a religious organization;

(2) is exclusively religious, spiritual, or ecclesiastical in nature;

(3) does not treat minors; and

(4) is registered under this chapter.

(b) An exempt program registered under this section may not provide medical care, medical detoxification, or medical withdrawal services.

§145.22. Registration for Exempt Faith-Based Programs.

(a) To register its exemption, the religious organization shall complete and submit these documents to the commission:

(1) the following registration application;
Figure 1: 40 TAC §145.22

(2) a copy of the determination letter from the Internal Revenue Service documenting the organization's tax exempt status under the Internal Revenue Code (26 United States Code), Section 501(c)(3); and

(3) a copy of the letter from the State of Texas Comptroller's Office documenting the organization's religious tax exemption status.

(b) The commission shall issue a letter documenting the organization's registered exemption if the application packet satisfies the requirements in this section.

(c) An exempt organization registered under this section shall notify the commission in writing within 10 working days of any change affecting the program's exemption.

§145.23. Admission.

(a) An exempt program registered under this section may only admit individuals who are mentally and physically stable and able to participate in the program. The program may not admit a person who requires medical care from a physician or other health professional to stabilize a physical or mental disorder.

(b) An exempt program registered under this section may not admit a person unless the person signs the following form at the time of admission:
Figure 2: 40 TAC §145.23

(c) The program shall keep the original signed admission statement and give a copy of it to the person admitted.

§145.24. Advertisement.

An exempt program registered under this section must include the following statement in any advertisements or literature that promotes or describes the program or its chemical dependency treatment services:
Figure 3: 40 TAC §145.24

§145.25. Revocation of Exemption.

(a) The commission may revoke the exemption after notice and hearing if:

(1) the organization conducting the program fails to inform the commission of any material changes in the program's registration information in a timely manner;

(2) any program advertisement or literature fails to include the statements required under this section; or

(3) the organization violates Texas Health and Safety Code, Title 40, Chapter 464, Subchapter C or any commission rule adopted under the subchapter.

(b) The commission shall notify the organization in writing of its intent to revoke the exemption and offer the organization the opportunity for an informal hearing.

(c) The organization shall have 15 calendar days from the postmark date of the notice to submit a written request for an informal hearing.

(d) If the organization does not request an informal hearing, the revocation shall go into effect 30 calendar days from the postmark date of the notice of intent.

(e) If the organization requests an informal hearing, the commission shall schedule the informal hearing within 15 calendar days of the postmark date of the request.

(f) At the hearing, the organization shall have opportunity to show compliance.

(g) If the organization does not show compliance, the commission's governing board shall consider the information received at the hearing and determine whether or not to revoke the organization's exemption.

(h) The commission shall send the organization written notification of its decision within 30 calendar days of the date of the hearing.

(i) The revocation shall take effect 30 calendar days from the postmark date of the written notice of decision.

(j) An organization whose exemption has been revoked may apply to reinstate the exemption one year after the effective date of the revocation.

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

Issued in Austin, Texas, on September 17, 1997.

TRD-9712360
Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 349–6609

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Chapter 146. Approved Drug and Alcohol Driving Awareness Programs

General Provisions

40 TAC §§146.1–146.9

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

The Texas Commission on Alcohol and Drug Abuse proposes the repeals of §§146.1-146.9, concerning general provisions for approved drug and alcohol driving awareness programs. These sections define terms used in this chapter and describe the objectives of the chapter, scope of the rules and standards,

program certification application and approval process, program certification expiration and renewal process, uniform certificates of course completion, and provisions for denial, revocation, or nonrenewal of certification. The repeal is proposed because the commission is no longer administering this program.

Terry Bleier, Executive Director, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of the proposed repeals.

Ms. Bleier also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated will be the elimination of obsolete rules. There will be no effect on small businesses. The anticipated economic cost to current providers is lost revenue of $25 per program participant.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 9001 North IH 35, Suite 105, Austin, Texas 78753.

The repealed sections are proposed under the Texas Health and Safety Code, §461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the repealed sections is the Texas Health and Safety Code, Chapter 461.

§146.1. Definitions.

§146.2. Objective.

§146.3. Scope of Rules, Regulations, and Standards.

§146.4. Fees.

§146.5. Program Certification: Application and Issuance of Certificate of Approval.

§146.6. Program Certification Expiration: Renewal.

§146.7. Uniform Certificates of Course Completion.

§146.8. Denial, Revocation, or Nonrenewal of Certification.

§146.9. Invalidity of Provisions.

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

Issued in Austin, Texas, on September 17, 1997.

TRD-9712361
Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 349–6609

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Drug and Alcohol Driving Awareness Program Standards and Procedures

40 TAC §§146.25–146.36

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

The Texas Commission on Alcohol and Drug Abuse proposes the repeals of §§146.25-146.36, concerning program standards and procedures for approved drug and alcohol driving awareness programs. These sections describe the program purpose, content, admission criteria, operational requirements, discrimination prohibitions, provisions for participant complaints, and requirements for program administrators, instructors, classroom facilities, recordkeeping and reporting. These sections also state that the commission will maintain a listing of programs and has the right to monitor programs for compliance. The repeals are proposed because the commission is no longer administering this program.

Terry Bleier, Executive Director, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of the proposed repeals.

Ms. Bleier also has determined that for each year of the first five years the repeals in effect the public benefit anticipated will be the elimination of obsolete rules. There will be no effect on small businesses. The anticipated economic cost to current providers is lost revenue of $25 per program participant.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 9001 North IH 35, Suite 105, Austin, Texas 78753.

The repealed sections are proposed under the Texas Health and Safety Code, §461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the repealed sections is the Texas Health and Safety Code, Chapter 461.

§146.25. Program Purpose.

§146.26. Program Content.

§146.27. Program Admission.

§146.28. Program Operation Requirements.

§146.29. Discrimination Prohibited.

§146.30. Participant Complaints.

§146.31. Program Administrators.

§146.32. Program Instructors.

§146.33. Classroom Facilities.

§146.34. Recordkeeping and Reporting.

§146.35. Program Listing.

§146.36. Program Monitoring.

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

Issued in Austin, Texas, on September 17, 1997.

TRD-9712362

Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 349–6609

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Chapter 148. Facility Licensure

Subchapter A. Licensure Information

General Provisions

40 TAC §148.2

The Texas Commission on Alcohol and Drug Abuse proposes an amendment to §148.2, concerning licensure information. These rules establish exemptions from licensure. The amendment provides an exemption for faith-based chemical dependency treatment programs registered with the commission. The amendment is proposed to implement new provisions of Texas Health and Safety Code, §464.52, which was adopted during the 75th session of the Texas Legislature.

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

Ms. Bleier also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will exemption from licensure for faith-based chemical dependency treatment programs. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 9001 North IH 35, Suite 105, Austin, Texas 78753.

The amendment is proposed under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the proposed rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

§148.2. License Required.
A facility providing chemical dependency treatment in Texas shall have a license issued by the commission unless it is:

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

(6) the private practice of a licensed health care practitioner or licensed chemical dependency counselor who personally renders individual or group services within the scope of the practitioner's license and in the practitioner's individual office; [or]

(7) **a religious organization registered under Chapter 145 of this title (relating to Faith-Based Chemical Dependency Treatment Programs); or** [a 12-step or similar self-help chemical dependency recovery program:

[(A) that does not offer or purport to offer a chemical dependency treatment program;

[(B) that does not charge program participants; and

[(C) in which program participants may maintain anonymity.]

(8) a 12-step or similar self-help chemical dependency recovery program:

(A) that does not offer or purport to offer a chemical dependency treatment program;

(B) that does not charge program participants; and

(C) in which program participants may maintain anonymity.

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

Issued in Austin, Texas, on September 17, 1997.

TRD-9712363
Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 349–6609

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Definitions

40 TAC §148.61

The Texas Commission on Alcohol and Drug Abuse proposes an amendment to §148.61, concerning definitions. These rules define the terms used in this chapter. The proposed amendment adds a new definition for religious organization. The amendment is proposed to implement the new provisions of Texas Health and Safety Code, §464.52, which was adopted during the 75th session of the Texas Legislature.

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

Ms. Bleier also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be exemption from licensure for faith-based chemical dependency treatment programs. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 9001 North IH 35, Suite 105, Austin, Texas 78753.

The amendment is proposed under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the proposed rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

§148.61. Definitions.

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

Religious organization-A church, synagogue, mosque, or other religious institution:

(A) the purpose of which is the propagation of religious beliefs; and

(B) that is exempt from federal income tax by being listed as an exempt organization under Internal Revenue Code (26 United States Code), §501(a).

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

Issued in Austin, Texas, on September 17, 1997.

TRD-9712364
Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 349–6609

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Part IV. Texas Commission for the Blind

Chapter 162. Criss Cole Rehabilitation Center

The Texas Commission for the Blind proposes the repeal of §§162.1-162.5 of Chapter 162, pertaining to the operation of Criss Cole Rehabilitation Center, and simultaneously proposes new rules. The purpose of the repeal is to allow for the adoption of a new chapter as the agency continues its recodification efforts to establish an organized rule base that allows for orderly expansion and conforms to Government Code, §2001.003, concerning the definition of a rule.

The proposed new chapter has been divided into subchapters. Subchapter A (§§162.1-162.3) contains general rules about the types of services offered at Criss Cole Rehabilitation Center, who may be referred to the Center for services, and explains how a consumer may appeal an action taken by the Commission in the administration of its services at the Center. Subchapter B, §§162.10-162.22, contains the Commission's new rules for conducting investigations of abuse, neglect, and exploitation in a facility operated by a state agency as required by Family Code, Chapter 261 (pertaining to the reporting and investigation of abuse or neglect of a child), and Human Resources Code, Chapter 48 (pertaining to the reporting and investigating of abuse, neglect, or exploitation of a consumer who is elderly or disabled).

Pat D. Westbrook, Executive Director, has determined that for the first five years the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Westbrook has also determined that for each year of the first five years the rules as proposed are in effect the public benefits anticipated as a result of enforcing the rules will be a clear understanding of the purpose of Criss Cole Rehabilitation Center and a system for investigating reports of abuse, neglect, and exploitation that meets legislative intent. There will be no effect on small businesses. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

Questions about the content of this proposal may be directed to Jean Crecelius at (512) 459-2611 and written comments on the proposal may be submitted to Policy and Rules Coordinator, P. O. Box 12866, Austin, Texas 78711, within 30 days from the date of this publication.

Subchapter

40 TAC §§162.1–162.5

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

The repeals are proposed under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs.

The repeals affect Human Resources Code, Title 5, §91.021 concerning responsibility for visually handicapped persons, §91.023 concerning rehabilitation services, and §91.052 concerning the vocational rehabilitation program for the blind.

§162.1. Purpose.

§162.2. Criteria for Admission.

§162.3. Standards of Conduct.

§162.4. Scope of Services.

§162.5. Investigations of Abuse, Neglect, and Exploitation.

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

Issued in Austin, Texas, on September 15, 1997.

TRD-9712646
Pat D. Westbrook
Executive Director
Texas Commission for the Blind
Earliest possible date of adoption: October 27, 1997
For further information, please call: (512) 459–2611

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Subchapter A. General Rules

40 TAC §§162.1–162.3

The new sections are proposed under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs.

The new sections affect Human Resources Code, Title 5, §91.021 concerning responsibility for visually handicapped per-

sons, § 91.023 concerning rehabilitation services, and §91.052 concerning the vocational rehabilitation program for the blind.

§162.1. Services.

Criss Cole Rehabilitation Center (CCRC) is a comprehensive rehabilitation facility operated by the Texas Commission for the Blind in Austin, Texas. CCRC provides services such as functional evaluations, individualized and small group training in communication, home and personal management, orientation and mobility, braille, low vision, health management, nutrition, physical conditioning, social skills, technology awareness, and career guidance. Special summer training is available for consumers in high school who are preparing for higher education. This list is not to be interpreted as comprehensive; ancillary services may also be available.

§162.2. Referrals.

(a) A person must be referred to CCRC by one of the Commission's vocational rehabilitation counselors or independent living caseworkers.

(b) Priority for admission shall be given to consumers who are blind and receiving services from the Commission's Vocational Rehabilitation Program.

§162.3. CCRC Consumer Handbook.

(a) Consumers must abide by established guidelines while receiving services at CCRC. Prior to admittance into the program at CCRC each consumer shall be provided a copy of the *CCRC Consumer Handbook* , which contains guidelines for admission to CCRC, rules concerning participation in CCRC programs, procedures for discharge from the CCRC program, details of the process for appealing any CCRC program decision which may be adverse to the consumer, and other pertinent information relative to CCRC.

(b) A consumer may request a copy of the handbook through the consumer's vocational rehabilitation counselor or any supervisor of any agency office. A copy in the consumer's preferred accessible format shall be delivered or mailed to the consumer within five working days of such request. The handbook is also available for public viewing from 8:00 a.m. until 5:00 p.m. on work days at CCRC, 4800 North Lamar, Austin, Texas, and is available upon request by calling the Commission's toll-free line, (800) 252-5204.

(c) Receiving services at CCRC may be withdrawn by the Commission for good cause.

(d) A consumer who disagrees with an action taken by the Commission in the administration of its services at CCRC may use the appeals process established for the program from which the consumer was referred.

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

Issued in Austin, Texas, on September 15, 1997.

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Pat D. Westbrook
Executive Director
Texas Commission for the Blind
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For further information, please call: (512) 459–2611

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Subchapter B. Investigations of Abuse, Neglect, and Exploitation

40 TAC §§162.10–162.22

The new sections are proposed under Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the Commission to adopt rules prescribing the policies and procedures followed by the Commission in the administration of its programs.

The new sections affect Human Resources Code, Title 5, §91.021 concerning responsibility for visually handicapped persons, §91.023 concerning rehabilitation services, and §91.052 concerning the vocational rehabilitation program for the blind.

§162.10. Purpose.

The purpose of this subchapter is to:

(1) define abuse, neglect, and exploitation as the terms pertain to consumers receiving services at Criss Cole Rehabilitation Center from agents or employees of the Texas Commission for the Blind;

(2) prescribe procedures in accordance with the Human Resources Code, Chapter 48, for reporting allegations of abuse, neglect or exploitation of a consumer who is elderly or disabled and procedures for investigating the reports; and

(3) because a consumer receiving services at CCRC may not have reached the age of 18, to prescribe procedures in accordance with Family Code, Chapter 261, for the reporting and investigation of abuse or neglect of a consumer who is a minor.

§162.11. Definitions.

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

Abuse–

(A) The negligent or wilful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain; or sexual abuse, including any involuntary or nonconsensual sexual conduct that would constitute an offense under:

(i) Penal Code, §21.08 (indecent exposure); or

(ii) Penal Code, Chapter 22 (assaultive offenses);

(B) The following actions by agents or employees of the Texas Commission for the Blind:

(i) causing mental or emotional injury to a consumer who is a minor that results in an observable and material impairment in the minor's growth, development, or psychological functioning;

(ii) causing or permitting a consumer who is a minor to be in a situation in which the minor sustains a mental or emotional injury that results in an observable and material impairment in the minor's growth, development, or psychological functioning;

(iii) causing physical injury that results in substantial harm to a consumer who is a minor, or the genuine threat of substantial harm from physical injury to a consumer who is a minor, including an injury that is at variance with the history or explanation given, and excluding an accident and a reasonable action to correct

the behavior of a consumer who is a minor that does not result in or expose the minor to substantial harm from physical injury;

(C) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the consumer;

(D) sexual conduct harmful to the mental, emotional, or physical welfare of a consumer who is a minor;

(E) failure to make a reasonable effort to prevent sexual conduct harmful to a consumer who is a minor;

(F) compelling or encouraging a consumer who is a minor to engage in sexual conduct as defined by Penal Code, §43.01; or

(G) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the consumer who is a minor if the person knew or should have known that the resulting photograph, film, or depiction of the minor is obscene as defined by the Penal Code, §43.21or pornographic.

Accident–An unforeseen event that causes or threatens physical injury despite prudent efforts to avoid the risk of injury.

Agent–An individual not employed by the Commission but working under the auspices of the Center, such as a volunteer, student, or consultant.

Allegation–A report by a person believing or having knowledge that a consumer is or has been abused, neglected, or exploited while receiving services from the Center.

CCRC–The acronym for Criss Cole Rehabilitation Center, which is located at 4800 North Lamar, in Austin, Texas. The term is used interchangeably with "the Center" in these rules.

Commission–The Texas Commission for the Blind, its staff and agents, which includes CCRC.

Consumer–A person receiving services from CCRC, including those consumers temporarily away from CCRC on supervised activities.

Disabled–Any consumer receiving services from the Commission, including consumers receiving services in CCRC.

Elderly–A person 65 years of age or older.

Exploitation–The illegal or improper act or process of using the resources of an elderly or disabled consumer for monetary or personal benefit, profit, or gain without the informed consent of the consumer.

Executive Director–The chief executive officer of the Texas Commission for the Blind, which includes CCRC.

Guardian–Anyone named as "guardian of the person" of a consumer by a court having jurisdiction.

Investigator–The person designated by the executive director or the executive director's designee to conduct a thorough investigation of allegations under this subchapter. The person may be a Commission employee, but may not have been involved in the circumstances being investigated at CCRC.

Minor–A person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

Neglect--The following acts or omissions by agents or employees of the Texas Commission for the Blind while a consumer is receiving services from CCRC:

(A) failing to provide the goods or services to a consumer, including medical services, which are necessary to avoid physical or emotional harm or pain;

(B) placing a consumer who is minor in or failing to remove a consumer who is a minor from a situation that a reasonable person would realize requires judgment or actions beyond the minor's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the minor;

(C) failing to seek, obtain, or follow through with medical care for a consumer who is a minor, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the consumer who is a minor;

(D) failing to provide a consumer with food or shelter necessary to sustain the life or health of the consumer; or

(E) placing a consumer who is a minor in or failing to remove a consumer who is a minor from a situation in which the minor would be exposed to a substantial risk of sexual conduct harmful to the minor.

Perpetrator–The employee or agent of the Texas Commission for the Blind who has committed an act of abuse, neglect, or exploitation.

Reporter–The person filing a report of abuse, neglect, or exploitation, whether the victim of alleged abuse, neglect, or exploitation; a third party filing a report on behalf of the alleged victim; or both.

Sexual abuse–Any sexual activity involving a consumer and an employee or agent of the Texas Commission for the Blind, including sexual exploitation as defined in this subchapter or sexual assault as defined in the Texas Penal Code, §22.011.

Sexual exploitation–A coercive, manipulative, or otherwise exploitative pattern, practice, or scheme of conduct involving a consumer and an employee or agent of the Texas Commission for the Blind, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of a consumer. The term does not include obtaining information about a consumer's sexual history within standard accepted clinical practice.

Substantial harm–Real and significant physical injury or damage to a consumer that includes, but is not limited to, bruises, cuts, welts, skull or other bone fractures, brain damage, subdural hematoma, internal injuries, burns, scalds, wounds, poisoning, human bites, concussions, and dislocations and sprains.

§162.12. Situations Investigated.

(a) The Commission's executive director designates the agency's Deputy Director for Programs to review all complaints received about CCRC activities for their appropriateness for investigation pursuant to this subchapter.

(b) A report relating to allegations of abuse, neglect, or exploitation of a consumer shall be investigated pursuant to this subchapter if:

(1) the consumer was receiving services in CCRC at the time of the alleged act; or the alleged act occurred away from CCRC but the Commission was responsible for the supervision of the consumer who was the alleged victim at the time the act allegedly occurred; and

(2) the alleged perpetrator at the time of the alleged act was an employee or agent of the Commission.

(c) An allegation involving the daily administrative operations of CCRC that has not resulted in a specific case of abuse, neglect, or exploitation shall be investigated as a complaint under Chapter 159 of this title (relating to Administrative Rules and Procedures).

§162.13. Reports of Allegations.

(a) Persons who suspect or have knowledge of, or who are involved in an allegation of abuse, neglect, or exploitation at CCRC are encouraged to notify the executive director by mail, in person, or by telephone. The Texas Commission for the Blind is located at 4800 North Lamar, Austin, Texas 78756. The Commission's toll-free number is (800) 252-5204. For purposes of this section, any report of alleged abuse, neglect or exploitation made to any supervisor of any program at CCRC shall be deemed to have been made to the executive director.

(b) Anonymous allegations shall be investigated following the same procedures used when the reporter is known.

§162.14. Referrals to Other Agencies.

(a) Reports of abuse, neglect, or exploitation that are not within the Commission's authority and responsibility to investigate under these rules shall be referred to the Texas Department of Protective and Regulatory Services and other appropriate officials within 24 hours of receipt of the report.

(b) Incidents and reports of incidents at CCRC involving consumers that appear to violate the Penal Code and do not involve a Commission employee or agent shall be referred to appropriate law enforcement entities.

§162.15. Priority of Investigations.

(a) An allegation relating to a consumer who is still receiving services in CCRC where the act allegedly occurred at the time of the receipt of the allegation shall be given priority in the scheduling of investigations.

(b) An allegation relating to a consumer who is no longer receiving services in CCRC shall be given secondary priority in the scheduling of investigations.

§162.16. Timing of Investigations.

(a) Immediately upon receiving an allegation of abuse, neglect, or exploitation, the Commission shall, if appropriate, ensure that adequate medical care has been provided to the consumer and shall take measures to ensure the consumer's safety. Such measures shall include determining whether immediate personnel actions provided in Commission personnel policies should be taken, which may include the reassignment or dismissal of an alleged perpetrator.

(b) Within 24 hours of receiving an allegation the Commission shall start an investigation.

(c) An investigation shall be completed within 14 days if the consumer was in CCRC at the time the Commission received the allegation or within 30 days for all other allegations.

(d) During the pendency of any investigation the Commission shall take all actions necessary to insure the protection of any consumer who is the subject of an alleged complaint.

§162.17. Content of Investigation.

(a) The investigation shall consist of the following:

(1) an interview with the alleged victim;

(2) an interview with the alleged perpetrator unless the investigator has already determined that there was no abuse, neglect, or exploitation or the risk of the same does not exist;

(3) interviews with persons thought to have knowledge of the incident under investigation; and

(4) the gathering of other evidence relevant to the incident under investigation.

(b) The investigation shall address and include these rules and the issues of abuse, neglect, and exploitation set forth in the:

(1) Human Resources Code, Chapter 48, concerning investigations of the abuse, exploitation, or neglect of persons who are elderly or disabled; or

(2) Family Code, Chapter 261, Subchapter E, concerning the neglect or abuse of children in certain facilities.

§162.18. Classification of Findings.

(a) If during the course of the investigation it becomes apparent that the allegation is frivolous or patently without factual basis, a finding of "unfounded" shall be made. The reason for this determination, based on specific evidence, shall be included in the report.

(b) If there is not a preponderance of evidence to indicate that an allegation should or should not be confirmed, due to lack of witnesses or other relevant evidence, a finding of "inconclusive" shall be made.

(c) If during the course of the investigation it becomes apparent that abuse, neglect or exploitation has not occurred or is not likely to occur, a finding of "unconfirmed" shall be made.

(d) In incidences where the preponderance of evidence exists to confirm abuse, neglect, or exploitation but positive identification of the person responsible cannot be determined and self injury has been eliminated as the cause, a finding of "confirmed, perpetrator unknown" shall be made.

(e) In incidences where the preponderance of evidence exists to confirm abuse, neglect, or exploitation and positive identification of the perpetrator can be determined, a finding of "confirmed, perpetrator known" shall be made.

§162.19. Investigation Report.

(a) A report shall be produced at the conclusion of the investigation that contains:

(1) a statement of the allegations;

(2) a summary of the investigation;

(3) an analysis of the evidence;

(4) the investigator's determination as to whether or not abuse, neglect, or exploitation occurred;

(5) designation of the perpetrator, if possible;

(6) a determination as to how the incident should be classified in accordance with §162.18 of this title (relating to Classification of Findings); and

(7) recommendations resulting from the investigation.

(b) An investigation is not considered complete until review of the investigative report is completed by the executive director or the executive director's designee.

§162.20. Notification of Findings.

(a) If the investigation confirms abuse, neglect, or exploitation, the written report of the completed investigation, along with the recommendations and related documents, shall be submitted to:

(1) the appropriate district or county attorney or law enforcement agency if the report concerns abuse or neglect of a consumer who is a minor;

(2) the Texas Department of Protective and Regulatory Services if protective services are necessary;

(3) the appropriate court having jurisdiction if a guardian has been appointed for an elderly or disabled consumer; and

(4) the appropriate state or local law enforcement agency if the report concerns abuse of an elderly or disabled consumer which could constitute a criminal offense under any law, including the Penal Code, §22.04.

(b) In cases of abuse, neglect, or exploitation by an agent of the Commission who is a licensed, certified, or registered health care professional, the executive director or executive director's designee shall forward a copy of the completed investigative report to the state agency which licenses, certifies or registers the health care professional. Any information which might reveal the identity of the reporter or any other consumers of the facility shall be blacked out or deidentified.

(c) The executive director or executive director's designee shall notify the reporter, if known, in writing of the outcome of the completed investigation.

(d) The executive director or executive director's designee shall notify the alleged victim, and his or her parent or guardian if the person is a ward under the Probate Code or an adult disabled child pursuant to the Family Code, in writing of the outcome of the completed investigation.

(e) The executive director or executive director's designee shall notify the alleged perpetrator or perpetrator in writing of the outcome of the completed investigation.

§162.21. Complaints.

If the Commission receives a complaint about the investigation of abuse, neglect, or exploitation, the complaint shall be referred to the executive director, who shall review the findings and order a reinvestigation if warranted.

§162.22. Confidentiality of Investigative Process and Report.

(a) The allegation and the reports, records, communications, and working papers used or developed in the investigative process, including the resulting final report regarding abuse, neglect, or exploitation, are confidential and may be disclosed only as provided in the Family Code, §261.201, or the Human Resources Code, §48.101 and §48.038, subsections (f) and (g).

(b) Information discussed during deliberations of abuse, neglect, and exploitation investigations may not be discussed outside the purview of those deliberations.

(c) The completed investigative report and related documents may be released to governmental agencies as described in this subchapter.

(d) The completed investigative report and related documents may be released by court order.

(e) The completed investigative report and related documents may be released to the victim or the victim's parent or guardian, if the victim is a minor, if there is no ongoing criminal investigation. Any information which might reveal the identity of the reporter, any other consumers of the Commission, or any other person whose life or safety might be endangered by the disclosure shall be blacked out or deidentified.

(f) The investigative report and related documents shall not be available to the public.

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

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Pat D. Westbrook
Executive Director
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For further information, please call: (512) 459–2611

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ADOPTED RULES

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

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

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 10. Seed Certification Standards

Genetic Seed Chart

4 TAC §10.15

The Texas Department of Agriculture (the department) and the State Seed and Plant Board (the Board) adopts amendments to §10.15 and §10.21, concerning additional requirements for the certification of certain crops under the Texas Seed and Plant Certification Act without changes to the proposed text as published in the July 15, 1997, issue of the *Texas Register* (22 TexReg 6510).

The department is the certifying agency in the administration of the Seed and Plant Certification Act, and is charged with administering and enforcing the standards adopted by the Board. The adopted amendment to §10.15 clarifies the standards for genetic seed certification. The adopted amendment to §10.21 changes the requirements and standards for hybrid sorghum varietal purity grow-out tests, as adopted by the Board.

No comments were received regarding the adoption of the amendments. However, the department has made some changes to correct typographical errors that were made in the publication of §10.21.

The amendments are adopted under the Texas Agriculture Code, §62.002, which provides the State Seed and Plant Board with the authority to establish standards of genetic purity and identity as necessary for the efficient enforcement of agricultural interest and the Texas Agriculture Code §12.016, which provides the department with the authority to adopt rules for administration of the code.

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

Issued in Austin, Texas, on September 17, 1997.

TRD-9712365
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: October 13, 1997
Proposal publication date: July 15, 1997
For further information, please call: (512) 463–7541

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Aditional Requirements for the Certification of Certain Crops

4 TAC §10.21

The amendments are adopted under the Texas Agriculture Code,§62.002, which provides the State Seed and Plant Board with the authority to establish standards of genetic purity and identity as necessary for the efficient enforcement of agricultural interest and the Texas Agriculture Code §12.016, which provides the department with the authority to adopt rules for administration of the code.

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

Issued in Austin, Texas, on September 17, 1997.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463–7541

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 9. Liquefied Petroleum Gas Division

The Railroad Commission of Texas adopts amendments to §9.183 and §9.251, relating to uniform protection standards, and adoption by reference of NFPA 54 and NFPA 501C, and certain other NFPA publications; and new §§9.801, 9.804, 9.807, 9.810, 9.813, and 9.816, relating to adoption by reference of NFPA 51 and certain other NFPA publications; clarification and/or exclusion of definitions in NFPA 51; exclusion of certain sections and Chapters 6, 7, and 8 in NFPA 51; sections in NFPA 51 adopted with additional or alternative language; container installation requirements; and LP-gas pressure go-

ing into a building, without changes to the versions published in the July 15, 1997, *Texas Register* (22 TexReg 6541). The new rules will be part of new subchapter J, entitled "Adoption by Reference of NFPA 51, *Standard for the Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting, and Allied Processes*, and Other Requirements for LP-Gas Welding Applications."

The Commission adopts the amendments and new sections to establish rules and procedures for LP-gas used in welding and other similar applications, an area of LP-gas use for which the Commission has not previously adopted rules. The Commission adopts the National Fire Protection Association's *Standard for the Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting, and Allied Processes* (commonly referred to as "NFPA 51"), a nationally-recognized standard. The Commission adopts NFPA 51 in new §9.801, with certain exceptions and clarifications described in new rules §§9.804, 9.807, 9.810, 9.813, and 9.816. The adoption by reference incorporates the 1997 edition of NFPA 51. A task force appointed by the Commission and made up of members of the LP-gas industry reviewed NFPA 51 and proposed the adoption of NFPA 51 with the additional or alternative language specified in the new sections. The rulemaking has also been reviewed and approved by the Commission's LP-gas advisory committee.

The Commission also adopts by reference, in §9.801(b), all other NFPA publications or portions of those publications referenced in NFPA 51 which apply to LP-gas welding activities only. In other words, if LP-gas welding activities are to be performed by a licensee and those activities are included in an NFPA publication referenced in NFPA 51, then the licensee shall perform those activities in compliance with the referenced document. For example, §1-4.2 of NFPA 51 refers to another NFPA publication, NFPA 51B, *Standard for Fire Prevention in Use of Cutting and Welding Processes*. Licensees shall also be required to purchase that NFPA publication and perform LP-gas activities to those standards.

The Commission proposed an effective date of October 1, 1997, for the implementation of the adoption by reference. This will allow sufficient time for submission and review of comments, preparation of the rules for final adoption, development of necessary examinations, printing and distribution of new pages for the Commission rulebooks, and training of Commission staff. As of the effective date, Commission examinations and review materials will include information from NFPA 51.

The adoption by reference of NFPA 51 could affect up to about 715 licensees with Category E and J licenses (about 705 Category E licensees and 10 Category J licensees) out of the estimated 2,328 total number of licensees. The number of licensees actually affected will be well below that because not all Category E or J licensees perform welding activities. An exact number cannot be determined because welding activities do not require a separate license or certificate.

The amendment to §9.183 excludes DOT portable containers used in welding applications from the storage requirements in §9.183(o). The amendment will allow the continuation of the routine and common use of these containers inside buildings where welding activities occur.

There are some sections in NFPA 51 for which the Commission adopts alternative or additional language, or which the Commission chooses not to adopt. In particular, new rule §9.804 defines the "authority having jurisdiction," a phrase used throughout NFPA publications, including NFPA 51, to be the Railroad Commission of Texas. This language identifies the Commission as the "authority having jurisdiction" because the Commission has statutory authority over LP-gas safety matters in Texas. The section also designates several definitions being amended or not adopted in order to eliminate references to acetylene and other items not applicable to LP-gas welding activities.

New §9.807 identifies several sections or chapters in NFPA 51 which the Commission does not adopt because they refer to activities not related to LP-gas.

New §9.810 lists sections in NFPA 51 for which the Commission adopts additional or alternative language. Because NFPA 51 covers other activities besides LP-gas welding uses, these changes are necessary to limit the requirements to areas for which the Commission has jurisdiction. The amended or additional language was approved by the Commission's LP-gas welding advisory committee, whose members regularly perform LP- gas welding activities.

New §9.813 outlines requirements for containers used to supply LP-gas for welding activities. These requirements should ensure safety while allowing the industry to continue using these containers as it has done routinely in the past without imposing unrealistic requirements.

New §9.816 states that LP-gas pressure going into a building shall not exceed the amount required for the application being performed. This will prevent excessive pressures from being used.

The adoption by reference of NFPA 51 will necessitate some Commission rulemaking in the future. Secretary of State rules, 1 Texas Administrative Code §91.41 and §91.42, state that an adoption by reference must incorporate the document being adopted as it exists on the date of adoption. NFPA amends 51 approximately every five years, although NFPA occasionally adopts interim amendments. If NFPA changes 51 or adopts an interim amendment and the Commission wants to incorporate those changes into the requirements for Texas, then the Commission will have to re-adopt the new language or edition in order for the changes to be effective. Likewise, if NFPA changes any of the eight other NFPA documents referenced in NFPA 51, then the Commission will have to adopt the changes in those particular editions for them to become effective. If the Commission waits to re-adopt a new edition of NFPA 51, then the referenced documents that are changed between now and then will not become effective until that adoption's effective date. For this reason, new §9.801(b)(1)-(8) separately lists the eight pamphlets referenced in NFPA 51 and the date of the edition being adopted. If the Commission wishes to adopt different editions of any of these referenced pamphlets, then only a minor rulemaking will be necessary, and the rule will always include a list of the NFPA standards currently effective in Texas.

The adoption by reference of NFPA 51 means that the Commission must provide for public viewing a complete set of NFPA 51 and all the referenced NFPA documents at both the Secretary

of State's office and the Commission's Austin office. Providing copies for public viewing complies with the public information law in Texas; however, because the NFPA documents are copyrighted, copies may not be made. The Commission does not assume any responsibility or liability for the use of the NFPA documents, other than as specified in the rules.

The Commission received no comments on the proposal.

Subchapter B. Basic Rules

16 TAC §9.183

The amendments and new sections are adopted under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which allows the Commission to adopt by reference the published codes of nationally recognized societies, including the National Fire Protection Association.

The Texas Natural Resources Code, §113.051 and §113.052, is affected by the amendments and new sections.

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

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TRD-9712333
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 463-7008

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Subchapter J. Adoption by Reference of NFPA 51, Standard for the Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting, and Allied Processes, and Other Requirements for LP-Gas Welding Applications

16 TAC §§9.801, 9.804, 9.807, 9.810, 9.813, 9.816

The amendments and new sections are adopted under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which allows the Commission to adopt by reference the published codes of nationally recognized societies, including the National Fire Protection Association.

The Texas Natural Resources Code, §113.051 and §113.052, is affected by the amendments and new sections.

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

Issued in Austin, Texas, on September 16, 1997.

TRD-9712335
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Effective date: October 6, 1997
Proposal publication date: July 15, 1997
For further information, please call: (512) 463-7008

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Subchapter D. Adoption by Reference of NFPA 54 (National Fuel Gas Code) and NFPA 501C (Standard on Recreational Vehicles) and Adopted Exceptions to NFPA 54

16 TAC §9.251

The amendments and new sections are adopted under the Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.052, which allows the Commission to adopt by reference the published codes of nationally recognized societies, including the National Fire Protection Association.

The Texas Natural Resources Code, §113.051 and §113.052, is affected by the amendments and new sections.

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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Mary Ross McDonald
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Subchapter B. Basic Rules

16 TAC §9.184

The Railroad Commission of Texas adopts amendments to §9.184, relating to uniform safety requirements; §9.679, relating to painting; and §9.1764, relating to painting, without changes to the versions published in the July 15, 1997, *Texas Register* (22 TexReg 6543). Section 9.184 describes safety requirements for installations, including painting of containers. Section 9.679 and §9.1764 specify painting requirements for transport containers which comply with the United States Department of Transportation (DOT) MC-330 and MC- 331 specifications, and for transport containers which do not comply with these specifications, generally known as "nonspecification" or "nonspec" units.

New language in §§9.184(a)(14), 9.679, and 9.1764 permits the painting of containers in colors other than white or aluminum provided that light or pastel colors are used. Dark, heat-absorbing colors are prohibited. DOT forklift or portable cylinders and motor or mobile fuel containers mounted on vehicles may be painted any color. The titles of §9.679 and §9.1764 are revised to be more specific.

These amendments will prevent many LP-gas companies which do business in states other than Texas from having to repaint their containers just for use in Texas. The National Fire Protection Association's publication NFPA 58, *Standard for the Storage and Handling of Liquefied Petroleum Gases*, does not prohibit the use of any particular colors. However, because of the extremely high temperatures possible in Texas, the darker, heat- absorbing colors will be prohibited. The amendments will also allow more flexibility for an LP-gas company to use its official company colors on its LP-gas containers.

The Commission received no comments on the proposal.

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

The Texas Natural Resources Code, §113.051, is affected by the amendments.

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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Mary Ross McDonald
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Subchapter H. Nonspecification Transport Containers; Trucks Transporting LP-Gas in Portable Containers

16 TAC §9.679

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

The Texas Natural Resources Code, §113.051, is affected by the amendments.

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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Deputy General Counsel, Office of General Counsel
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For further information, please call: (512) 463-7008

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Subchapter T. DOT MC-330 and MC-331 Transport Containers

16 TAC §9.1764

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

The Texas Natural Resources Code, §113.051, is affected by the amendments.

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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Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 463-7008

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Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rule

Telephone

16 TAC §23.97, §23.106

The Public Utility Commission of Texas (PUC) adopts new §23.106, relating to Selection of Telecommunications Utilities, and an amendment to §23.97, relating to Interconnection, with changes to the proposed text as published in the July 1, 1997, issue of the *Texas Register* (22 TexReg 6145). The new rule implements the provisions of Texas Senate Bill 253, 75th Legislature, Regular Session (1997), which sets out the manner in which a telecommunications utility is permitted to switch a customer from one telecommunications utility to another in the state of Texas. The amendment to §23.97 removes references to the "Secretary of the Commission" in subsection (h), and amends subsection (i), relating to Customer Safeguards by replacing the requirements of paragraph (1), relating to the requirements for provision of service to customers, with a reference to the requirements of the proposed new §23.106.

A public hearing on the rule was held at commission offices on July 15, 1997, at 10:00 a.m. Representatives from AT&T Communications of the Southwest, Inc. (AT&T), Brittan Communications International Corporation (BCI), Consumers Union (CU), GTE Southwest, Inc. (GTE), Office of Public Utility Counsel (OPC), Southwestern Bell Telephone Company (SWBT), United Telephone Company of Texas, Inc., Central Telephone Company of Texas, and Sprint Communications Company L.P. (Sprint), Texas Association of Long Distance Telephone Companies (TEXALTEL), Texas Statewide Telephone Cooperative, Inc. (TSTCI), and Texas Telephone Association (TTA) attended the hearing. To the extent the participants attended the hearing and made comments on the record, their comments are summarized herein. To the extent the participants attended the hearing, and filed written comments, the participants' statements largely reflect their written comments and are summarized herein.

The commission received written comments on the proposed rule from AT&T, BCI, CU, GTE, Long Distance International, Inc. (LDI), MCI Telecommunications Corporation (MCI), OPC, SWBT, Sprint, TEXALTEL, Telecommunication Resellers Association (TRA), TSTCI, and TTA. The commission also received written reply comments from AT&T, CU, LCI International Telecom Corp. (LCI), OPC, SWBT, TEXALTEL, and TSTCI. The commission did not receive comments or reply comments on the amendment to §23.97.

The commission invited specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the new rule and/or the amendment. The commission further requested specific comment regarding subsection (g)(1)(B), relating to the responsibility of a telecommunications utility that originated an unauthorized change to pay all "usual and customary charges" associated with returning the customer to the original telecommunications utility; in particular, what amount is "usual and customary" with respect to such charges, and is this language sufficient to assure that the customer whose service provider was changed without authorization does not bear any monetary costs associated with switching back to the original provider. Additionally, the commission invited specific comments regarding how the federal Telecommunications Act of 1996 impacts this rule and/or the amendment. The commission notes that it did not receive specific comments or reply comments on the issue of "usual and customary charges."

BCI, CU, OPC, TEXALTEL, TRA, and TSTCI stated in their comments that they generally support the rule as proposed, although each suggested certain changes to the rule. Sprint also generally supported the proposed rule, but recommended a four to six month implementation window. GTE, however, stated that it does not endorse the proposed rule because the Federal Communications Commission (FCC) is currently addressing the same issues in its rulemaking in CC Docket Number 94-129 (Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket Number 94-129, Further Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration, FCC 97-248, (released July 15, 1997)). GTE recommended the commission delay its rulemaking until the FCC has completed its investigation and established a record in CC Docket Number 94-129 which can be incorporated in the commission's rulemaking. LDI also suggested the commission delay implementation of the proposed rule until after the FCC has completed its rulemaking on this matter. AT&T and LCI recommended that the commission adopt a limited interim rule until the FCC completes its rulemaking in CC Docket Number 94-129. The commission disagrees with the recommendations that it adopt an interim rule or delay the implementation of the proposed rule until after the FCC adopts a new rule. Senate Bill 253 requires the commission to adopt nondiscriminatory and competitively neutral rules no later than November 1, 1997. Pursuant to this mandate, the commission intends to proceed without delay to adopt a proposed rule that is consistent with the Public Utility and Regulatory Act (PURA), S.B. 253, and the current FCC rules on unauthorized changes in customers' carrier selections ("slamming").

The commission does recognize that the FCC, in CC Docket Number 94-129, has proposed changes to its current slamming rules. However, the FCC did not publish its Proposed Rulemaking until after the commission had published proposed rule §23.106. Some of the issues raised in the Proposed Rulemaking were not specifically addressed in the commission's proposed rule. For the issues that were addressed in the proposed rule, S.B. 253 requires alternate procedures from those proposed by the FCC. Consequently, the commission believes the most appropriate course of action is to proceed to adoption in this current rulemaking without incorporating additional provisions which address issues raised by the FCC. This will ensure that customers receive the protection of a commission rule on slamming, while allowing the commission additional time to conduct a thorough review of the FCC's proposed rules. The additional time will also allow interested parties to submit specific comments on the issues.

In the Memorandum Opinion and Order on Reconsideration in CC Docket Number 94-129, the FCC adopted three amendments to its rules regarding the unauthorized switching of subscribers' primary interexchange carriers (IXCs) which modify: (1) 47 C.F.R. §64.1150(g) to require that IXCs using Letters of Agency (LOAs) must fully translate their LOAs into the same language as any associated promotional materials or oral descriptions and instructions; (2) 47 C.F.R. §64.1150(e)(4) to incorporate the terms "interLATA" and "intraLATA," as well as "interstate" and "intrastate," to remove confusion over the scope of the rules; and (3) 47 C.F.R. §64.1100(a) to clarify that carriers must confirm orders for long distance service generated by telemarketing using only one of the four verification options. To be consistent with the FCC amendments, the commission has modified §23.106(e)(5) to require that all materials associated with LOAs be translated into the same language as the LOA. The proposed rule already conforms with the other two FCC amendments.

In addition, the FCC has proposed several amendments to its rules to further eliminate slamming: (1) addition of 47 C.F.R. §64.1160(a)(2) providing that the executing carrier will be solely liable for violations whenever the submitting carrier has complied with the rule; (2) addition of 47 C.F.R. §64.1160(b) requiring any carrier that violates the verification procedures to remit all revenues and the value of any premiums to the properly au-

thorized carrier; (3) addition of 47 C.F.R. §64.1170(c) requiring that, upon receipt of the value of premiums from the unauthorized carrier, the authorized carrier must provide to the subscriber the premiums to which the subscriber would have been entitled; (4) addition of 47 C.F.R. §64.1170(d) requiring carriers to pursue private negotiations before petitioning the FCC to make a determination in disputes regarding the liability provisions; and (5) replacement of the term "customer" with "subscriber" in 47 C.F.R. §64.1100 to be consistent with the federal Telecommunications Act of 1996, §258, 47 U.S.C.A. §153 (West Supp. 1997)(FTA96).

Finally, the FCC seeks comment on a number of other issues related to slamming including: (1) whether the "welcome package" should be eliminated as a verification option; (2) whether the duties of the executing and submitting carriers should be delineated; (3) whether verification rules should apply to in-bound calls; (4) whether slammed customers should be liable for any unpaid charges assessed by unauthorized carriers; (5) whether verification procedures should apply to preferred carrier freeze solicitations; and (6) when a resale carrier must notify a consumer that the underlying network provider has changed.

AT&T, CU, LCI, OPC, SWBT, TEXALTEL, and TSTCI all commented on the proposed definitions of "carrier-initiated change" and "customer-initiated change" in proposed §23.106(c)(2) and (3). Several parties expressed concern that the practical effect of the proposed language would be to define all calls as carrier-initiated. SWBT stated in its comments that the definitions of carrier-initiated and customer-initiated changes are overly broad and unworkable and suggested language that would limit carrier-initiated changes to changes resulting from direct mail solicitation or telemarketing. The commission believes SWBT's language is underinclusive in its definition of carrier-initiated changes and would fail to cover all instances of carrier- initiated changes. TEXALTEL likewise submitted alternative definitions which the commission finds unworkable because they are underinclusive in their definition of carrier-initiated changes. In its comments, AT&T noted that the use of the term "print advertising" in proposed §23.106(c)(2) and (3) introduces substantial ambiguity into the definition and suggested that it be removed since the remaining reference to "other actions initiated by carriers" will be sufficiently broad to cover print advertising which contains letters of authorization or other vehicles which could be considered to result in carrier-initiated changes. CU and OPC support AT&T's proposed change. The commission agrees with AT&T, CU and OPC, and has amended the definitions to exclude "print advertising." The commission does so to avoid interpretations of "print advertising" that can be overinclusive and have the practical effect of rendering nearly every change a carrier-initiated change. However, print advertising which contains LOAs or other vehicles which could be considered to result in carrier-initiated changes is still encompassed by the phrase "other actions initiated by carriers" and will be considered by the commission to be carrier-initiated. The commission further notes that the FCC is addressing the issue of the applicability of the verification procedures to inbound calls in CC Docket Number 94-129; if the FCC amends its rules so that verification procedures apply to inbound calls, the distinction between carrier-initiated and customer-initiated changes will then be moot. The commission believes this issue should be addressed further after the FCC finalizes its decision.

Both SWBT and TEXALTEL commented that the definition of local calling area is unnecessary and should be deleted. The commission notes that §23.106(d)(4)(vi) refers to "calling areas," and has amended the definition in §23.106(c) to define a "calling area" rather than a "local calling area."

Nearly all parties commented either generally or specifically about the provisions of §23.106(d) relating to carrier-initiated changes and verification procedures. OPC requested access to the records of all carrier-initiated changes upon request. CU commented that both the Attorney General and OPC should have access to the verification information maintained under §23.106(d) because they represent consumers. The commission first notes that S.B. 253 did not include provisions for such access to the information maintained pursuant to the rule. The commission does not have the authority under S.B. 253 or PURA to grant a third party, including OPC or the Attorney General, access to private customer verification records maintained by telecommunications utilities. The commission further notes that OPC and the Attorney General, as representatives of consumers, have an alternative route for access to the verification information. OPC and the Attorney General can obtain access to records via the consumers they represent. Under the rule, a customer can request from the carrier access to the verification information.

SWBT objected to the reference to carrier-initiated change by "written solicitation" in §23.106(d). As explained above, the commission believes carrier-initiated changes include changes resulting from direct mail solicitation, as well as print advertising which contains LOAs or other vehicles which could be considered to result in carrier-initiated changes. Therefore, the commission believes the term "written solicitation" is appropriate. TSTCI suggested that the carrier initiating the change should be required to submit the verification to the carrier who will be responsible for changing the customer's service. The commission notes that the FCC is currently addressing the issue of the duties of the executing and submitting carriers in its rulemaking; the commission believes this matter should be addressed after the FCC makes its decision. TTA commented that §23.106(d) should be redrafted to specify that the carrier must tender only those carrier records relevant to a customer's challenge rather than records for an entire twelve-month period. The commission disagrees, and believes that the proposed language already addresses TTA's concerns.

BCI commented that the rules should impose even stricter standards for the verification of telemarketing sales. BCI suggested that for telemarketing sales, the commission eliminate two of the four methods of verification of carrier-initiated change orders permitted under §23.106(d): §23.106(d)(2), verification by electronic authorization; and (d)(4), verification by information package. The commission disagrees. Senate Bill 253 expressly states that the four types of verification in §23.106(d) are acceptable. Further, §23.106(d) is consistent with current FCC rules, which also expressly allow for each of the four methods.

BCI also suggested that §23.106(d)(2)(B) be modified to address situations where telecommunications networks lack the technical ability to forward automatic number identifier (ANI)

information. The commission agrees that some switches in Texas may not have the capability to forward ANI information as is required to use the electronic authorization method. The commission accordingly has amended its rule to state that the electronic authorization method is not an available verification option in exchanges where automatic recording of the ANI from the local switching system is not technically possible. BCI also suggested that §23.106(d)(3) be amended to require verification of ANI under the third party verification option. The commission disagrees. Under the proposed rule and the FCC rule, independent third party verification requires that the customer give appropriate verification data. In addition, §23.106(d)(3) states that third parties must be independent, appropriately qualified, and in a physically separate location. This language addresses BCI's concerns of unscrupulous behavior. The commission also notes that ANI information is not required under S.B. 253 or the FCC rules for third party verification.

TRA commented that the notice requirements in §23.106(d)(4)(A)(iv), (vi), (vii), and (xii) exceed the FCC rule requirements and will raise the costs of using information package verification procedures, which must be created specifically for Texas customers, and will discourage providers from using the information package verification option. The commission first notes that the state-specific information in §23.106(d)(4)(A)(xii) parallels the federal information required in FCC rule §64.1100(d)(9) and therefore does not impose unreasonable costs on the procedure. Further, the commission disagrees with TRA that the requirements in §23.106(d)(4)(A)(iv), (vi), and (vii) will significantly raise costs of verification by this method. §23.106(d)(4)(A)(iv) and (vii) merely require a carrier to tell the customer what telephone number(s) and type(s) of service (*e.g.*, local or interLATA long distance) are being changed. §23.106(d)(4)(A)(vi) contains the same requirement carriers are already required to follow under current commission rules in §23.97(i)(1)(C)(iv)(IV), (V) and (VI) for LOAs. The only difference is the addition of a requirement in §23.106(d)(4)(A)(vi) that the actual amount of the switch charge be stated. The commission agrees with the comments of TRA and others that the requirement to state the exact amount of the charge should be amended to require a more general statement. The commission believes, however, that consumers should be provided with at least an approximate amount of the charge, based on the industry average charge in Texas. The commission has amended §23.106(d)(4)(A)(vi) to state: "I understand that I must pay a charge of approximately $ (industry average charge) to switch providers. If I later wish to return to my current telephone company, I may be required to pay a reconnection charge to that company."

Sprint stated in its comments that §23.106(d)(4) requires Texas-specific information to be included in the mailing, which is inconsistent with federal rules and will require changes to the current process. In particular, Sprint objected to §23.106(d)(4)(A)(v) as very cumbersome and requiring system changes which could prove to be prohibitively expensive. The commission notes that §23.106(d)(4)(A)(v) parallels FCC rule §64.1100(d)(4), exactly. Sprint further noted that it does not currently have the ability to send the name of the person ordering the change as proposed in §23.106(d)(4)(A)(viii) and currently sends the information to the person as it appears on the local phone account. The commission finds this comment confusing. Under commission rules, for a carrier-initiated change, a carrier must obtain authorization and verification from the actual subscriber to the line. No person other than the telephone subscriber has the authority to make a change in service. Finally, Sprint notes that §23.106(d)(4)(A)(vi) will require knowledge of the amount of the primary interexchange carrier (PIC) change charge for the specific LEC serving a specific customer which is very burdensome. The commission agrees and has amended the language as discussed above.

TEXALTEL also recommended changes to §23.106(d)(4)(A)(i), (ii), (v) and (vi). The commission notes that §23.106(d)(4)(A)(i), (ii), (v) parallel FCC rule §64.1100(d)(1), (2) and (4) exactly. The commission has amended §23.106(d)(4)(A)(vi) to require that the industry average charge rather than the exact charge for a specific LEC be provided.

TEXALTEL and LCI commented that the language in §23.106(d)(4)(B) is unwieldy and recommended making the language more consistent with the FCC's language. In its comments, OPC noted there seems to be some type of grammatical problem with paragraph (4)(A) and (B) that leads to confusion regarding the verification requirements. OPC suggests that paragraph (4) be changed as follows: ". . . subparagraph (A) and the customer does not cancel service after receiving the notification pursuant to subparagraph (B)." The commission agrees to the clarification suggested by OPC and has amended the rule accordingly.

Several parties commented that the state-specific requirements of §23.106(e)(3)(A) and (B) serve to raise providers' operating costs and reduce the desirability of LOAs as an effective verification option. The commission agrees with the comments to the extent that the requirement to state the exact amount of the switchover charge be deleted. As now required in §23.106(d)(4)(A)(vi), the commission has amended §23.106(e)(3)(A) to state: "I understand that I must pay a charge of approximately $ (industry average charge) to switch providers." The commission has also amended §23.106(e)(3)(B)(iii) to delete the requirement to specify the exact amount of the charge and instead to require that the industry average charge be stated. The commission disagrees with the comments that the rule should not incorporate the actual text of the LOA. The commission believes this measure prevents any misunderstanding as to the requirements of the rule, and notes that the proposed text is consistent with FCC rules.

In its comments, TEXALTEL noted LOA forms must be separate or separable from promotional material, but has observed that some contest entry forms make it impossible to enter the contest without submitting the LOA form. TEXALTEL suggests the rules require that contest entry forms and LOA forms also be separate or separable. The commission notes that the rule already requires LOA forms be separate or separable and not combined with inducements of any kind (*e.g.*, contest entry forms), except that LOAs may be combined with checks which meet the requirements of the rule. The commission therefore believes any contest entry forms that require the submission of the LOA form to enter the contest are in violation of §23.106.

GTE recommended that the proposed rule language be modified to address "PIC change freeze" verifications in addition

to "PIC change" verifications, and recommended adding subsection §23.106(e)(4)(A): "An LOA format shall be used for a customer to take action in order to freeze a current telecommunications utility, such freeze can be changed only through the execution of a subsequent LOA by the consumer." TEXALTEL supported GTE's suggestion. The commission notes that S.B. 253 did not address preferred carrier (PC) freezes, but the FCC rulemaking on slamming does address whether verification procedures should apply to PC freeze solicitations. The commission therefore disagrees with GTE and TEXALTEL that PC freeze provisions should be added at this time.

OPC recommended adding the term "nonpublic" to define "customer specific" information in §23.106(f) so that it conforms with S.B. 253. CU also noted the proposed rule fails to include the term "nonpublic." CU argued that, while social security numbers and drivers license numbers may be customer specific, such public information can be used by companies engaged in fraud to falsely prove that a customer initiated a change which in fact was unauthorized. CU recommended the commission establish some boundaries to help ensure carriers use truly nonpublic information as verification. SWBT also agreed that the term "nonpublic" should modify "customer specific" information. The commission agrees that the term "nonpublic" should be added to §23.106(f) so that it conforms with S.B. 253 and helps to ensure that fraudulent verifications are not made using publicly accessible customer specific information as verification. The commission declines to define "nonpublic" information at this time, but is willing to consider the issue at the time it addresses the anticipated changes to the FCC rules.

SWBT recommended a 90 day statute of limitations for consumers to make a claim that an unauthorized change occurred. MCI suggested that an unauthorized change must be reported by the customer to the carrier initiating the change before the customer pays the second bill for services by that carrier. AT&T also supported a statute of limitations. OPC and CU argued strongly against inserting a statute of limitations. OPC stated that the provisions of S.B. 253 already address any utility concerns that customers may attempt to "game the system" by delaying the reporting of slamming violations. The commission disagrees with the recommendations that a statute of limitations should be inserted into the rule. The commission believes the proposed rule does not benefit the customer who delays a report of slamming in order to "game the system." After the commission has the opportunity to gain further experience with the rule, the issue may be reconsidered.

TSTCI requested subsection §23.106(g)(1) be revised to more clearly state which telecommunications utility is responsible under what circumstance for reconnection, billing and payment obligations. The commission notes that this issue is being addressed in the FCC proceeding, and the commission will therefore address the issue of more specific delineation of utility obligations after the FCC's decision. More specifically, TSTCI also commented that the slamming carrier (an IXC) does not have the ability to return the customer to his original IXC. TEXALTEL also stated §23.106(g)(1)(A) will require industry cooperation and noted that in some cases, only the original carrier can reconnect the slammed customer, especially in the case of facilities-based local competitors, and that the offending carrier can notify the original carrier but cannot accomplish the reconnection. AT&T noted that this section imposes an obligation that the carrier may not have the physical capability of fulfilling, and suggested that it be modified to read that the slamming carrier will take all steps within its control to accomplish the switch over within the required period. SWBT noted that systems do not exist for a telecommunications utility to transfer a customer to a different telecommunications utility, and suggested the rule require the slamming company to return the customer to the original utility "where technically feasible" and to direct the customer to the local exchange company (LEC) or the original utility where systems do not permit the slammer to make the change. Because the telecommunication utility that initiated the unauthorized change may not have the physical capability to return a customer to his original carrier, the commission has amended §23.106(g)(1)(A) to require the utility that made the unauthorized change to return the customer to the original utility where technically feasible within three business days of the customer's request, and if not feasible, to take all action within the utility's control to return the customer to the original utility within the required time period.

TEXALTEL suggested §23.106(g)(1)(B) be modified to require "prompt" payment and noted that in traditional unauthorized PIC changes, the LEC would bill the IXC for the unauthorized changes and the IXC would pay within the normal payment cycle. TEXALTEL further noted this was the best treatment for the customer, as the changes are handled among the carriers. Finally, TEXALTEL believed it is unreasonable to require that the offending carrier submit payment before receipt of billing and that 20-30 days is reasonable to allow time for normal issuance of checks and mailing time. MCI stated that requiring payment to another carrier within three days is unnecessary, burdensome, and does not affect the end-use customer. Further, MCI suggested the phrase "within three business days of the customer's request" be deleted, and noted the time frames for providing billing records, reimbursing the original carrier and reimbursing customers for excessive charges dated from the customer's request are simply unworkable. Finally, MCI recommended that utilities provide billing records within 30 business days after having received payment for the entire final amount due, and that reimbursements to utilities and carriers occur within 45 business days after receipt of such final payment. SWBT recommended that the rule be changed to permit the required actions on billing and payments in §23.106(g)(1)(B)-(E) to occur within a "reasonable time." LDI commented that the recommended timeframes in §23.106(g)(1)(C)-(E) were unworkable. LDI suggested a generic time period of "up to three months" to allow all parties to obtain the information required to resolve the customer's complaint. TSTCI stated that the language in §23.106(g)(1)(B) should clearly reflect that the slamming carrier should be responsible for (1) the refund of any charges to the customer that resulted from the unauthorized switch, and (2) the payment of charges to the telecommunications utility responsible for switching the customer back to his original provider. TSTCI further stated the proposed rule should more specifically address the slamming carrier's responsibility for refunding the exact charges (i.e., the PC change charge) associated with the unauthorized carrier change to the customer and the original telecommunications utility. The commission is persuaded by the comments of various parties that

additional time is necessary to comply with the billing and payment obligations under the rule. The commission has amended §23.106(g)(1)(B) to provide the unauthorized carrier with five business days to pay all usual and customary charges associated with returning the customer to the original utility. This amount of time is consistent with commission rule §23.61(e)(2) relating to the time period for installation of service. Payment for reconnection within five days will ensure that reconnection of the customer is not delayed.

TEXALTEL commented that §23.106(g)(1)(C) requires provision of more data than is needed. TEXALTEL suggested billing records be provided upon request of the consumer or the original telecommunications utility where necessary to effect restoral of frequent flyer miles, etc. Sprint stated the seven day requirement creates an extreme hardship for telecommunications utilities, and noted a timing problem is also created because of the separate, interdependent timing requirements in subsection (g)(1)(C), (2)(A), and (1)(D) and (E). Sprint suggested the timing requirements be expanded consistent with all the provisions of the rule and noted a 45 day period to clear up all issues is adequate. Further, Sprint noted that the customer payment process could take a month and would then clearly be out of line with the 10 day requirement. Thus, Sprint suggested it may be appropriate to have two procedures – one for those customers who have paid the slamming company and one for those who have not. Sprint believed that if the bill has not been paid, the billing/receivable could be credited off the slamming carrier's records and transferred to the original carrier's records for its billing and collection at its own rates. TSTCI stated the slamming carrier should be required to provide billing records to the original telecommunications utility within five business days since the utility providing the information is not performing any analysis but simply forwarding billing records. TSTCI also recommended that the original telecommunications utility be given five business days, instead of three business days, following the receipt of billing records, to provide the required information to the other telecommunications utility. Further, TSTCI suggested the commission consider revisions to §23.106(g)(1)(D) and (E) to indicate that refunds to the original telecommunications utility and customers would be returned within fifteen working days. The commission is persuaded by the comments that the time periods established under §23.106(g)(1)(C)-(E) and §23.106(g)(2)(A) should be expanded. Accordingly, the commission has amended §23.106(g)(1)(C) to allow 10 days; (D) and (E) to allow 30 days; and §23.106(g)(2)(A) to allow 10 days after receipt of the billing records. The commission believes that 30 business days is sufficient time to complete the process and for an unauthorized carrier to pay the original utility and the customer.

TEXALTEL noted the FCC rules require that all amounts collected by the offending carrier are to be paid to the original carrier. TEXALTEL argued that the commission's proposed §23.106(g) is therefore preempted and unlawful. The commission disagrees. TEXALTEL referred to proposed FCC rules, not current FCC rules. Further, the remedies provided under §258 of the FTA96 are in addition to any other remedies available by law. The commission therefore notes that S.B. 253 requires an unauthorized carrier to pay any excess charges to the customer. This bifurcated procedure which refunds excess charges directly to the customer is more pro-consumer than a requirement that the unauthorized carrier remit all charges received to the properly authorized carrier. While the FTA96 does not incorporate a procedure for direct remittance to the customer, the broader pro-consumer provisions of the commission rule provide additional protections to the customer without being preempted by the FTA96 or any FCC rule enforcing the FTA96 provisions. The FCC cannot preempt or affect these additional customer rights under state law.

For §23.106(g)(2)(B), OPC and CU requested that the phrase "all benefits associated with the service(s)" be explained. Noting that the wording in this subsection leaves the impression that the customer receives the "customer benefits" (e.g., frequent flyer miles) only for service prior to the unauthorized change, CU proposed the following language: "(B) provide to the customer all benefits associated with the service that would have been awarded had the unauthorized change not occurred." The commission agrees with the recommendations of OPC and CU and has amended §23.106(g)(2)(B) to reflect the requests.

MCI commented that maintenance of unauthorized change records pursuant to §23.106(g)(2)(C) is costly and unnecessary. MCI further noted the commission, on its own motion, can pursue compliance and enforcement of its rules on a case-by-case basis based upon the complaints it receives. Thus, MCI suggested that if the commission finds that a telecommunications utility has repeatedly engaged in violations of the rules, it could, as part of its sanctions, require the offending utility to begin to maintain such records as a condition to continue to operate. The commission disagrees. The records maintained pursuant to this section will provide a valuable tool for the commission in its enforcement of slamming prohibitions.

Commenting on §23.106(h)(1), TRA suggested that instead of requiring providers to give notice in both English and Spanish, the commission should allow providers to give notice in the same language that the company used to market its services. LDI applauded the commission's customer education efforts but noted that many carriers do not have a physical address in the state of Texas and suggested that the distinction be made clear that this requirement is intended for local exchange companies (LECs) and the carrier selection process associated with choosing a LEC. MCI noted that this proposed subsection would require no less than 15 notices annually to customers regarding their rights relative to unauthorized changes (assuming the customer receives one bill for their combined local and long distance services). MCI believed that the notices by separate, annual mailings and via each and every bill are unnecessary, duplicative, and costly, and should be deleted from the rule. TEXALTEL believed the notice requirements in this subsection are extremely excessive and will cause the industry to incur extraordinary expenses that are not necessary and are not in the public interest. TEXALTEL suggested the rules leave to the discretion of the telecommunications utility whether to provide the notice in both languages or to provide the notice in English but state in Spanish that a Spanish version is available on request, and provide the necessary phone number and address to make the request. TEXALTEL also stated that it does not believe the commission wants to deal with requests from 900 or so non-dominant carriers for exemption from the Spanish requirements nor is it efficient for the carriers to be required to go to

this effort for an exemption for which they are all expected to qualify. TEXALTEL further believed the requirement for a direct mailing is also unnecessary and imprudent, and suggests a very simplified notice be given to consumers upon adoption of the rule by inclusion in telephone directories. TEXALTEL stated that it sees no reason for the IXC to have to send a duplicate notice and notes this would be tremendously burdensome because IXCs that rely on LEC billing and collection often do not know who their customers are and do not have the information available to them to comply with the notice requirement. TEXALTEL pointed out that the requirement that the first notice be completed by the sooner of September 30, 1997 or the effective date of the rule is impossible and suggests that if any notice is to be required, it be 90 days after adoption of the rule. Further, TEXALTEL noted that if the commission insists on bilingual notices, then publication of the first notice should be one year after adoption of the rule to allow time for a large number of exemption requests to be filed and processed by the commission. Finally, TEXALTEL believed the requirement to list a physical address where bills can be paid is unreasonable since it has nothing to do with slamming. TEXALTEL noted the commission has no jurisdiction to require that non-dominant carriers implement this requirement, and suggests this requirement be dropped and dealt with in the context of billing rules if it is found to be a problem.

SWBT stated the physical address requirement in §23.106(h)(2) is unnecessary for a slamming rule because where a customer can pay bills is not relevant to implement slamming prohibitions, and recommended deletion of this requirement. Further, SWBT noted that the requirement in §23.106(h)(3) may not be the most efficacious method as current systems may only accept changes from the receiving carrier. SWBT recommended the notice should advise the customer to contact the original company selected by the customer. SWBT also objected to the mailing of a separate notice. SWBT noted the language in S.B. 253 suggests it was the intention of the Legislature that if a notice needed to be sent, it was at the commission's expense, not that of telecommunications utilities. SWBT further noted that a bill insert notice, sent once, and funded by the commission, will be adequate and thereafter new customers can be informed of their rights under the rules by the utility selected. SWBT proposed the language of the rule require the notice (if it must be sent at all) to be sent by November 1 or 30 days after adoption of the rule, whichever comes later. Finally, SWBT stated the requirement in §23.106(h)(4)(B) to include the notice in directories imposes a continuing expense which outweighs its value. SWBT further noted this requirement is inconsistent with S.B. 253 which requires the commission's rules be competitively neutral and that the commission, not utilities, is charged with the notice obligation. TSTCI stated that a separate mailing is not required or necessary, and noted that this is a more costly method of notice distribution than mailing a bill insert. TSTCI stated the legislation requiring the commission to implement this proposed rule gave the direction that the "Commission may notify customers of their rights under these rules." Therefore, TSTCI suggested the commission consider making the notice a part of the "Your Rights As A Customer" information ILECs are required to provide to customers or publish in their directories.

TTA believed the requirement for billing addresses in §23.106(h)(2) may impose an undue financial burden on telecommunications utilities, particularly the ILECs, and suggested the language be amended to require that the notice provide that bill payment locations would be available upon request. In its comments of §23.106(h)(4), TRA noted the commission should not require providers to list a physical address where customers can pay bills since many smaller providers, including IXC resellers, will likely not maintain local offices within the state. TRA further noted that the requirement that providers list their name and an address and toll-free telephone number at which they can be reached should be sufficient to satisfy customer inquiries. Therefore, TRA suggested the proposed section be amended to allow providers to send notice only when initiating service or when customers request such information. TRA opined the separate mailing requirement is duplicative and will only serve to raise providers' costs without benefiting the public with new or "hard-to-find" information. TTA believed the requirement in this subsection would impose costs that far exceed the benefits to be gained in terms of customer education, and suggested the commission allow telecommunications utilities to choose to provide the required notice of customer rights as a bill insert or separate mailing. TTA recommended that the notice deadline of September 1 or sooner be amended to provide more time for compliance by companies to reach their entire customer base, and that the deadline be modified to allow for the notice to be compatible with existing billing cycles. GTE noted in its comments that §23.106(h)(4)(A) would place an unfair financial burden on the LEC industry. GTE proposed the elimination of language in this subsection that refers to notice "by separate mailing." AT&T commented that the annual notice requirement in this subsection will impose an incredibly expensive obligation that will result in multiple, redundant notices to the same customers. AT&T noted the requirement is inconsistent with S.B. 253 since this section directs that the commission, not the carriers, may notify customers of their rights. Further, AT&T noted that notice of consumer rights is legitimately considered part of the enforcement function and would be subject to funding by administrative penalties. OPC supported notice by separate mailing, and suggested the commission include a waiver provision that would allow notice by bill insert for utilities that can establish good cause for the waiver.

The commission first notes that S.B. 253 grants to the commission the authority to implement slamming rules that apply to non-dominant carriers as well as dominant carriers. The commission further notes that the Spanish language requirements in §23.106(h)(1) are consistent with those in commission rule §23.61, relating to the information package "Your Rights as a Customer." Because not all carriers may have a physical location to pay bills within Texas, the commission has amended §23.106(h)(2) to delete this requirement. The commission was persuaded that the separate mailing and annual notice provisions were unnecessary and has deleted the requirement under §23.106(h)(4)(A) that notice be made by separate mailing, and that an annual notice be made. The commission has also amended §23.106(h)(4)(A) to remove the requirement that notice be sent by September 1, 1997, leaving the requirement that

notice be sent within 30 days of the effective date of this section.

In its comments on proposed §23.106(h)(2)and (3), CU recommended the commission include in the requirements of the notice the hours the telecommunications utility has staff available to answer customer complaints and the commission's phone number for handling complaints. The commission disagrees and has amended these sections as discussed above. Further, CU recommended the term "benefits" be defined or elaborated upon and suggests the following language: "Benefits" are additional products or services (such as frequent flyer miles) offered to customers for subscribing to a carrier's telecommunications service." The commission agrees and has amended the notice.

TSTCI noted the proposed "Customer Notice" was inadvertently omitted from proposed §23.106(h)(3) as published in the *Texas Register*. The commission notes that the proposed customer notice was published as Figure 2: 16 TAC §23.106(h)(3) at 22 TexReg 6192. TSTCI believed the revisions to the notice which reference "phone company/phone provider" may serve only to confuse the customer. TSTCI strongly suggested the commission revisit the customer notice and more clearly indicate the "provider" (i.e., local or long distance) who is responsible for taking action to correct the unauthorized change. The commission disagrees. The language of the notice was deliberately crafted to be more accessible and easily understandable to customers.

OPC suggested the proposed subsection §23.106(i) track the legislation exactly. OPC further suggested the commission should not try to characterize in the rule itself what behavior will be considered "repeated" violations and what behavior will constitute "repeated and reckless" violations. Finally, OPC believed the commission will want to retain the most discretion possible to analyze on a case-by-case basis the various factors which will obviously influence the imposition of penalties on companies. SWBT noted §23.106(i)(4) allows a finding of recklessness upon the existence of two incidents and recommends this subsection be modified as well. Sprint believed the ambiguousness of subsection §23.106(i)(3) and (4) could lead to improper results. Therefore, Sprint suggested a more objective standard be set. Further, Sprint recommended the commission conduct a workshop to more clearly understand the systems impact of this rule and allow for additional time (four to six months) to implement this rule. SWBT recommended that the commission adopt a rule which takes into account the relative size (by number of customers) of the telecommunications utility before penalties are imposed (more fair and avoids liability where there is simply a misunderstanding with as few as two customers.) MCI believed this subsection raises a number of due process concerns. MCI suggested the rule be revised to state at both paragraphs (1) and (2) "Upon a commission staff request of any records pursuant to this paragraph, the commission staff shall notify the utility in writing, of all reason(s) that have prompted the commission's request." In addition, MCI requested that paragraphs (1) and (2) be revised to state that the request by commission staff must be written and must be directed to the attention of the utility's legal/regulatory department. Further MCI believed paragraphs (3) and (4) fail to expressly state that the utility is entitled to hearing and recommends the following revision to both paragraphs: "If the commission finds, after a hearing on the occurrence of the violation, that a telecommunications utility. . . ." MCI argued paragraphs (3) and (4) violate PURA and that Section 1.3215(e) imposes the burden of proof on the utility that the alleged violation was accidental or inadvertent. MCI stated such burden is appropriate as accidents or inadvertent incidents can happen within 30 day periods. MCI stated that the proposed language denies the utility due process and by operation of law converts that possible accidental or inadvertent unauthorized change into a violation subject to administrative penalty and recommended deletion of the accidental/inadvertent language. MCI further noted paragraph (4) raises the same concern, and recommended the accidental/inadvertent language be deleted. TEXALTEL stated the requirements in §23.106(i)(1)-(4) appear to imply that three incidents of slamming within 30 days will not be deemed "accidental or inadvertent" and suggests severe sanctions should be automatic. TEXALTEL further suggested that the next to the last sentence in (3) be stricken and if enforcement situations arise, the commission look at specific facts and exercise its judgment. OPC noted the enabling legislation makes no reference to slamming incidents that will be "deemed accidental or inadvertent." OPC supported the intent behind the language in §23.106(i)(3), but believes the characterization of incidents that will not be deemed accidental or inadvertent leads one to assume that there are incidents that will be deemed accidental or inadvertent. OPC noted it is unsure what is meant by the "30 day cure period" and urged that it be deleted because it has no statutory basis. Further, OPC suggested deletion of the language which refers to accidental or inadvertent slamming incidents. Finally, OPC suggested deletion of the language in §23.106(i)(4) which has no statutory basis.

The commission disagrees with the parties that changes should be made to §23.106(i). The commission has authority under S.B. 253 and PURA to require the maintenance and production of records under §23.106(i)(1) and (2). Further, the commission is not required to notify a utility of the reason(s) that have prompted the commission's request for a record(s). The commission has considered the comments regarding the "accidental or inadvertent" and "repeated and "reckless" language in §§23.106(i)(3) and (4), but is not persuaded that the provisions should be amended. The commission believes §§23.106(i)(3) and (4) provide fair notice to telecommunications utilities as to the nature of the proscribed conduct and the standards to which parties will be held when claims of accidental or inadvertent are raised. Further, the commission believes the language of §§23.106(i)(3) and (4) does not prevent the commission from looking at specific facts and exercising its judgment accordingly.

SWBT commented that §23.106(j), which requires the identification of both the LEC and the IXC on the first page of a bill, would cause problems in the case of multiple- line accounts where more than one PC may be selected. SWBT suggested adding language which requires that the IXC associated with the main billing number be identified on the first page, with any additional information to be printed on a subsequent page. The commission understands that the first page of the bill may not have sufficient space to allow all IXCs of multiple-line accounts to be printed. The commission has amended the rule to allow that, to the extent that multiple IXCs will not fit on the first page of a bill, the remaining IXCs may be displayed elsewhere in the bill. TTA suggested §23.106(j)(2) be redrafted to establish that

providers of local exchange service which also bill for interexchange services be subject to the disclosure requirement only if there is a "direct" billing arrangement between the local service provider and the primary interexchange service provider. TTA also stated that the requirement in subsection (j)(4) is burdensome and exceeds the legislative direction found in S.B. 253. TTA suggested that §23.106(j) should not require that consumer notice be placed on the first page of each bill. OPC and CU disagreed with TTA's comments that LECs should be exempted from listing a customer's primary interexchange carrier whenever there is no direct relationship with the primary interexchange carrier. The commission agrees with OPC and CU. Senate Bill 253 does not specify that the billing relationship must be the type of direct contractual relationship contemplated by TTA. TEXALTEL similarly suggested that PICs not be identified as required in subsection (j)(2) since the bill is not always from the PIC. The commission notes that the purpose of subsection (j)(1), (2), and (3) is to give the customer the ability to identify when an unauthorized carrier change has occurred. The identification of the provider for each type of service on the relevant bill is necessary to determine if an unauthorized switch has occurred. TEXALTEL also argued this section has no connection to slamming and the commission lacks jurisdiction to enforce compliance by non-dominant carriers. The commission disagrees. SENATE BILL 253 expressly grants the commission authority to promulgate these provisions. TEXALTEL also commented that the language in §23.106(j)(3) could be read to require that if a LEC provides billing for any IXC, that it must print the PIC on all of its bills. The commission believes that the rule is clear in its application to each customer's bill and that no revision is necessary.

TRA commented that the billing programming costs to implement the commission contact information in (j)(4) is overly burdensome. Both TRA and MCI noted that the information provided in (j)(4) is duplicative of information which will be provided pursuant to subsection (h). TRA recommended that the requirement in (j)(4) should be deleted in favor of allowing carriers to disclose service changes and references to the commission's Office of Customer Protection in their notices of customer rights. The commission imposes the customer notice of (j)(4) as directly required by S.B. 253. In addition, TTA noted that S.B. 253 does not require that the customer notice in (j)(4) must be placed on the first page. The commission agrees with the comment of TTA and due to limited space on the first page amends (j)(4) to require that a bill for telecommunications service must place the information prominently on the customer's bill, which may or may not be the first page of the bill.

TSTCI commented that customer confusion arises when a primary IXC resells its service to "underlying carriers" unbeknownst to the customer. OPC and CU agreed that this is a problematic issue in their reply comments. The commission believes that compliance with §23.106 will eliminate this situation; the rule is clear in stating that the primary interexchange carrier is the provider which must be identified. This issue is also more specifically addressed by the FCC in its proposed rules.

This new section and the amendment are adopted under the Public Utility Regulatory Act, 75th Legislature, Regular Session, Chapter 166, §1, 1997 Texas Session Law Service 732, 733 (Vernon) (to be codified at Texas Utilities Code Annotated §14.002 and §14.052) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and specifically, Texas Senate Bill 253, 75th Legislature, Regular Session (1997), which sets out the manner in which a telecommunications utility is permitted to switch a customer from one telecommunications utility to another in the State of Texas.

Cross Index to Statutes: PURA §14.002 and §14.052.

§23.97. Interconnection.

(a)-(g) (No change.)

(h) Filing of rates, terms, and conditions.

(1) Rates, terms and conditions resulting from negotiations, compulsory arbitration process, and statements of generally available terms.

(A) A CTU from which interconnection is requested shall file any agreement, adopted by negotiation or by compulsory arbitration, with the commission. The commission shall make such agreement available for public inspection and copying within 10 days after the agreement is approved by the commission pursuant to subparagraphs (C) and (D) of this paragraph.

(B) An ILEC serving greater than five million access lines may prepare and file with the commission, a statement of terms and conditions that it generally offers within the state pursuant to 47 United States Code §252(f) (1996). The commission shall make such statement available for public inspection and copying within 10 days after the statement is approved by the commission pursuant to subparagraph (E) of this paragraph.

(C)-(E) (No change.)

(2) (No change.)

(i) Customer safeguards.

(1) Requirements for provision of service to customers. Nothing in this section or in the CTU's tariffs shall be interpreted as precluding a customer of any CTU from purchasing local exchange service from more than one CTU at a time. No CTU shall connect, disconnect, or move any wiring or circuits on the customer's side of the demarcation point without the customer's express authorization as specified in §23.106 of this title, (relating to Selection of Telecommunications Utilities).

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

§23.106. Selection of Telecommunications Utilities.

(a) Purpose. The provisions of this section are intended to ensure that all customers in this state are protected from an unauthorized change in a customer's local or long-distance telecommunications utility.

(b) Application. This section, including any reference in this section to requirements in 47 Code of Federal Regulations §64.1100 and §64.1150 (relating to changing interexchange carriers), applies to all "telecommunications utilities," as that term is defined in subsection (c)(5) of this section.

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

(1) Automatic number identification (ANI) - The automatic transmission by the local switching system of the originating billing telephone number to an interexchange carrier or other communications carrier in the normal course of telephone operations.

(2) Calling area - The area within which telecommunications service is furnished to customers under a specific schedule of exchange rates. A "local" calling area may include more than one exchange area.

(3) Carrier-initiated change - A change in the telecommunications utility serving a customer that was initiated by the telecommunications utility to which the customer is changed, whether the switch is made because a customer did or did not respond to direct mail solicitation, telemarketing, or other actions initiated by the carrier.

(4) Customer-initiated change - A change in the telecommunications utility serving a customer that is initiated by the customer and is not the result of direct mail solicitation, telemarketing, or other actions initiated by the carrier.

(5) Telecommunications utility - A telecommunications utility as defined in the Public Utility Regulatory Act (PURA) §§51.002(8) and (11), including but not limited to, dominant and non-dominant carriers, local exchange telephone service providers, interexchange telecommunications service providers, and resellers of local and interexchange telecommunications service.

(d) Changes initiated by a telecommunications utility. Before a carrier-initiated change order is processed, the telecommunications utility initiating the change (the prospective telecommunications utility) must obtain verification from the customer that such change is desired for each affected telephone line(s) and ensure that such verification is obtained in accordance with 47 Code of Federal Regulations §64.1100. In the case of a carrier-initiated change by written solicitation, the prospective telecommunications utility must obtain verification as specified in 47 Code of Federal Regulations §64.1150, and subsection (e) of this section, relating to Letters of Agency. The prospective telecommunications utility must maintain records of all carrier-initiated changes, including verifications, for a period of 12 months and shall provide such records to the customer, if such customer challenges the change, and to the commission staff if it so requests. A carrier-initiated change order must be verified by one of the methods set out in paragraphs (1)-(4) of this subsection.

(1) Verification may be obtained by written authorization from the customer in a form that meets the requirements of subsection (e) of this section.

(2) Verification may be obtained by electronic authorization placed from the telephone number(s) which is (are) the subject of the change order(s) except in exchanges where automatic recording of the ANI from the local switching system is not technically possible; however, if verification is obtained by electronic authorization, the prospective telecommunications utility must:

(A) ensure that the electronic authorization confirms the information described in subsection (e)(3) of this section; and

(B) establish one or more toll-free telephone numbers exclusively for the purpose of verifying the change whereby calls to the toll-free number(s) will connect the customer to a voice response unit or similar mechanism that records the required information regarding the change, including automatically recording the ANI from the local switching system.

(3) Verification may be obtained by the customer's oral authorization to submit the change order, given to an appropriately qualified and independent third party operating in a location physically separate from the marketing representative, that confirms and includes appropriate verification data (e.g., the customer's date of birth or mother's maiden name).

(4) Verification may be obtained by sending each new customer an information package via first class mail within three business days of a customer's request for a telecommunications utility change provided that such verification meets the requirements of subparagraph (A) of this paragraph and the customer does not cancel service after receiving the notification pursuant to subparagraph (B) of this paragraph.

(A) The information package must contain at least the information and material as specified in 47 Code of Federal Regulations §64.1100(d) and this subparagraph which includes:

(i) a statement that the information is being sent to confirm a telemarketing order placed by the customer within the previous week;

(ii) the name of the customer's current provider of the service that will be provided by the newly requested telecommunications utility;

(iii) the name of the newly requested telecommunications utility;

(iv) the type of service(s) that will be provided by the newly requested telecommunications utility

(v) a description of any terms, conditions, or charges that will be incurred;

(vi) the statement, "I understand that I must pay a charge of approximately $ (industry average charge) to switch providers. If I later wish to return to my current telephone company, I may be required to pay a reconnection charge to that company. I also understand that my new telephone company may have different calling areas, rates and charges than my current telephone company, and by not canceling this change order within 14 days of the date that this information package was mailed to me I indicate that I understand those differences (if any) and am willing to be billed accordingly;

(vii) the telephone numbers that will be switched to the newly requested telecommunications utility;

(viii) the name of the person ordering the change;

(ix) the name, address, and telephone number of both the customer and the newly requested telecommunications utility;

(x) a postpaid postcard which the customer can use to deny, cancel or confirm a service order;

(xi) a clear statement that if the customer does not return the postcard the customer's telecommunications utility will be switched to the newly requested telecommunications utility within 14 days after the date the information package was mailed by (the name of the newly requested telecommunications utility); and

(xii) the statement, "Complaints about telephone service and unauthorized changes in a customer's telephone service provider ("slamming") are investigated by the Public Utility Commission of Texas. If a telephone company "slams" you and fails to resolve your request to be returned to your original telephone company as required by law, or if you would like to know the complaint history for a particular telephone company, please write or call the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120, or toll-free within Texas at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136."

(B) The customer does not cancel the requested change within 14 days after the information package is mailed to the customer by the prospective telecommunications utility.

(e) Letters of Agency (LOA). If a telecommunications utility obtains written authorization from a customer for a change of telecommunications utility as specified in subsection (d)(1) of this section, it shall use a letter of agency (LOA) as specified in this subsection.

(1) The LOA shall be a separate or easily separable document containing only the authorizing language described in paragraph (3) of this subsection for the sole purpose of authorizing the telecommunications utility to initiate a telecommunications utility change. The LOA must be signed and dated by the customer of the telephone line(s) requesting the telecommunications utility change.

(2) The LOA shall not be combined with inducements of any kind on the same document; except that the LOA may be combined with a check if the LOA and the check meet the requirements of subparagraphs (A)-(B) of this paragraph.

(A) An LOA combined with a check may contain only the language set out in paragraph (3) of this subsection, and the necessary information to make the check a negotiable instrument.

(B) A check combined with an LOA shall not contain any promotional language or material but shall contain, on the front of the check and on the back of the check in easily readable, bold-faced type, type near the signature line, the following notice: "By signing this check, I am authorizing (name of the telecommunications utility) to be my new telephone service provider for (the type of service that the telecommunications utility will be providing).

(3) LOA language.

(A) The LOA must be printed clearly and legibly and use only the following language:
Figure 1: 16 TAC §23.106(e)(3)(A)

(B) In the LOA set out by subparagraph (A) of this paragraph, the telecommunications utility seeking authorization shall replace, in bold type, the words:

(i) "(new telecommunications utility)," with its corporate name;

(ii) "(type of service(s) that will be provided by the new telecommunications utility)," with the type of service(s) that it will be providing to the customer; and

(iii) "I must pay a charge of approximately $ (industry average charge)" with the text, "there is no charge" only if there is no charge of any kind to the customer for the switchover.

(4) The LOA shall not suggest or require that a customer take some action in order to retain the customer's current telecommunications utility.

(5) If any portion of a LOA is translated into another language, then all portions of the LOA must be translated into that language. Every LOA must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the LOA.

(f) Changes initiated by a customer. In the case of a customer-initiated change of telecommunications utility, the telecommunications utility to which the customer has changed his service shall maintain a record of nonpublic customer specific information that may be used to establish that the customer authorized the change. Such information is to be maintained by the telecommunications utility for at least 12 months after the change and will be used to establish verification of the customer's authorization. This information shall be treated in accordance with the Federal Communications Commission (FCC) rules and regulations relating to customer-specific customer proprietary network information, and shall be made available to the customer and/or the commission staff upon request.

(g) Unauthorized changes.

(1) Responsibilities of the telecommunications utility that initiated the change. If a customer's telecommunications utility is changed and the change was not made or verified consistent with this section, the telecommunications utility that initiated the unauthorized change shall:

(A) return the customer to the telecommunications utility from which the customer was changed (the original telecommunications utility) where technically feasible, and if not technically feasible, take all action within the utility's control to return the customer to the original utility, including requesting reconnection to the original telecommunications utility from a telecommunications utility that can execute the reversal, within three business days of the customer's request;

(B) pay all usual and customary charges associated with returning the customer to the original telecommunications utility within five business days of the customer's request;

(C) provide all billing records to the original telecommunications utility that are related to the unauthorized provision of services to the customer within 10 business days of the customer's request to return the customer to the original telecommunications utility;

(D) pay the original telecommunications utility any amount paid to it by the customer that would have been paid to the original telecommunications utility if the unauthorized change had not occurred, within 30 business days of the customer's request to return the customer to the original telecommunications utility; and

(E) return to the customer any amount paid by the customer in excess of the charges that would have been imposed for identical services by the original telecommunications utility if the unauthorized change had not occurred, within 30 business days of the customer's request to return the customer to the original telecommunications utility.

(2) Responsibilities of the original telecommunications utility. The original telecommunications utility from which the customer was changed shall:

(A) provide the telecommunications utility that initiated the unauthorized change with the amount that would have been imposed for identical services by the original telecommunications utility if the unauthorized change had not occurred, within 10 business days of the receipt of the billing records required under paragraph (1)(C) of this subsection;

(B) provide to the customer all benefits associated with the service(s) (e.g., frequent flyer miles) that would have been awarded had the unauthorized change not occurred, on receipt of payment for service(s) provided during the unauthorized change; and

(C) maintain a record related to customers that experienced an unauthorized change in telecommunications utilities that contains:

(i) the name of the telecommunications utility that initiated the unauthorized change;

(ii) the telephone number(s) that were affected by the unauthorized change;

(iii) the date the customer requested that the telecommunications utility that initiated the unauthorized change return the customer to the original carrier; and

(iv) the date the customer was returned to the original telecommunications utility.

(h) Notice of customer rights.

(1) Each telecommunications utility shall make available to its customers the notice set out in paragraph (3) of this subsection in both English and Spanish as necessary to adequately inform the customer; however, the commission may exempt a telecommunications utility from the requirement that the information be provided in Spanish upon application and a showing that 10% or fewer of its customers are exclusively Spanish- speaking, and that the telecommunications utility will notify all customers through a statement in both English and Spanish, in the notice, that the information is available in Spanish from the telecommunications utility, both by mail and at the utility's offices.

(2) Each notice provided as set out in paragraph (4)(A) of this subsection shall also contain the name, address and telephone numbers where a customer can contact the telecommunications utility.

(3) Customer notice. The notice shall state:

Figure 2: 16 TAC §23.106(h)(3)

(4) Distribution and timing of notice.

(A) Each telecommunications utility shall mail the notice to each of its residential and business customers within 30 days of the effective date of this section. In addition, the telecommunications utility shall send the notice to new customers at the time service is initiated, and upon customer request.

(B) Each telecommunications utility shall print the notice in the white pages of its telephone directories, beginning with the first publication of such directories subsequent to the effective date of this section; thereafter, the notice must appear in the white pages of each telephone directory published for the telecommunications utility. The notice that appears in the directory is not required to list the information contained in paragraph (2) of this subsection.

(i) Compliance and enforcement.

(1) Records of customer verifications. A telecommunications utility shall provide a copy of records maintained under the requirements of subsections (d) - (f) of this section to the commission staff upon request.

(2) Records of unauthorized changes. A telecommunications utility shall provide a copy of records maintained under the requirements of subsection (g)(2)(C) of this section to the commission staff upon request.

(3) Administrative penalties. If the commission finds that a telecommunications utility has repeatedly engaged in violations of this section, the commission shall order the utility to take corrective action as necessary, and the utility may be subject to administrative penalties pursuant to PURA §15.023 and §15.024. For purposes of §§15.024(b) and (c), there shall be a rebuttable presumption that a single incident of an unauthorized change in a customer's telecommunications utility ("slamming") is not accidental or inadvertent if subsequent incidents of slamming by the same utility occur within 30 days of when the incident is reported to the commission, or during the 30-day cure period. Any proceeds from administrative penalties that are collected under this section shall be used to fund enforcement of this section.

(4) Certificate revocation. If the commission finds that a telecommunications utility is repeatedly and recklessly in violation of this section, and if consistent with the public interest, the commission may suspend, restrict, or revoke the registration or certificate of the telecommunications utility, thereby denying the telecommunications utility the right to provide service in this state. For purposes of this section, a single incident of slamming may be deemed reckless if subsequent incidents of slamming by the same telecommunications utility occur during the 30-day grace period after an incident of slamming is ccreported to the commission regarding the initial incident.

(j) Notice of identity of a customer's telecommunications utility. Any bill for telecommunications services must contain the information contained in paragraphs (1)-(4) of this subsection in legible, bold type in each bill sent to a customer. Where charges for multiple lines are included in a single bill, the information contained in paragraphs (1)-(3) of this subsection must be contained on the first page of the bill to the extent possible. Any information that cannot be located on the first page must be displayed prominently elsewhere in the bill.

(1) If a bill is for local exchange service, the name and telephone number of the telecommunications utility that is providing local exchange service directly to the customer.

(2) If the bill is for interexchange services, the name and telephone number of the primary interexchange carrier.

(3) In such cases where the telecommunications utility providing local exchange service also provides billing services for a primary interexchange carrier, the first page of the combined bill shall identify both the local exchange and interexchange providers, as required by paragraphs (1) and (2) of this subsection; however, the commission may, for good cause, waive this requirement in exchanges served by incumbent local exchange companies serving 31,000 access lines or less.

(4) A statement, prominently located in the bill, that if the customer believes that the local exchange provider or the interexchange carrier named in the bill is not the customer's chosen

interexchange carrier, that the customer may contact: Public Utility Commission of Texas, Office of Customer Protection, P. O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

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

Issued in Austin, Texas, on September 12, 1997.

TRD-9712208
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: October 2, 1997
Proposal publication date: July 1, 1997
For further information, please call: (512) 936-7308

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TITLE 22. EXAMINING BOARDS

Part XXI. Texas State Board of Examiners of Psychologists

Chapter 473. Fees

22 TAC §473.3

The Texas State Board of Examiners of Psychologists adopts an amendment to §473.3, concerning Annual Renewal Fees, to be effective September 10, 1997, without changes to the proposed text published in the May 23, 1997, issue of the *Texas Register* (22 TexReg 4411).

The amendment is necessary to implement the Board's licensing and enforcement strategies concerning the Licensed Specialist in School Psychology in accordance with its mission and strategic plan by generating revenue, pursuant to the 1995 General Appropriations Act, 74th Legislative Session, House Bill Number 1.

The amendment will ensure funding to permit the Board to carry out its mission to protect the public.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the Statute.

Pursuant to the Psychologists' Certification and Licensing Act, §26, effective September 1, 1996, any individual who provides school psychological services in a public school district must be a Licensed Specialist in School Psychology. Given the necessity of immediately establishing a renewal fee for the Licensed Specialist in School Psychology in order to permit individuals currently licensed as Licensed Specialists in School Psychology to renew said licenses for the current fiscal year, the Board finds that it would create an imminent peril to the public health and welfare if Licensed Specialists in School Psychology were unable to renew these licenses and, therefore, were unable to provide school psychological services to the students of the Texas public school districts, which would occur unless the effective date of this rule is expedited as permitted by the Texas Government Code, §2001.036(a)(2).

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

Issued in Austin, Texas, on September 9, 1997.

TRD-9712107
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: September 10, 1997
Proposal publication date: May 23, 1997
For further information, please call: (512) 305–7700

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 1. Texas Board of Health

Procedures and Policies

25 TAC §§1.6, 1.7

The Texas Department of Health (department) adopts amendments to §§1.6 and 1.7 concerning actions requiring Board of Health (board) approval, and the duties of the commissioner of health (commissioner). Sections 1.6 and 1.7 are adopted with changes to the proposed text as published in the July 4, 1997, issue of the *Texas Register* (22 TexReg 6254).

The amendment to §1.6 will increase board involvement in the approval of senior staff at the department, and in the major contracting activities of the department. The amendment to §1.7 requires the commissioner to hire and supervise personnel, execute all contracts greater than $1 million, and to advise the board on major contracting activities.

The following comments were received concerning the proposed sections. Following each comment is the department's comments and any resulting change(s). Minor editorial changes were made for clarification purposes.

Comment: Concerning §1.6, a commenter suggested that the board would be better served by receiving information of major contracting activities prior to the time a contract is written.

Response: The department agrees and has changed the rule accordingly.

Comment: Concerning §§1.6 and 1.7, a commenter suggested the proposed rules state that the commissioner supervises the internal auditor when the law requires the internal auditor to report to the board.

Response: The department agrees and has changed the rule accordingly.

The commenters included a board member and staff of the department.

The amendments are adopted under the Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health.

§1.6. Actions Requiring Board Approval

(a) Strategic plan. The strategic plan is subject to approval by the Board of Health.

(b) Appropriation request. The department's appropriation request and annual operating budget are subject to approval by the board prior to submission to the legislature.

(c) Rules. The board shall adopt rules for its own procedure and for the performance of each duty imposed by law on the board, the department, and the commissioner.

(d) Appointment of the director of the Internal Audit Division. The appointment or removal of the director of the Internal Audit Division by the commissioner is subject to approval by the board.

(e) Of those appointments made by the commissioner, the following shall be subject to the approval of the board:

(1) the deputy commissioners of the department;

(2) the associate commissioners of the department;

(3) the regional directors of the department;

(4) the director of the Texas Center for Infectious Disease; and

(5) the director of the South Texas Hospital.

(f) Contracts. The chair of the board shall appoint a subcommittee of no more than three members to review contract activities to which the department is a party, involving payment greater than $1 million. The subcommittee shall report major contract activity to the board on a quarterly basis.

(g) Other actions. The board may approve any other action by the commissioner or the department where the approval of the board is required by law or requested by the commissioner.

§1.7. Commissioner of Health

(a) The commissioner of health, as the executive head of the Texas Department of Health (department), shall perform the duties delegated and assigned by the Board of Health (board) and state law. Subject to §1.6 of this title (relating to Actions Requiring Board Approval), the board conducts all department business through the commissioner.

(b) The commissioner shall:

(1) administer and enforce federal and state health laws applicable to the department by issuing orders, making decisions, executing contracts, and implementing the duties delegated or assigned to the commissioner by the board;

(2) administer and implement department services, programs, and activities, maintain professional standards within the department, and represent the department as its chief executive. To accomplish this goal, the commissioner is authorized to hire and supervise personnel, establish appropriate organization, acquire suitable administrative, clinical, and laboratory facilities, and obtain sufficient financial support;

(3) hire and supervise all personnel subject to §1.6(e) of this title;

(4) execute all contracts to which the department is a party involving payment greater than $1 million. This duty may not be delegated; and

(5) provide information to the board's subcommittee on contracts concerning contracting activities anticipated to be for payment greater than $1 million, including requests for proposals, invitations for bid, and other procurement activities.

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

Issued in Austin, Texas, on September 12, 1997.

TRD-9712272
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: October 6, 1997
Proposal publication date: July 4, 1997
For further information, please call: (512) 458–7236

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Chapter 30. Medicaid Managed Care

Subchapter B. Standards for the State of Texas Access Reform (STAR)

25 TAC §§30.22, 30.23

The Texas Department of Health (department) adopts amendments to §30.22 and §30.23, concerning enrollment of Medicaid managed care members. Section 30.23 is adopted with one change to the proposed text as published in the April 15, 1997, issue of the *Texas Register* (22 TexReg 3509). Section 30.22 is adopted without change, and therefore the section will not be republished.

The amendments add definitions and establish a detailed process for assigning Medicaid managed care members to managed care organizations (MCOs) (including a Primary Care Case Management (PCCM) network) and to primary care physicians (PCPs) if the members fail to electively select an MCO and PCP. When Medicaid clients who are eligible for the state's Medicaid managed care program fail to select an MCO and PCP during an enrollment period specified by the state, the Texas Department of Health or its agent will assign the Medicaid client to an MCO and PCP. These amendments provide the criteria the state follows in making those default assignments.

The department held a public hearing concerning the proposed rules on August 7, 1997, in Austin. One change was made to §30.23(e)(1) as a result of comments received.

The following comments were received concerning the proposed sections, and the department's response to the comments are described as follows.

Comment: Concerning the rules in general, one commenter stated that a patient's encounter history with a provider should be broadened to include charity/uninsured encounter data supplied by traditional providers.

Response: The department disagrees with the commenter and has made no change in the rules in response to the comment. Default to PCPs based on factors other than those specified in the rules is permitted by §30.23(e)(5). Charity/uninsured encounter data may be considered if the department determines that it is an appropriate measure for purposes of defaulting to PCPs.

Comment: Concerning the rules in general, one commenter stated that a member's diagnosis should be added to the criteria for defaulting a Medicaid managed care member to an MCO and PCP.

Response: The department disagrees with adding this level of specificity and has not made a change to the rules in response to the comment. The proposed rules allow for the department to take other factors into consideration in the default methodology. Special medical needs may be considered as provided by §30.23(e)(8), but the department does not believe that a member's diagnosis should be added to that criteria.

Comment: Concerning the rules in general, one commenter said the rules would violate the Civil Rights Bill of 1964.

Response: The department disagrees and has made no changes in response to the comment. The department does not believe that the proposal violates any state or federal law.

Comment: Concerning the rules in general, one commenter was opposed to the department policy of maintaining the same primary care provider (PCP) as the most important factor in defaulting a Medicaid managed care member to an MCO and to the department policy of awarding default assignments to MCOs based on the percentage of their elective enrollments. The commenter recommended numerous changes throughout the rules to lessen the weight given to past claims history and percentage of elective enrollments. The commenter suggested that the department balance those considerations with other factors which characterize each health plan.

Response: The department disagrees with the commenter and no changes have been made in response to the comments. The department favors member choice of a PCP and seeks to preserve the priority of that choice as a basis for assigning members to an MCO. It is the department's policy that MCOs should be rewarded for the efforts they initiate regarding enrollment of Medicaid recipients, and the proposal was written to reflect a benefit for those MCOs through the use of elective enrollment as a criteria for default assignments.

Comment: Concerning §30.23(d), one commenter suggested this section be amended to include time frames for the enrollment and default process.

Response: The department disagrees with the commenter and has made no changes in response to this comment. Time frames are more appropriately established in operational procedures since time frames can vary during various phases of the program.

Comment: Concerning §30.23(e)(1), one commenter recommended the provision be changed to make an MCO responsible for assisting members select a PCP if the member selects the MCO but no PCP.

Response: The department disagrees with the commenter because this suggestion is administratively burdensome and is not feasible for the department to implement. No changes were made in response to the comment.

Comment: Concerning §30.23(e)(1), two commenters said in a case in which a member selects a PCP but no MCO, the assignment of a member to an MCO should not be based on proximity but on other factors related to MCOs.

Response: The department agrees with the commenters and has amended §30.23(e)(1).

Comment: Concerning §30.23(e)(1), one commenter recommended that default not be conducted by the department until after a member is given an opportunity to choose an MCO and PCP through face-to-face outreach.

Response: The department disagrees with the commenter and has not made a change in response to the comment. The department's goal is to minimize the number of default assignments to MCOs and PCPs. The department undertakes a broad range of efforts to inform members about their choice, including face-to-face contact. However, the department believes implementing the suggestion by rule would inappropriately limit the department's flexibility in administering the program. The department believes that the default mechanism as proposed is in the best interest of each member and the department.

Comment: Concerning §30.23(e)(2) and (3), one commenter stated the provision should take into account the frequency of patient-provider encounters and not default a member based only on the most recent encounter history. The commenter recommended the methodology for defaulting to a PCP be based on an established pattern of utilization with a particular provider and that the methodology allow for default to a teaching hospital or clinic as a PCP.

Response: The department disagrees that the suggested changes are necessary. Sections 30.23(e)(2) and (3) allow for consideration of the number of encounters with a PCP in addition to the most recent encounter. Therefore, frequency may be considered under the rules as proposed. The department allows for the designation of clinics, including hospital-based clinics, as PCPs.

Comment: Concerning §30.23(e)(5), one commenter suggested that the department clarify that all participating PCPs will be eligible to have members assigned to them through the default process.

Response: The department disagrees that there is need for the suggested clarification. All participating PCPs are eligible to have members assigned to them through the default methodology. The department believes this is reflected in the rules as proposed.

Comment: Concerning §30.23(e)(5), one commenter suggested that the department base the default methodology, in part, on an MCO's willingness to offer continuity of coverage to a member who becomes ineligible for Medicaid.

Response: The department disagrees with the commenter because the proposal allows for the department to develop criteria as needed. The department has made no change in response to the comment.

Comment: Concerning §30.23(e)(12), several commenters opposed the section because it limits member access to the PCCM model and gives preference to HMOs.

Response: The department disagrees and has made no change in response to this comment. The primary purpose for limiting defaults to the PCCM program is to allow for budget certainty by the state. Since the PCCM network pays claims on the traditional Medicaid fee-for-services basis plus a $3 case management fee, while the state assumes full risk, high defaults to the PCCM program exposes the state to a financial loss compared with the cost under regular Medicaid. A loss to the state would be viewed as non-compliance with the federal waiver which authorizes the state to implement Medicaid managed care in order to achieve cost savings. The rules do not eliminate the PCCM model, and members may choose or may be defaulted to the PCCM model under certain circumstances.

Comment: Concerning §30.23(e)(12), one commenter said access to a PCCM network should not be limited because patients who have an established relationship with a primary care provider should have the opportunity to continue that relationship.

Response: The department agrees that an established patient-provider relationship should be preserved and believes the rules as proposed achieve this goal. The rules are designed to ensure that patients are defaulted to a primary care provider with whom they have an established relationship. Therefore, the department has made no change in response to the comment.

Comment: Concerning §30.23(e)(12), several commenters opposed allowing default enrollment to be made only to an HMO and not to a PCCM network.

Response: The department disagrees with the commenters and has made no change in response to this comment. The proposed rules allow defaults to be made to a PCCM network under certain circumstances.

Comment: Concerning §30.23(e)(12), several commenters opposed the elimination of the PCCM network from the state's Medicaid managed care programs.

Response: The department disagrees with the commenters and has made no change in response to the comment. The proposed section does not eliminate the option of a PCCM network in the Medicaid managed care program.

Comment: Concerning §30.23(e)(12), two commenters state that Medicaid managed care members should not be forced to change to an HMO from the PCCM model.

Response: The department disagrees and has made no change in response to the comment. The default mechanism does not affect members who choose an MCO and PCP through the enrollment process; members may choose among any participating MCO. Members who fail to choose an MCO may still be defaulted to a PCCM network as specified in the rules.

The department received approximately 50 responses from individuals and organizations commenting on the rules, including the following:

Bexar County Medical Society, Texas Organization of Rural & Community Hospitals, Harris Methodist, Susan M. Berry, Arthur E. Marlin, Denise P. Kleister, Ricardo Mu¤oz, Michael C. Snabes, South Texas PM&R Group, Michael L. Jones, Thomas A. Kingman, Gail Van Wingerden, Tristan A. Castaneda, South Texas OB/GYN Associates, Joel Y. Rutman, Harris County Medical Society, James S. Potyka, Rolando N. Torio, Medicaid Primary Care Case Management Physicians, William H. Bradshaw, Enrique M. Galan, Robert W. Kottman, Sheldon Gross, Northwest Pediatric Associates, Raymond D. Potterf, Texas Academy of Family Physicians, John V. Mumma, Hugo A. Rojas, Ernesto Bondarevsky, Richard G. Rouse, Joel Rutstein, Joe Childress, L. Richard Garcia, PCA Health Plans, South Texas Newborn Associates, Albert E. Sanders, Renal Associates, Houston Welfare Rights Organization, Seven Oaks Women's Center, AmeriHealth HMO of Texas, Inc., Texas Association of Public & Nonprofit Hospitals, Healthcare Matters!, Texas Pediatric Society, John R. Almirol, Ronald D. Wong, Texas Medical Association, Texas Society of Internal Medicine, HMO Blue, and Dallas County Medical Society.

All comments were neither for nor against the rules in their entirety. However, they raised questions, offered comments for clarification, and suggested changes in or deletion of specific provisions in the rules.

The following commenter was for the rules in their entirety: Americaid Community Care.

The sections implement Texas Health and Safety Code, §12.017, which requires the department to adopt standards for MCOs participating in the Medicaid program. General rulemaking authority for the rules is contained in Texas Health and Safety Code, §12.001, which requires the Texas Board of Health (board) to adopt rules for its procedures and for the performance of any duty imposed by law on the board, the department and the commissioner of health.

§30.23. Enrollment.

(a) For the purposes of this section, a managed care organization (MCO) includes a primary care case management (PCCM) provider network.

(b) The department shall determine which Medicaid eligible clients residing in a STAR Program service area will be mandatory or voluntary members and which Medicaid eligible clients may be excluded from participation in managed care.

(c) The department shall conduct enrollment and disenrollment activities or contract with another agency or contractor to assume administration of these functions. The department may not contract with a participating managed care organization to serve as the administrator for enrollment or disenrollment activities in any area of the state.

(d) The department shall establish procedures for enrollment into participating MCOs and primary care providers (PCP), including enrollment periods and time limits within which enrollment must occur. Members who are mandatory members must select an MCO or PCP within the time period allowed by the department or be defaulted to an MCO or PCP.

(e) Mandatory members who fail to select an MCO or PCP during the period established by the department will have an MCO or PCP selected for them by the department or its contractor using criteria determined by the department. The department shall establish a detailed default methodology that incorporates the following requirements.

(1) A member who does not select a PCP and MCO will be assigned a PCP and MCO through the default process established by the department. A member who selects an MCO but not a PCP, will be assigned to the selected MCO and the member will be assigned to a PCP through the default process. A member who selects a PCP but not an MCO will be assigned to the PCP chosen by the member, subject to PCP restrictions on client age, gender, and capacity, and the member will be assigned to an MCO through a manual default process that is established by the department based on the provisions of §30.23(e)(6).

(2) Each member, who has not selected a PCP, will be defaulted to the PCP with whom there is the most recent Medicaid managed care encounter history. The number of encounters between the member and the PCP may also be considered.

(3) If there is no Medicaid managed care encounter history, each member will be defaulted to the PCP with whom there is the most recent traditional Medicaid claims history. The number of prior encounters between the member and the PCP may also be considered.

(4) If a member does not have history with a PCP, the member will be defaulted to a PCP on the basis of geographical proximity to the PCP.

(5) The department may identify other criteria to be used along with the criteria based on geographical proximity such as, but not limited to, capacity of the PCP, PCP performance, and greatest variance between the percentage of elective and default enrollments (with the percentage of default enrollments subtracted from the percentage of elective enrollments).

(6) The department shall develop a methodology for assignment of defaults to each MCO in the service area. Such methodology may be based on MCO performance, the greatest variance between the percentage of elective and default enrollments (with the percentage of default enrollments subtracted from the percentage of elective enrollments), or other factors determined by the department.

(7) Members who cannot be assigned to a PCP and MCO on the basis of an automated default process may be assigned through a manual default process determined by the department.

(8) Members with special medical needs may be defaulted on the basis of a manual default methodology if such members can be identified and if the automated default process cannot be administered for such members.

(9) A member who is defaulted to a PCP who is contracted with only one MCO shall be assigned to that MCO.

(10) PCP restrictions on client age, gender, and capacity shall be considered as limitations to default assignments to PCPs.

(11) Family members shall be defaulted to the same PCP and MCO to the maximum extent possible within the limitation of PCP restrictions on client age, gender, and capacity by MCO as well as geographical proximity considerations.

(12) The detailed default methodology developed by the department shall be fully applicable to each MCO in the Medicaid managed care program by service area. However, the number of defaults assigned to the state administered PCCM network shall be restricted as follows:

(A) If a member is defaulted to a PCP who is contracted only with PCCM program, the member will be defaulted to the PCCM program;

(B) If a member is defaulted to a PCP who is contracted with the PCCM program and an HMO, the member will be defaulted to the HMO;

(C) If a member is defaulted to a PCP who is contracted with the PCCM program and two or more HMOs, the member will be defaulted to one of the HMOs on the basis of paragraph (6) of this subsection;

(D) A member will be defaulted to the PCCM program if a PCCM provider is the only PCP within reasonable geographical proximity to the member as defined by the department.

(f) A member may request to change MCOs at any time and for any reason, regardless of whether the MCO was selected by the member or assigned by the department. Disenrollment will take place no later than the first day of the second month after the month in which the member has requested termination. MCOs must inform members of disenrollment procedures at the time of enrollment. MCOs must notify members in appropriate communication formats.

(g) The department shall establish limits for the number of members each PCP may accept to ensure members have reasonable access to the provider. The department shall develop criteria to allow exceptions to this limit on a case-by-case basis, provided the exceptions do not adversely affect member access.

(h) The department may not enroll any Medicaid eligible recipient who is excluded from participation by federal rule or regulation.

(i) Recipients who are located more than 30 miles from the nearest PCP in an MCO cannot be enrolled in the MCO unless an exception is made be the department.

(j) Medicaid recipients and Medicare beneficiaries must constitute less than 75 percent of the total enrollment of an MCO, unless the MCO has received a waiver for this requirement under 42 Code of Federal Regulations §434.26.

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

Issued in Austin, Texas, on September 12, 1997.

TRD-9712274
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: October 6, 1997
Proposal publication date: April 15, 1997
For further information, please call: (512) 458–7236

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Chapter 97. Communicable Diseases

Sexually Transmitted Diseases Including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)

25 TAC §§97140–97.143

The Texas Department of Health (department) adopts amendments to §§97.140-97.143, concerning sexually transmitted diseases (STD) including acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV). Sections §§97.140-97.143 are adopted without changes to the proposed text as published in the June 20, 1997, issue of the *Texas Register* (22 TexReg 5894), and therefore the sections will not be republished.

The amendments adopt the document titled "HIV Counseling Protocols," which will be used for counseling state employees exposed to the HIV virus infection on the job. The new document replaces the document titled "HIV Serologic Testing and Documentation Guidelines" which the Texas Board of Health (board) adopted in September 1992. The rules are also being updated to delete superfluous information and to reflect an updated address from which department information can be obtained regarding the "HIV Counseling Protocols"; the HIV counseling and testing course; the "Model Health Education Program/Resource Guide for HIV/AIDS Education of School-Age Children"; and the "Model HIV/AIDS Workplace Guidelines."

No comments were received concerning the proposed rules during the comment period.

The amendments to §97.140 and §97.141 are adopted under the Texas Health and Safety Code, §85.087, which requires that the department develop and offer a training course for persons providing HIV counseling, and charge a reasonable fee for the course; the amendment to §97.142 is adopted under the Texas Health and Safety Code, §85.004, which requires the department to develop a guide for a model program; the amendment to §97.143 is adopted under the Texas Health and Safety Code, §85.012, which requires the department to develop a model workplace guideline; Texas Health and Safety Code §85.016 which provides the board with authority to adopt rules necessary to implement this section; and Texas Health and Safety Code §12.001 which provides the board with authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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

Issued in Austin, Texas, on September 12, 1997.

TRD-9712273
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: October 6, 1997
Proposal publication date: June 20, 1997
For further information, please call: (512) 458–7236

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 21. Trade Practices

Subchapter B. Insurance Advertising, Certain Trade Practices, and Solicitation

28 TAC §21.113

The Commissioner of Insurance adopts an amendment to §21.113, concerning rules pertaining specifically to accident and health insurance advertising and health maintenance organization advertising. The amendment is adopted without changes to the proposal as published in the August 8, 1997 issue of the *Texas Register* (22 TexReg 7334). The text of the amendment to the section is not republished.

The adopted amendment is necessary to implement the provisions of S.B. 682, 75th Legislature, Regular Session, which adds Article 21.20-2 to the Insurance Code, addressing advertisements for certain health benefit plans and permitting inclusion of certain rate information under certain circumstances, provided that required statutory disclosures are made.

The adopted amendment provides that subject to Article 21.21 a health benefit plan advertisement may include rate information without including information about all exclusions and limitations, so long as the advertisement prominently indicates that the rates are illustrative, that a person should not send money to the issuer in response to the advertisement, that a person must complete an application for coverage in order to obtain coverage, and that certain exclusions and limitations may apply to the plan. The amendment further provides that the advertisement must indicate the age, gender and geographic location on which any premium rate mentioned in the advertisement is based. The adopted amendment also makes miscellaneous editorial and clarifying changes to certain subsections of §21.113.

No written comments were received on the amendment as published.

The amendment is adopted pursuant to the Insurance Code, Article 21.21, §13. Article 21.21, §13, provides that the department is authorized to promulgate and enforce reasonable rules and regulations and order such provision as is necessary in the accomplishment of the purposes of Article 21.21, relating to unfair competition and unfair practices.

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

Issued in Austin, Texas, on September 15, 1997.

TRD-9712288
Caroline Scott
General Counsel and Chief Clerk
Texas Department of Insurance

Effective date: October 6, 1997
Proposal publication date: August 8, 1997
For further information, please call: (512) 463–6327

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Part II. Texas Workers' Compensation Commission

Chapter 110. Required Notices of Coverage

Subchapter B. Employer Notices

28 TAC §110.108

The Texas Workers' Compensation Commission (TWCC or the Commission) adopts new §110.108, concerning notice to employees regarding exposure to certain communicable diseases, with changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 5995). This new rule is adopted in conjunction with new §122.3 and §122.4, concerning the reporting and testing requirements for emergency responders and state employees regarding exposure to certain communicable diseases and human immunodeficiency virus (HIV). The new rule is adopted to provide notice to employees of requirements set out in the Texas Health and Safety Code.

The only change to the rule as proposed is the change of the toll-free telephone number cited in the notice in subsection (d) of the rule. The number has been changed to 1-800-372-7713 which will put injured workers in contact with a person in the Central office who will be able to answer questions regarding exposure to infectious diseases. The telephone number contained in the proposed rule would connect the employee with the nearest field office and could require a transfer of the call to the central office. The change allows a more direct access to information regarding work-related exposure to infectious disease.

The Texas Health and Safety Code, §81.050(j) requires that, for the purpose of qualifying for workers' compensation, an employee who is employed as a law enforcement officer, a fire fighter, an emergency medical service employee or paramedic, or a correctional officer, who claims a possible work-related exposure to a reportable disease must provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that, not later than the 10th day after the date of the exposure, the employee had a test result that indicated an absence of the reportable disease. The Texas Health and Safety Code, §85.116(c) provides a similar requirement for state employees who claim a possible work-related exposure to human immunodeficiency virus (HIV). Section 85.116(c) requires a state employee who claims a possible work related exposure to HIV to provide his or her employer with a written statement of the date and circumstances of the exposure and document that within 10 days after the date of exposure the employee had a test result that indicated an absence of HIV infection. Because these provisions of the Health and Safety Code affect the eligibility of certain employees to receive workers' compensation benefits, this new rule requires employers to inform employees of these requirements. Without such a rule, employees may not know of the requirements.

New §110.108 (a) and (b) requires employers of emergency responders and state employers to post a notice in their personnel offices and in their workplace where affected employees are likely to see it, regarding the employer notification and testing requirements set out in the Health and Safety Code for eligibility for workers' compensation benefits. Subsection (c) of the new rule requires the employer's workers' compensation carrier including state and political subdivision employers to pay the cost of testing. The text of the notice to be posted is provided in subsection (d).

In conjunction with this proposal, the TWCC is also adopting new §122.3, which sets out the employee's reporting and testing requirements for emergency responders exposed to a reportable disease, and new §122.4, which sets out the reporting and testing requirements for state employees exposed to HIV. Because of the close relationship between the provisions of new §§122.2, 122.4 and §110.108, public comments regarding all three rules have been included in this preamble. For additional information regarding the adoption of §§122.3 and 122.4 please refer to the preamble to the adoption of those rules contained elsewhere in this issue of the *Texas Register*.

Comments generally supporting the proposed new §§110.108, 122.3 and 122.4 were received from: City of Houston Fire Department - EMS; Harris County Risk Management and Benefits; and American Insurance Association.

Comments not specifically supporting or opposing the proposed new §110.108 but making recommendations regarding the rule were received from the following: Carol S. Lawrence; Texas Workers' Compensation Insurance Fund; Richardson Fire Department; and the Office of the Attorney General of Texas (Workers' Compensation Division).

Summaries of the comments and commission responses are as follows:

GENERAL

COMMENT: One commenter supported both rule 110.108 and rule 122.3, stating these new rules will better protect and support Texas emergency medical personnel. Another commenter supported the notice and testing requirements.

RESPONSE: Staff notes support for the rules, as proposed.

COMMENT: Commenter supported the rules, emphasizing the need for determining that there's not a preexisting condition for the alleged exposure and indicating that this rule would help insurers in their investigation of an employee's alleged occupational exposure to HIV/AIDS, but should not take the place of an investigation.

RESPONSE: Staff agrees that the purpose of the testing requirement is to establish the presence or absence of disease; however, the issue of investigation is not addressed by this rule. Investigation is neither prohibited nor required by the rule.

DISEASES

COMMENT: Commenter stated it was easy to pinpoint exposures to HIV or hepatitis B, but expressed concern with 10 day testing and reporting requirement for tuberculosis. The com-

menter stated that it was very difficult to pinpoint the exact time of exposure for tuberculosis because it is an airborne transmissible disease. The commenter believed that reporting based on findings discovered during annual or semi-annual examinations would be more appropriate.

RESPONSE: Staff agrees in part. The acute nature of a number of the reportable diseases, the variable incubation times of the diseases' causative agents, methods of transmission and possible immunization were all considered in drafting the proposed rules. However, the Health and Safety Code, §81.050 specifically refers to "reportable diseases". "Reportable diseases" by statute (Health and Safety Code, §81.041) are to be specified by the Texas Department of Health. The diseases listed in new §122.3 are those diseases designated by the Texas Department of Health as "reportable diseases". The Health and Safety Code requires certain employees to obtain a test following exposure to a reportable disease, if the employee desires to retain the option of receiving workers' compensation benefits should the exposure result in a compensable injury. TWCC rules cannot change this statutory mandate. The Commission fully recognizes the concerns of the commenter and will forward the commenter's comments and information provided on tuberculosis to the Department of Health for their consideration.

To clarify that issues such as those raised by the commenter can be considered by a decision-maker and to clarify that the subject matter of such issues is not limited to the incubation period of a particular disease, the last sentence of §122.3(c)(1) has been deleted and "These rules do not prohibit the consideration by a decision-maker of additional factors" has been added.

COMMENT: One commenter asked whether a definitive test is available to demonstrate that the exposed worker is free from infection for each communicable disease listed in 25 TAC §97.11(b)(1)-(4) (Texas Department of Health) and, by reference, TWCC's proposed rules 110.108 and 122.3. The commenter contends that, if there is not a *positive/negative' test for each disease, a statutory change and/or amendment to 25 TAC §97.11 and §97.13 (Texas Department of Health) may be necessary.*

RESPONSE: Staff agrees in part. Although definitive tests are available to demonstrate the absence of infection at the time of exposure for many of the diseases on the list of reportable diseases, definitive tests are not available for all of the listed diseases. In addition, due to variance in pathogenicity of the infectious organisms, signs and symptoms may be present within 24- 48 hours rendering a diagnostic test "within 10 days" moot. However, legislative action would be necessary to change the testing requirements contained in the Health and Safety Code.

To clarify that issues such as those raised by the commenter can be considered by a decision-maker and to clarify that the subject matter of such issues is not limited to the incubation period of a particular disease, the last sentence of §122.3(c)(1) has been deleted and "These rules do not prohibit the consideration by a decision-maker of additional factors" has been added.

WHO IS COVERED

COMMENT: One commenter pointed out for consideration that the Texas Health and Safety Code, §81.050(j) does not define "employee," but that Section 401.102 (a) of the Texas Labor Code defines employee as "each person in the service of another under a contract of hire, whether express or implied, or oral or written." The commenter also cited Appeals Panel case #94647 as applying the Health and Safety Code, §81.050(j) to all employees.

RESPONSE: Staff disagrees. Section 81.050(b) adequately defines the occupations for which these provisions apply and, therefore, the employees involved. Staff disagrees that Appeals Panel case #94647 addressed the issue of the applicability of Health and Safety Code §81.050. This Appeals Panel decision was based on the fact that the appeal was not timely filed. Although the Appeals Panel reviewed the evidence and referred to §81.050(j), the references did not represent a finding by the Appeals Panel regarding the applicability of Health and Safety Code, §81.050. The staff believes the intent of §81.050 is stated in its title of "Mandatory Testing of Persons Suspected of Exposing *Certain Other Persons* to Reportable Diseases, Including HIV Infection" (emphasis added), and that "certain other persons" are those engaged in the specific occupations listed in §81.050(b). In addition, §81.050(k) states that a person listed in §81.050(b) who may have been exposed to a reportable disease may not be required to be tested. This reference back to §81.050(b) further supports the limited application of §81.050. The Texas Department of Health in promulgation of its rules at 25 TAC Chapter 97 has also interpreted the application of the Health and Safety Code, §81.050 to be limited to those persons described in §81.050(b).

COMMENT: One commenter believed that §122.3 should be expanded to apply to all state workers, rather than just law enforcement officers, fire fighters, emergency medical service employees, paramedics and correctional officers. The commenter reasoned that other state workers are exposed to the diseases listed in subsection (b) of this rule, and they should also be held responsible to provide documentation of exposure and "baseline" testing. The commenter also suggested that rules 122.3 and 122.4 be combined. Commenter felt that there should be one rule for all reportable diseases, including HIV. Commenter saw no logical basis for separating HIV and other reportable diseases nor for creating separate rules for state employees exposed to HIV and emergency responders exposed to a reportable disease. Employees of certified self-insurers and employees covered under workers' compensation insurance should also be included.

RESPONSE: Staff disagrees. Inclusion of all employees in §122.3 would expand the application of the Texas Health and Safety Code, §81.050 and §85.116 and further restrict workers' compensation benefit eligibility. The separation of HIV and other reportable diseases, and the use of two rules is necessitated by the Health and Safety Code, which separates the provisions that apply to specified groups of employees.

COMMENT: One commenter suggested that the coverage of the proposed rules be broadened to cover other employee and employer groups beyond emergency responders. The commenter felt that carriers will likely require any employee to meet the proof required in Texas Health and Safety Code, Chapter 81, Communicable Diseases, §81.050(j), before benefits are

initiated and, therefore, the Commission's proposed rules may disadvantage employees who are not "emergency responders" because such employees may be unaware of the statutory requirement.

RESPONSE: Staff disagrees. The staff believes the intent of §81.050 is stated in its title of "Mandatory Testing of Persons Suspected of Exposing *Certain Other Persons* to Reportable Diseases, Including HIV Infection" (emphasis added), and that "certain other persons" are those engaged in the specific occupations listed in §81.050(b). In addition, §81.050(k) states that a person listed in §81.050(b) who may have been exposed to a reportable disease may not be required to be tested. This reference back to §81.050(b) further supports the limited application of §81.050. The Texas Department of Health, in promulgation of its rules at 25 TAC Chapter 97, has also interpreted the application of the Health and Safety Code, §81.050 to be limited to those persons described in §81.050(b).

COMMENT: One commenter suggested that the definition of "emergency responders" in 25 TAC §97.13(b)(2) (Texas Department of Health) and in TWCC's proposed Rules 110.108 and 122.3 are not exactly the same. The commenter pointed out that the definition in TWCC's proposed rules does not include volunteers for an employer with the responsibility of answering emergency calls for assistance.

RESPONSE: Staff disagrees. Although the applicability of new §122.3, §122.4, and §110.108 is limited to emergency responders who are state employees or employees covered by workers' compensation insurance, the definition of "emergency responder" is the same in the Texas Department of Health rules and these new rules. Section 122.3(a) specifically includes employees providing services as a volunteer who are covered by workers' compensation insurance. The Texas Labor Code, §406.097 provides that an emergency service organization which is not a political subdivision or which is separate from any political subdivision may elect to obtain workers' compensation insurance coverage for its named volunteer members who participate in the normal function of the organization. The Texas Labor Code, §504.012 provides that a political subdivision may cover volunteer fire fighters, police officers, emergency medical personnel, and other volunteers that are specifically named. Therefore, the persons covered by the two sets of rules are essentially the same.

COMMENT: Commenter requested that a definition of "emergency responder" be included and, if the rule is limited to the occupations listed in §122.3, that a definition of "law enforcement officer" and "emergency medical service employee" also be included.

RESPONSE: Staff disagrees that additional definitions are necessary. Rule 122.3(f) refers to the Texas Department of Health rules, 25 TAC Chapter 97, Communicable Diseases, for applicable requirements. Section 97.13 of those rules provides the definition of "emergency responder" as "an emergency medical services employee, paramedic, fire fighter, correctional officer, or law enforcement officer who is employed by or volunteers for an employer with the responsibility of answering emergency calls for assistance". Application of the new rules is limited to the occupations set out in §122.3(a). It is not necessary to further define "law enforcement officer" or "emergency medical employee".

EXPOSURE CRITERIA

COMMENT: Commenter stated that the proposed rule should incorporate the provisions of the Texas Department of Health rule, 25 TAC §97.11, which identifies the exposure criteria for the reportable diseases listed in 122.3(b). Another commenter suggested the rule include language that defines, clarifies, and establishes objective criteria of what constitutes exposure to reportable diseases.

RESPONSE: Staff agrees in part. The Texas Health and Safety Code §81.050 requires the Texas Health Department to prescribe the criteria that constitute exposure to reportable diseases. Subsection (b) of new Rule 122.3 lists the reportable diseases as currently determined by the Texas Department of Health, and the last sentence of subsection (b) states that "To determine the most current list of reportable diseases and the exposure criteria, refer to the Texas Department of Health rules, 25 TAC Chapter 97, Communicable Diseases." Subsection (c)(1) of Rule 122.3 states that "Exposure criteria and testing protocol must conform to Texas Department of Health requirements." The referenced rules clearly define reportable diseases and the exposure criteria for reportable diseases. It is therefore unnecessary to restate the Texas Department of Health rules in this section.

COST

COMMENT: Commenter, as a self-insured political subdivision, stated the desire to have the flexibility to pay for the cost of testing through alternate methods such as through the group health plan, contracting with a medical provider or by way of in-house medical providers, stating that it would allow better management of costs.

RESPONSE: Payment of costs of testing for covered emergency responders of political subdivisions must be in accordance with a method which complies with Texas Labor Code §504.011 and new Commission rules §§122.3 and 122.4. Texas Labor Code §504.011 provides three methods by which a political subdivision shall extend workers' compensation benefits to its employees. However, the payment for such benefits must be made by an insurance carrier as that term is defined in Texas Labor Code §410.011(27), except as otherwise authorized in the Texas Workers' Compensation Act.

COMMENT: One commenter felt the proposed §122.3 seemed to contradict the Texas Workers' Compensation Act, under §408.021, which states that a carrier is only liable for medical benefits for a compensable injury, by requiring the carrier to pay for a medical procedure that may not be related to a compensable injury. The commenter also felt the rule contradicts the Health and Safety Code, §85.116(a) which requires that the state agency pay for the costs of testing and counseling for an alleged HIV exposure. Additionally, the commenter felt the wording concerning costs in subsection (d) of §122.3 does not make it clear whether a self insured state agency or the Office of the Attorney General must pay for testing, noting the difference between the state agency as employer and the Office of Attorney General as carrier.

RESPONSE: Staff disagrees. The Texas Health and Safety Code, §85.116 is the basis for the portions of the rules dealing with costs of testing for state employees. Section 85.116(d) specifically states that employee testing and counseling shall be paid from funds appropriated for payment of workers' compensation benefits to state employees. The fact that the subsection states that the director of the workers' compensation division of the Attorney General's Office shall adopt rules necessary to administer this subsection, further emphasizes that office's role and responsibility in this area. At the time the statute was written, the Office of Attorney General was both the employer and the carrier. Subsequent changes to the Texas Workers' Compensation Act, §501.042 modified the relationship of the Office of the Attorney General to other state agencies to only that of the carrier and identified the individual state agencies as the employer. In addition, recent changes to §501.042 place responsibility for state employee's with claims at the State Office of Risk Management. These changes in the status of the Office of the Attorney General have not yet been reflected in the Health and Safety Code. §85.116(a). Those state agencies who do not receive injury claim service from the State Office of Risk Management also have funds appropriated for workers compensation and should use those funds to meet the statutory requirements. The intent of the rules is to provide medical service to those employees whose exposure occurred within the course and scope of their employment. Payment for these medical services equates to medical only claim payments which currently are processed within the system. If the carrier determines that the exposure was not within course and scope, it may contest payment of services using established procedures.

COMMENT: Commenter questioned how long an employer would be required to pay for testing for a given exposure since the incubation periods for reportable diseases vary greatly.

RESPONSE: The purpose of the testing is to establish that the employee was free from the disease at the time of the exposure. Although not more than one test is anticipated to be required for determination of the presence of a particular disease, if additional testing is required to make such determination, the employer would be liable for the cost of the testing.

STATEMENTS

COMMENT: Commenter states that rule 122.4(b)(2), like rule 122.3(c)(2), should require the employee to provide the employer a *sworn affidavit* of the date and circumstances of the exposure, rather than just requiring a written statement.

RESPONSE: Staff disagrees. The Health and Safety Code provides separate specific report procedures in §81.050(j) for emergency responders exposed to a reportable disease and in §85.116(c) for state employees exposed to HIV. The procedures vary in their requirement of sworn versus unsworn statements of exposure.

The new rule is adopted under the Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; the Texas Labor Code §406.005, which requires employers to provide notice of workers' compensation coverage to employees; the Texas Labor Code §406.009, which requires the Commission to collect and maintain information, to monitor compliance with Subchapter A of Chapter 409, and to adopt rules as necessary to enforce the subchapter; the Texas Labor Code §406.031, which provides that an insurance carrier is liable for compensation for a covered employee's injury arising in the course and scope of employment; the Texas Labor Code §409.001, which requires an injured employee to notify the employer of an injury; the Texas Labor Code, §412.006, which authorizes the Commission to adopt rules to implement the risk management requirements for a state agency; the Texas Labor Code §504.011, which provides the methods by which political subdivisions are required to provide workers' compensation benefits to its employees; the Texas Labor Code §504.012, which allows political subdivisions to provide specifically named volunteers with workers' compensation coverage; the Texas Health and Safety Code §81.050(j), which requires that for the purpose of qualifying for workers' compensation an employee who claims a possible work-related exposure to a reportable disease must provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that, not later than the 10th day after the date of the exposure, the employee had a test result that indicated an absence of the reportable disease; and the Texas Health and Safety Code, §85.116, which requires that for the purpose of qualifying for workers' compensation an employee of the state who claims a possible work-related exposure to HIV must provide the employer with a written statement of the date and circumstances of the exposure and document that, not later than the 10th day after the date of the exposure, the employee had a test result that indicated an absence of HIV infection; that the state agency pay the costs of testing and counseling; and that the Texas Department of Health establish the criteria that constitute exposure to HIV; the Texas Government Code §607.001, which defines "public safety employee"; the Texas Government Code §607.002, which provides for reimbursement to a public safety employee of reasonable medical expenses incurred in preventative treatment because of exposure to a contagious disease.

§110.108. Employer Notice Regarding Work-Related Exposure To Communicable Disease/HIV: Posting Requirements; Payment for Tests.

(a) Each employer covered by workers' compensation insurance, including state and political subdivision employers, which employ emergency medical service employees, paramedics, fire fighters, law enforcement officers or correctional officers must post the notice contained in subsection (d) of this section, in its workplace to inform employees about Health and Safety Code requirements which may affect qualifying for workers' compensation benefits following a work-related exposure to a reportable communicable disease. The notice shall be posted in the personnel office, if the employer has a personnel office, and in the workplace where employees are likely to read the notice on a regular basis. Specific guidance for employers and employees covered by this subsection is found in §122.3 of this title (relating to Exposure to Communicable Diseases: Reporting and Testing Requirements for Emergency Responders).

(b) Each state agency must post the notice contained in subsection (d) of this section, in its workplace to inform employees about requirements which may affect qualifying for workers' compensation benefits following a work-related exposure to human immunodeficiency virus (HIV). The notice shall be posted in the personnel office and in the workplace where employees are likely to read the notice

on a regular basis. Specific guidance for state employers and employees covered by this subsection is found in §122.4 of this title (relating to State Employees: Exposed to Human Immunodeficiency Virus (HIV): Reporting and Testing Requirements).

(c) The cost of testing for exposure to a reportable communicable disease for emergency medical service employees, paramedics, fire fighters, law enforcement officers and correctional officers shall be paid by the employer's workers' compensation insurance carrier, including state and political subdivision employers.

(d) The following notice shall be printed with a title in at least 15 point bold type and the text in at least 14 point normal type, in English and Spanish or in English and any other language common to the employer's affected employee population. The text of the notice shall be as follows without any additional words or changes:
Figure 1: 28 TAC §110.108(d)

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

Issued in Austin, Texas, on September 12, 1997.

TRD-9712194
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Effective date: October 15, 1997
Proposal publication date: June 24, 1997
For further information, please call: (512) 440-3700

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Chapter 122. Claimants

Subchapter A. Claims Procedures for Injured Employees

28 TAC §122.3, §122.4

The Texas Workers' Compensation Commission (TWCC or the Commission) adopts new §122.3 and §122.4, concerning the reporting and testing requirements for emergency responders and state employees regarding exposure to certain communicable diseases and human immunodeficiency virus (HIV), with changes to the proposed text as published in the June 24, 1997, issue of the *Texas Register* (22 TexReg 5997). These new rules are adopted in conjunction with the adoption of new §110.108, concerning employer notice regarding work-related exposure to communicable disease\ HIV: posting requirements; payment for tests. The new rules are adopted to provide employees with information regarding the testing and reporting requirements set out in the Texas Health and Safety Code for eligibility for workers' compensation benefits.

Changes made to the proposed rule are in response to public comment received in writing and at a public hearing held on August 20, 1997, and are described in the summary of comments and responses section of this preamble.

The list of reportable diseases in §122.3(b) has been changed to make it consistent with the most current list of reportable diseases designated by the Texas Department of Health at 25 TAC §97.3. In subsection 122.3(c)(1) the sentence "Actual time elements for obtaining the test should consider the incubation period, if any, of the disease to which the employee has been exposed." was deleted and the sentence "This rule does not prohibit a decision-maker's consideration of other factors." was added.

The Texas Health and Safety Code, §81.050(j) requires that, for the purpose of qualifying for workers' compensation benefits, an employee who is employed as a law enforcement officer, a fire fighter, an emergency medical service employee or paramedic, or a correctional officer, who claims a possible work-related exposure to a reportable disease must provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that, not later than the 10th day after the date of the exposure, the employee had a test result that indicated an absence of the reportable disease. The Texas Health and Safety Code, §85.116(c) provides a similar requirement for state employees who claim a possible work-related exposure to human immunodeficiency virus (HIV). Section 85.116(c) requires a state employee who claims a possible work related exposure to HIV to provide his or her employer with a written statement of the date and circumstances of the exposure and document that within 10 days after the date of exposure, the employee had a test result that indicated an absence of HIV infection. Because these provisions of the Health and Safety Code affect the eligibility of certain employees to receive workers' compensation benefits, these new rules set out the actions which must be taken by affected employees to preserve their claim for workers' compensation benefits. Without such a rule, employees may not know of the requirements.

New §122.3 applies to all law enforcement officers, fire fighters, emergency medical service employees, paramedics, and correctional officers who have a work-related exposure to a reportable disease. Subsection (b) of the rule defines the term "reportable disease" and lists the communicable diseases currently designated as reportable by the Texas Department of Health. Subsection (c) states the requirement that to be eligible for workers' compensation benefits affected employees must obtain a test within 10 days of the exposure to the reportable disease, and the requirement that the employee provide the employer with a sworn affidavit of the date and circumstances of the exposure and a copy of the employee's test results. Subsection (d) requires the employer's workers' compensation carrier including state and political subdivision employers to pay for the employee's test regardless of the results of the test. The cost of a state employee's testing shall be paid from funds appropriated for payment of workers' compensation benefits to state employees Subsection (e) reiterates the requirement contained in new §110.108 that employers of emergency responders post the notice contained in §110.108(d). Subsection (f) refers emergency responders and their employers to Texas Health and Safety Code, Chapter 81 and to the rules of the Texas Department of Health (Chapter 97) for additional information.

New §122.4 applies to state employees who have a work-related exposure to HIV. Subsection (b) states the requirement that to be eligible for workers' compensation benefits, state employees must obtain a test within 10 days of the exposure to HIV, and the requirement that the employee provide the em-

ployer with a written statement of the date and circumstances of the exposure and a copy of the employee's test results. Subsection (c) requires the costs of the tests to be paid from funds appropriated for payment of workers' compensation benefits to state employees. Subsection (d) reiterates the requirement contained in §110,108 that employers of emergency responders post the notice contained in §110.108(d). Subsection (e) refers emergency responders and their employers to Texas Health and Safety Code, Chapter 85 and to the rules of the Texas Department of Health (25 TAC Chapter 97) for additional information.

In conjunction with this adoption, the TWCC is also adopting new rule 110.108 which requires employers of emergency responders and state employers to post a notice in their personnel offices and in their workplace where affected employees are likely to see it, regarding the testing requirements set out in the Health and Safety Code for eligibility for workers' compensation benefits. Because of the close relationship between the provisions of new §§122.2, 122.4 and §110.108, public comments regarding all three rules have been included in this preamble. For additional information regarding the adoption of §110.108 please refer to the preamble to the adoption of this rule contained elsewhere in this issue of the *Texas Register* .

Comments generally supporting the proposed new §§110.108, 122.3, and 122.4 were received from: City of Houston Fire Department - EMS; Harris County Risk Management and Benefits; and the American Insurance Association.

Comments not specifically supporting or opposing the proposed new §§110.108, 122.3, and 122.4 but making recommendations regarding the rule were received from the following: Carol S. Lawrence; Texas Workers' Compensation Insurance Fund; Richardson Fire Department; and the Office of the Attorney General of Texas (Workers' Compensation Division).

Summaries of the comments and commission responses are as follows:

GENERAL

COMMENT: One commenter supported both rule 110.108 and rule 122.3, stating these new rules will better protect and support Texas emergency medical personnel. Another commenter supported the notice and testing requirements.

RESPONSE: Staff notes support for the rules, as proposed.

COMMENT: Commenter supported the rules, emphasizing the need for determining that there's not a preexisting condition for the alleged exposure and indicating that this rule would help insurers in their investigation of an employee's alleged occupational exposure to HIV/AIDS, but should not take the place of an investigation.

RESPONSE: Staff agrees that the purpose of the testing requirement is to establish the presence or absence of disease; however, the issue of investigation is not addressed by this rule. Investigation is neither prohibited nor required by the rule.

DISEASES

COMMENT: Commenter stated it was easy to pinpoint exposures to HIV or hepatitis B, but expressed concern with 10 day testing and reporting requirement for tuberculosis. The commenter stated that it was very difficult to pinpoint the exact time of exposure for tuberculosis because it is an airborne transmissible disease. The commenter believed that reporting based on findings discovered during annual or semi-annual examinations would be more appropriate.

RESPONSE: Staff agrees in part. The acute nature of a number of the reportable diseases, the variable incubation times of the diseases' causative agents, methods of transmission and possible immunization were all considered in drafting the proposed rules. However, the Health and Safety Code, 81.050 specifically refers to "reportable diseases". "Reportable diseases" by statute (Health and Safety Code, §81.041) are to be specified by the Texas Department of Health. The diseases listed in new §122.3 are those diseases designated by the Texas Department of Health as "reportable diseases". The Health and Safety Code requires certain employees to obtain a test following exposure to a reportable disease, if the employee desires to retain the option of receiving workers' compensation benefits should the exposure result in a compensable injury. TWCC rules cannot change this statutory mandate. The Commission fully recognizes the concerns of the commenter and will forward the commenter's comments and information provided on tuberculosis to the Department of Health for their consideration.

To clarify that issues such as those raised by the commenter can be considered by a decision-maker and to clarify that the subject matter of such issues is not limited to the incubation period of a particular disease, the last sentence of subsection 122.3(c)(1) has been deleted and "These rules do not prohibit the consideration by a decision-maker of additional factors" has been added.

COMMENT: One commenter asked whether a definitive test is available to demonstrate that the exposed worker is free from infection for each communicable disease listed in 25 TAC §97.11(b)(1)-(4) (Texas Department of Health) and, by reference, TWCC's proposed rules 110.108 and 122.3. The commenter contends that, if there is not a *positive/negative' test for each disease, a statutory change and/or amendment to 25 TAC §97.11 and §97.13 (Texas Department of Health) may be necessary.*

RESPONSE: Staff Agrees in part. Although definitive tests are available to demonstrate the absence of infection at the time of exposure for many of the diseases on the list of reportable diseases, definitive tests are not available for all of the listed diseases. In addition, due to variance in pathogenicity of the infectious organisms, signs and symptoms may be present within 24- 48 hours rendering a diagnostic test "within 10 days" moot. However, legislative action would be necessary to change the testing requirements contained in the Health and Safety Code.

To clarify that issues such as those raised by the commenter can be considered by a decision-maker and to clarify that the subject matter of such issues is not limited to the incubation period of a particular disease, the last sentence of subsection 122.3(c)(1) has been deleted and "These rules do not prohibit the consideration by a decision-maker of additional factors" has been added.

WHO IS COVERED

COMMENT: One commenter pointed out for consideration that the Texas Health and Safety Code, §81.050(j) does not define "employee," but that Section 401.102 (a) of the Texas Labor Code defines employee as "each person in the service of another under a contract of hire, whether express or implied, or oral or written." The commenter also cited Appeals Panel case #94647 as applying the Health and Safety Code, §81.050 (j) to all employees.

RESPONSE: Staff disagrees. Section 81.050(b) adequately defines the occupations for which these provisions apply and, therefore, the employees involved. Staff disagrees that Appeals Panel case #94647 addressed the issue of the applicability of Health and Safety Code §81.050. This Appeals Panel decision was based on the fact that the appeal was not timely filed. Although the Appeals Panel reviewed the evidence and referred to §81.050(j), the references did not represent a finding by the Appeals Panel regarding the applicability of Health and Safety Code, §81.050. The staff believes the intent of §81.050 is stated in its title of "Mandatory Testing of Persons Suspected of Exposing *Certain Other Persons* to Reportable Diseases, Including HIV Infection" (emphasis added), and that "certain other persons" are those engaged in the specific occupations listed in §81.050(b). In addition, §81.050(k) states that a person listed in §81.050(b) who may have been exposed to a reportable disease may not be required to be tested. This reference back to §81.050(b) further supports the limited application of §81.050. The Texas Department of Health in promulgation of its rules at 25 TAC Chapter 97 has also interpreted the application of the Health and Safety Code, §81.050 to be limited to those persons described in §81.050(b).

COMMENT: One commenter believed that §122.3 should be expanded to apply to all state workers, rather than just law enforcement officers, fire fighters, emergency medical service employees, paramedics and correctional officers. The commenter reasoned that other state workers are exposed to the diseases listed in subsection (b) of this rule, and they should also be held responsible to provide documentation of exposure and "baseline" testing. The commenter also suggested that Rules 122.3 and 122.4 be combined. Commenter felt that there should be one rule for all reportable diseases, including HIV. Commenter saw no logical basis for separating HIV and other reportable diseases nor for creating separate rules for state employees exposed to HIV and emergency responders exposed to a reportable disease. Employees of certified self-insurers and employees covered under workers' compensation insurance should also be included.

RESPONSE: Staff disagrees. Inclusion of all employees in §122.3 would expand the application of the Texas Health and Safety Code, §81.050 and §85.116 and further restrict workers' compensation benefit eligibility. The separation of HIV and other reportable diseases, and the use of two rules is necessitated by the Health and Safety Code, which separates the provisions that apply to specified groups of employees.

COMMENT: One commenter suggested that the coverage of the proposed rules be broadened to cover other employee and employer groups beyond emergency responders. The commenter felt that carriers will likely require any employee to meet the proof required in Texas Health and Safety Code, Chapter 81, Communicable Diseases, §81.050 (j), before benefits are initiated and, therefore, the Commission's proposed rules may disadvantage employees who are not "emergency responders" because such employees may be unaware of the statutory requirement.

RESPONSE: Staff disagrees. The staff believes the intent of §81.050 is stated in its title of "Mandatory Testing of Persons Suspected of Exposing *Certain Other Persons* to Reportable Diseases, Including HIV Infection" (emphasis added), and that "certain other persons" are those engaged in the specific occupations listed in §81.050(b). In addition, §81.050(k) states that a person listed in §81.050(b) who may have been exposed to a reportable disease may not be required to be tested. This reference back to §81.050(b) further supports the limited application of §81.050. The Texas Department of Health, in promulgation of its rules at 25 TAC Chapter 97, has also interpreted the application of the Health and Safety Code, §81.050 to be limited to those persons described in §81.050(b).

COMMENT: One commenter suggested that the definition of "emergency responders" in 25 TAC §97.13(b)(2) (Texas Department of Health) and in TWCC's proposed Rules 110.108 and 122.3 are not exactly the same. The commenter pointed out that the definition in TWCC's proposed rules does not include volunteers for an employer with the responsibility of answering emergency calls for assistance.

RESPONSE: Staff disagrees. Although the applicability of new §122.3, §122.4, and §110.108 is limited to emergency responders who are state employees or employees covered by workers' compensation insurance, the definition of "emergency responder" is the same in the Texas Department of Health rules and these new rules. Section 122.3(a) specifically includes employees providing services as a volunteer who are covered by workers' compensation insurance. The Texas Labor Code, §406.097 provides that an emergency service organization which is not a political subdivision or which is separate from any political subdivision may elect to obtain workers' compensation insurance coverage for its named volunteer members who participate in the normal function of the organization. The Texas Labor Code, §504.012 provides that a political subdivision may cover volunteer fire fighters, police officers, emergency medical personnel, and other volunteers that are specifically named. Therefore, the persons covered by the two sets of rules are essentially the same.

COMMENT: Commenter requested that a definition of "emergency responder" be included and, if the rule is limited to the occupations listed in §122.3, that a definition of "law enforcement officer" and "emergency medical service employee" also be included.

RESPONSE: Staff disagrees that additional definitions are necessary. Rule 122.3(f) refers to the Texas Department of Health rules, 25 TAC Chapter 97, Communicable Diseases, for applicable requirements. Section 97.13 of those rules provides the definition of "emergency responder" as "an emergency medical services employee, paramedic, fire fighter, correctional officer, or law enforcement officer who is employed by or volunteers for an employer with the responsibility of answering emergency calls for assistance". Application of the new rules is limited to the occupations set out in §122.3(a). It is

not necessary to further define "law enforcement officer" or "emergency medical employee".

EXPOSURE CRITERIA

COMMENT: Commenter stated that the proposed rule should incorporate the provisions of the Texas Department of Health rule, 25 TAC §97.11, which identifies the exposure criteria for the reportable diseases listed in 122.3(b). Another commenter suggested the rule include language that defines, clarifies, and establishes objective criteria of what constitutes exposure to reportable diseases.

RESPONSE: Staff agrees in part. The Texas Health and Safety Code §81.050 requires the Texas Health Department to prescribe the criteria that constitute exposure to reportable diseases. Subsection (b) of new Rule 122.3 lists the reportable diseases as currently determined by the Texas Department of Health, and the last sentence of subsection (b) states that "To determine the most current list of reportable diseases and the exposure criteria, refer to the Texas Department of Health rules, 25 TAC Chapter 97, Communicable Diseases." Subsection (c)(1) of Rule 122.3 states that "Exposure criteria and testing protocol must conform to Texas Department of Health requirements." The referenced rules clearly define reportable diseases and the exposure criteria for reportable diseases. It is therefore unnecessary to restate the Texas Department of Health rules in this section.

COST

COMMENT: Commenter, as a self-insured political subdivision, stated the desire to have the flexibility to pay for the cost of testing through alternate methods such as through the group health plan, contracting with a medical provider or by way of in-house medical providers, stating that it would allow better management of costs.

RESPONSE: Payment of costs of testing for covered emergency responders of political subdivisions must be in accordance with a method which complies with Texas Labor Code §504.011 and new Commission rules §§122.3 and 122.4. Texas Labor Code §504.011 provides three methods by which a political subdivision shall extend workers' compensation benefits to its employees. However, the payment for such benefits must be made by an insurance carrier as that term is defined in Texas Labor Code §410.011(27), except as otherwise authorized in the Texas Workers' Compensation Act.

COMMENT: One commenter felt the proposed §122.3 seemed to contradict the Texas Workers' Compensation Act, under §408.021, which states that a carrier is only liable for medical benefits for a compensable injury, by requiring the carrier to pay for a medical procedure that may not be related to a compensable injury. The commenter also felt the rule contradicts the Health and Safety Code, §85.116(a) which requires that the state agency pay for the costs of testing and counseling for an alleged HIV exposure. Additionally, the commenter felt the wording concerning costs in subsection (d) of §122.3 does not make it clear whether a self insured state agency or the Office of the Attorney General must pay for testing, noting the difference between the state agency as employer and the Office of Attorney General as carrier.

RESPONSE: Staff disagrees. The Texas Health and Safety Code, §85.116 is the basis for the portions of the rules dealing with costs of testing for state employees. Section 85.116(d) specifically states that employee testing and counseling shall be paid from funds appropriated for payment of workers' compensation benefits to state employees. The fact that the subsection states that the director of the workers' compensation division of the Attorney General's Office shall adopt rules necessary to administer this subsection, further emphasizes that office's role and responsibility in this area. At the time the statute was written, the Office of Attorney General was both the employer and the carrier. Subsequent changes to the Texas Workers' Compensation Act, §501.042 modified the relationship of the Office of the Attorney General to other state agencies to only that of the carrier and identified the individual state agencies as the employer. In addition, recent changes to §501.042 place responsibility for state employee's with claims at the State Office of Risk Management. These changes in the status of the Office of the Attorney General have not yet been reflected in the Health and Safety Code. §85.116(a). Those state agencies who do not receive injury claim service from the State Office of Risk Management also have funds appropriated for workers compensation and should use those funds to meet the statutory requirements. The intent of the rules is to provide medical service to those employees whose exposure occurred within the course and scope of their employment. Payment for these medical services equates to medical only claim payments which currently are processed within the system. If the carrier determines that the exposure was not within course and scope, it may contest payment of services using established procedures.

COMMENT: Commenter questioned how long an employer would be required to pay for testing for a given exposure since the incubation periods for reportable diseases vary greatly.

RESPONSE: The purpose of the testing is to establish that the employee was free from the disease at the time of the exposure. Although not more than one test is anticipated to be required for determination of the presence of a particular disease, if additional testing is required to make such determination, the employer would be liable for the cost of the testing.

STATEMENTS

COMMENT: Commenter states that Rule 122.4(b)(2), like rule 122.3(c)(2), should require the employee to provide the employer a *sworn affidavit* of the date and circumstances of the exposure, rather than just requiring a written statement.

RESPONSE: Staff disagrees. The Health and Safety Code provides separate specific report procedures in §81.050(j) for emergency responders exposed to a reportable disease and in §85.116(c) for state employees exposed to HIV. The procedures vary in their requirement of sworn versus unsworn statements of exposure.

The new rule is adopted under the Texas Labor Code, §402.061, which authorizes the Commission to adopt rules necessary to administer the Act; the Texas Labor Code §406.005, which requires employers to provide notice of workers' compensation coverage to employees; the Texas Labor Code §406.009, which requires the Commission to collect and maintain information, to monitor compliance

with Subchapter A of Chapter 409, and to adopt rules as necessary to enforce the subchapter; the Texas Labor Code §406.031, which provides that an insurance carrier is liable for compensation for a covered employee's injury arising in the course and scope of employment; the Texas Labor Code §409.001, which requires an injured employee to notify the employer of an injury; the Texas Labor Code, §412.006, which authorizes the Commission to adopt rules to implement the risk management requirements for a state agency; the Texas Labor Code §504.011, which provides the methods by which political subdivisions are required to provide workers' compensation benefits to its employees; the Texas Labor Code §504.012, which allows political subdivisions to provide specifically named volunteers with workers' compensation coverage; the Texas Health and Safety Code §81.050(j), which requires that for the purpose of qualifying for workers' compensation an employee who claims a possible work-related exposure to a reportable disease must provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that, not later than the 10th day after the date of the exposure, the employee had a test result that indicated an absence of the reportable disease; and the Texas Health and Safety Code, §85.116, which requires that for the purpose of qualifying for workers' compensation an employee of the state who claims a possible work-related exposure to HIV must provide the employer with a written statement of the date and circumstances of the exposure and document that, not later than the 10th day after the date of the exposure, the employee had a test result that indicated an absence of HIV infection; that the state agency pay the costs of testing and counseling; and that the Texas Department of Health establish the criteria that constitute exposure to HIV; the Texas Government Code §607.001, which defines "public safety employee"; the Texas Government Code §607.002, which provides for reimbursement to a public safety employee of reasonable medical expenses incurred in preventative treatment because of exposure to a contagious disease.

§122.3. Exposure to Communicable Diseases: Reporting and Testing Requirements for Emergency Responders.

(a) This section applies to all law enforcement officers, fire fighters, emergency medical service employees, paramedics, and correctional officers who are either state employees or employees covered under workers' compensation insurance (to include those who are providing services as a volunteer and are covered by workers' compensation insurance).

(b) For purposes of this section "reportable disease" means communicable diseases and health conditions required to be reported to the Texas Department of Health by the Texas Health and Safety Code, §81.041, as amended, including: acquired immune deficiency syndrome (AIDS); amebiasis; anthrax; botulism - adult and infant; brucellosis; campylobacteriosis; chancroid; chickenpox; Chlamydia trachomatis infection; cholera; cryptosporidiosis; dengue; diphtheria; ehrlichiosis; encephalitis; Escherichia coli 0157:H7; gonorrhea; Hansen's disease (leprosy); Heamophilus influenzae type b infection, invasive; hantavirus infection; hemolytic uremic syndrome (HUS); hepatitis, acute viral; human immunodeficiency virus (HIV) infection; legionellosis; listeriosis; Lyme disease; malaria; measles (Rubeola); meningitis; meningococcal infection, invasive; mumps; pertussis; plague; poliomyelitis, acute paralytic; rabies in man; relapsing fever; Rocky Mountain spotted fever; rubella (including congenital); salmonellosis, including typhoid fever; shigellosis; streptococcal disease, invasive Group A; syphilis; tetanus; trichinosis; tuberculosis; tuberculosis infection in persons less than 15 years of age; typhus; Vibrio infection; viral hemorrhagic fevers; and yellow fever. This list of diseases may change from time to time. To determine the most current list of reportable diseases and exposure criteria refer to Texas Department of Health rules, 25 TAC Chapter 97, Communicable Diseases.

(c) An employee listed in subsection (a) of this section will not be entitled to workers' compensation benefits for a reportable disease unless the employee:

(1) had a test performed within 10 days of an exposure to the reportable disease that indicated the absence of the reportable disease (Exposure criteria and testing protocol must conform to Texas Department of Health requirements. This rule does not prohibit a decision-maker's consideration of other factors.); and

(2) provided the employer with a sworn affidavit of the date and circumstances of the exposure and a copy of the results of the test required by paragraph (1) of this subsection.

(d) The employer's insurance carrier, including state and political subdivision employers, shall be liable for the costs of test(s) required by subsection (c) of this section, regardless of the results of the test(s), in addition to any other benefits required to be paid by the Texas Workers' Compensation Act or administrative rules. The cost of a state employee's testing, regardless of the results of the test, shall be paid from funds appropriated for payment of workers' compensation benefits to state employees.

(e) Section 110.108 of this title (relating to Employer Notice Regarding Work-Related Exposure to Communicable Diseases/ HIV: Posting Requirements; Payment for Tests) requires each employer with employees covered by this section to post the notice contained in subsection (d) of that section in its workplace to inform employees of the requirements of this section.

(f) Emergency responders and employers of emergency responders should also refer to the Texas Health and Safety Code Chapter 81 and Texas Department of Health rules, 25 TAC Chapter 97, Communicable Diseases, to ensure compliance with all applicable requirements.

§122.4. State Employees Exposed to Human Immunodeficiency Virus (HIV): Reporting and Testing Requirements.

(a) This section applies to all employees of the state of Texas.

(b) A state employee shall not be entitled to workers' compensation benefits for a work-related exposure to human immunodeficiency virus (HIV) infection unless the employee:

(1) had a test performed within 10 days of an exposure to HIV that indicated the absence of HIV infection (Exposure criteria and testing protocol must conform to Texas Department of Health requirements.); and

(2) provided the employer with a written statement of the date and circumstances of the exposure to HIV and a copy of the results of the test required by paragraph (1) of this subsection.

(c) The cost of a state employee's test(s) required by subsection (b) of this section, regardless of the results of the test(s), shall be paid from funds appropriated for payment of workers' compensation benefits to state employees, in addition to any other benefits required

to be paid by the Texas Workers' Compensation Act or administrative rules.

(d) Section 110.108 of this title (relating to Employer Notice Regarding Work Related Exposure to Communicable Disease/ HIV: Posting Requirements; Payment for Tests) requires each state agency to post the notice contained in subsection (d) of that section in its workplace to inform employees of the requirements of this section.

(e) State employers and state employees should also refer to the Texas Health and Safety Code Chapter 85 and Texas Department of Health rules, 25 TAC Chapter 97, Communicable Diseases, to ensure compliance with all applicable requirements.

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

Issued in Austin, Texas, on September 12, 1997.

TRD-9712197
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Effective date: October 15, 1997
Proposal publication date: June 24, 1997
For further information, please call: (512) 440-3700

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 65. Wildlife

Subchapter A. Statewide Hunting and Fishing Proclamation

Seasons and Bag Limits-Hunting Provisions

31 TAC §§65.42, 65.62, 65.64

The Texas Parks and Wildlife Commission adopts amendments to §§65.42, 65.62, and 65.64, concerning Deer, Quail, and Turkey, without change to the proposed text as published in the July 18, 1997, issue of the *Texas Register* (22 TexReg 6728).

The amendments will function by establishing and regulating a youth-only hunting season for white-tailed deer, quail, and turkey.

The amendments are necessary in order to implement certain provisions of House Bill 2542, enacted by the 75th Legislature, which allow for the creation of youth-only hunting seasons.

The department received 36 comments concerning adoption of the proposed amendments. Two persons opposed adoption, stating that youth should not be encouraged to engage in sport hunting. The department disagrees with the comments and responds that the agency has a statutory duty to provide for reasonable and equitable enjoyment of the wildlife resources of this state. No changes were made as a result of the comments. Thirty-four persons commented in favor of the proposed amendments. The Texas Wildlife Association commented in favor of adoption. Texas Animals opposed adoption of the proposed amendments.

The amendments are adopted under Section 80 of House Bill 2542, Acts of the 75th Texas Legislature, Regular Session, which authorizes the commission to provide for special open seasons during which the taking of wildlife resources is limited to persons younger than 17 years of age.

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

Issued in Austin, Texas, on September 11, 1997.

TRD-9712241
Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department
Effective date: October 2, 1997
Proposal publication date: July 18, 1997
For further information, please call: (512) 389–4642

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Subchapter N. Migratory Game Bird Proclamation

The Texas Parks and Wildlife Commission adopts the repeal of §65.317, §65.320, new §65.317, new §65.320, and an amendment to §65.318, concerning Migratory Game Bird Proclamation. New §§65.317, new §65.320, and the amendment to §65.318 are adopted with changes to the proposed text as published in the May 2, 1997, issue of the *Texas Register* (22 TexReg 3875). The repeal of §65.317 and §65.320 is adopted without changes and will not be republished. The change to §65.317, concerning Zones and Boundaries for Late Season Species, divides that portion of the state not within the High Plains Mallard Management Unit into two new duck zones. The change to §65.318, concerning Open Seasons and Bag and Possession Limits - Late Season, increases the length of the season for ducks, mergansers, and coots by 14 days; increases the aggregate bag limit to six ducks; increases the bag limit for pintails to three and the bag limit for mallard hens to two; implements a youth-only special season for ducks; and reduces the season lengths and bag limits for woodcock . The change to §65.320, concerning Extended Falconry Season - Late Season Species, adjusts season lengths to conform with changes made to the firearms season.

The repeal, new sections and amendment function to establish the zone and area boundaries, bag limits, opening and closing dates, and season lengths for the harvest of late season species of migratory game birds.

The repeal, new sections, and amendment are generally necessary to regulate the harvest of migratory birds in this state. Section 65.317, concerning Zones and Boundaries for Late Season Species, establishes geographical distinctions within which various harvest regulations are imposed for the purposes of sound biological management of the resource. Section 65.318, concerning, Season Length and Bag and

Possession Limits-Late Season, equitably distributes harvest of the resource while establishing biologically justifiable limits on that harvest. Section 65.320, concerning Extended Falconry Season-Late Season Species, provides opportunity for persons to harvest the resource by means of falconry while establishing biologically justifiable limits on that harvest.

The department received 287 comments concerning adoption of the proposed rules. One person opposed the creation of new duck zones in east Texas. The department disagrees with the comment and responds that strong support for the change exists among the regulated community. No changes were made as a result of the comment. Seventy-five commenters requested some form of season lengths, season configurations, and/or opening days other than those adopted by the Commission. The department, while sympathetic to the desires of the regulated community, disagrees with the comments and responds that due to the size and diversity of the state, as well as to limits imposed by the federal government under the Migratory Bird Treaty Act, it is impossible to establish regulations that in every instance accommodate the circumstances of every constituent. The Commission's first duty is to protect the resource, and its second duty is to equitably distribute opportunity; the regulations as adopted represent the Commission?s discharge of those duties. No changes were made as a result of the comments. One-hundred thirty-three commenters requested a longer duck season. Action by the U.S. Fish and Wildlife Service, Office of Migratory Bird Management, made it possible for the department to agree with the commenters and the changes were made accordingly. Twenty-four persons requested that the department create duck zones outside of the High Plains Mallard Management Unit. Action by the U.S. Fish and Wildlife Service, Office of Migratory Bird Management, made it possible for the department to agree with the commenters and the changes were made accordingly. Five commenters requested the creation of a youth-only season for ducks, mergansers and coots. Action by the U.S. Fish and Wildlife Service, Office of Migratory Bird Management, made it possible for the department to agree with the commenters and the changes were made accordingly. One person suggested an alternative to the dates adopted for the youth hunts. The department disagrees with the comment and responds that the dates adopted for youth hunting opportunity are designed to encourage the greatest participation possible. Two commenters were in favor of the dates adopted for the youth hunts. One commenter requested a crane season in Liberty and Chambers counties. The department disagrees and responds that federal regulations do not allow crane hunting in that part of the state. No changes were made as a result of the comment. Fifty-seven commenters supported the rules as adopted.

31 TAC §§65.317, 65.320

The repeal, amendment, and new sections are adopted under Parks and Wildlife Code, Chapter 64, Subchapter C, which provides the Commission with authority to regulate seasons, means, methods, and devices for taking and possessing migratory game bird wildlife resources.

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

Issued in Austin, Texas, on September 11, 1997.

TRD-9712239
Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department
Effective date: October 2, 1997
Proposal publication date: May 2, 1997
For further information, please call: (512) 389–4642

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31 TAC §§65.317, 65.318, 65.320

The amendment and new sections are adopted under Parks and Wildlife Code, Chapter 64, Subchapter C, which provides the Commission with authority to regulate seasons, means, methods, and devices for taking and possessing migratory game bird wildlife resources.

§65.317. Zones and Boundaries for Late Season Species.

(a) Ducks, mergansers, and coots.

(1) High Plains Mallard Management Unit: that portion of Texas lying west of a line from the international toll bridge at Del Rio, thence northward following U.S. Highway 277 to Abilene, State Highway 351 and State Highway 6 to Albany, and U.S. Highway 283 from Albany to Vernon, thence eastward along U.S. Highway 183 to the Texas-Oklahoma state line.

(2) North Zone: that portion of Texas not in the High Plains Mallard Management Unit but north of a line from the International Toll Bridge in Del Rio; thence northeast along U.S. Highway 277 Spur to U.S. Highway 90 in Del Rio; thence east along U.S. Highway 90 to Interstate Highway 10 at San Antonio; thence east along Interstate Highway 10 to the Texas-Louisiana State Line.

(3) South Zone: the remainder of the state.

(b) Geese.

(1) Western Zone: that portion of Texas lying west of a line from the international toll bridge at Laredo, thence northward following IH 35 and 35W to Fort Worth, thence northwest along U.S. Highways 81 and 287 to Bowie, thence northward along U.S. Highway 81 to the Texas-Oklahoma state line.

(2) Eastern Zone: the remainder of the state.

(c) Sandhill cranes.

(1) Zone A: that portion of Texas lying west of a line beginning at the international toll bridge at Laredo, thence northeast along U.S. Highway 81 to its junction with Interstate Highway 35 in Laredo, thence north along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, thence northwest along Interstate Highway 10 to its junction with U.S. Highway 83 at Junction, thence north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, thence east along U.S. Highway 62 to the Texas-Oklahoma state line.

(2) Zone B: That portion of Texas lying within boundaries beginning at the junction of Interstate Highway 35 and the Texas-Oklahoma state line, thence south along Interstate Highway 35 (following Interstate Highway 35 West through Fort Worth) to its junction with Interstate Highway 10 in San Antonio thence northwest along Interstate Highway 10 to its junction with U.S. Highway 83 in Junction, thence north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, thence east along

U.S. Highway 62 to the Texas-Oklahoma state line, thence eastward along the Texas-Oklahoma state line to Interstate Highway 35.

(3) Zone C: that portion of Texas lying within boundaries beginning at the international toll bridge at Brownsville, thence north and east along U.S. Highway 77 to its junction with U.S. Highway 87 at Victoria, thence eastward along U.S. Highway 87 to its junction with Farm Road 616 at Placedo, thence north and east along Farm Road 616 to its junction with State Highway 35, thence north and east along State Highway 35 to its junction with State Highway 6 at Alvin, thence west and north along State Highway 6 to its junction with U.S. Highway 290, thence westward along U.S. Highway 290 to its junction with Interstate Highway 35 at Austin, thence south along Interstate Highway 35 to its junction with U.S. Highway 81 in Laredo, thence southwest along U.S. Highway 81 to the international toll bridge in Laredo, thence south and east along the U.S.-Mexico international boundary to its junction with the U.S. Highway 77 international toll bridge at Brownsville.

(d) Woodcock: statewide.

(e) Common snipe (Wilson's snipe or jacksnipe): statewide.

§65.318. Open Seasons and Bag and Possession Limits - Late Season.

The possession limit for all species listed in this section shall be twice the daily bag limit, except for light geese. The possession limit for light geese shall be four times the daily bag limit.

(1) Ducks, mergansers, and coots. The daily bag limit for ducks is six, which may include no more than five mallards or Mexican mallards (Mexican duck), only two of which may be hens, one mottled duck, three pintails, two redheads, one canvasback, and two wood ducks. The daily bag limit for coots is 15. The daily bag limit for mergansers is five, which may include no more than one hooded merganser.

(A) High Plains Mallard Management Unit: October 11-14, 1997 and October 18, 1997 - January 18, 1998.

(B) North Zone: October 25-November 2, 1997 and November 15, 1997-January 18, 1998.

(C) South Zone: October 25-November 30, 1997 and December 13, 1997-January 18, 1998.

(2) Geese.

(A) Western Zone.

(i) Light geese: November 1, 1997 - February 15, 1998. The daily bag limit for light geese is ten.

(ii) Dark geese: November 1, 1997 - February 15, 1998. The daily bag limit for dark geese is five, which may not include more than four Canada geese and one white-fronted goose.

(B) Eastern Zone.

(i) Light geese: November 1, 1997 - February 15, 1998. The daily bag limit for light geese is ten.

(ii) Dark geese: November 1, 1997 - January 25, 1998. The daily bag limit for dark geese is two, which may not include more than one Canada goose and one white-fronted goose. During the period January 19-25, 1998, the daily bag limit is one Canada goose and one white-fronted goose, or two Canada geese.

(3) Sandhill cranes. A special permit, issued free of charge by the Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, is required of any person to hunt, shoot, or kill sandhill cranes in areas where an open season is provided under this proclamation. Permits will be issued on an impartial basis with no limitation on the number of permits that may be issued. The daily bag limit is three.

(A) Zone A: November 8, 1997 - February 8, 1998.

(B) Zone B: November 29, 1997 - February 8, 1998.

(C) Zone C: January 3, 1998 - February 8, 1998.

(4) Woodcock: December 18, 1997 - January 31, 1998. The daily bag limit is three.

(5) Common snipe (Wilson's snipe or jacksnipe): October 25, 1997 - February 8, 1998. The daily bag limit is eight.

(6) Special Youth-Only Season. There shall be a special youth-only duck season during which the hunting, taking, and possession of ducks, mergansers, and coots is restricted to licensed hunters 15 years of age and younger accompanied by a person 18 years of age or older. Bag and possession limits in any given zone during the season established by this paragraph shall be as provided for that zone by paragraph (1) of this section. Season dates are as follows:

(A) High Plains Mallard Management Unit: October 4, 1997;

(B) North Zone: October 18, 1997; and

(C) South Zone: October 18, 1997.

§65.320. Extended Falconry Season - Late Season Species.

(a) It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons:

(1) ducks, coots, and mergansers:

(A) High Plains Mallard Management Unit: no extended falconry season; and

(B) Remainder of the state: January 19, 1998 - February 10, 1998; and

(2) woodcock: November 24 - December 17, 1997 and February 1, 1998 - March 10, 1998.

(b) The daily bag and possession limits for migratory game birds under this section shall not exceed three and six birds, respectively, singly or in the aggregate.

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

Issued in Austin, Texas, on September 11, 1997.

TRD-9712240
Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department
Effective date: October 2, 1997
Proposal publication date: May 2, 1997
For further information, please call: (512) 389–4642

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 148. Facility Licensure

Subchapter B. Facility Management

40 TAC §§148.111, 148.113-148.117

The Texas Commission on Alcohol and Drug Abuse Adopts amendments to §§148.111 and 148.113-148.117, concerning personnel and staff development. Sections 148.114-148.117 are adopted with changes to the proposed text as published in the July 1, 1997, issue of the *Texas Register* (22 TexReg 6180). Sections 148.111 and 148.113 are adopted without changes and will not be republished.

The amendments are adopted to ensure training is required only for staff who need it, to eliminate the requirement for first aid training, to add provisions for training related to the care of pregnant women, and to clarify the wording of existing provisions.

Section 148.114 has been revised to require one staff person to have documented knowledge of pregnant substance abusers and their care, rather than six hours of training. Wording has been added to specify that CPR certification is required only for direct care staff in residential programs. The words "listed below" have been replaced with "following". Training requirements in §§148.115 and 148.117 are revised to be consistent with previously stated requirements. Section 148.116 is revised to require personnel documentation instead of a single personnel file, and retention requirements have been clarified to avoid confusion regarding the retention requirements in §148.118.

These rules describe requirements relating to the organizational structure, initial training, special training requirements, volunteers, personnel files and training records, and basic staffing requirements.

The commission received comments from the Association of Substance Abuse Service Providers of Texas and Christian Farms Treehouse, which are summarized below.

Comment: It is strongly recommended modifying the interagency memorandum of understanding to read "training up to eight hours shall depend on amount of client contact and also be appropriate to qualification and responsibilities of the job."

Response: Eight hours is mandated by statute, and state agencies do not have the authority to modify the requirement.

Comment: Training on pregnant substance abusers and their care is non-existent. Physician's medical advice should be followed, not attempted by non-medical personnel.

Response: This rule was not intended to have unqualified staff supervising the medical care of clients. It simply recognizes that programs who admit pregnant females should have some basic knowledge about the special needs and complications associated with caring for these clients.

Comment: This requirement is vague and is ultimately just another training requirement. It would seem more applicable to the intent of the rules to require programs to demonstrate that at least one clinical staff member is knowledgeable about the care of substance abusing females. The compliance manual could then specify what TCADA would accept as compliance documentation.

Response: The commission accepts this recommendation.

Comment: The requirement for training on intake and screening is excessive; this training does not need to be repeated annually.

Response: The requirement for eight hours of training annually is found in statute and the commission does not have the authority to change it.

Comment: Requiring personnel files to contain documentation of direct supervision is excessive. Recommend documentation of intern or trainee status and total number of supervised hours.

Response: The rule has been revised so that all documentation does not need to be kept in the personnel file. The commission does not believe, however, that documenting the total number of supervised hours is sufficient documentation of clinical supervision, which is a critical element of an intern's preparation for licensure.

Comment: Requiring personnel files to be kept for two years is contradictory with requirements for keeping evidence of training for abuse, neglect, and exploitation for five years.

Response: Other requirements that specify longer retention periods for certain documentation also apply. This has been clarified in the rule.

Comment: Strike references to first aid if not required.

Response: The references have been omitted.

The amendments are adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the adopted rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

§148.114. Special Training Requirements.

(a) (No change.)

(b) Staff shall have all required training before performing job duties independently. Training must be completed within 90 days from the date of hire. Unless otherwise specified, training in the following topics is required only once.

(c) The facility shall annually provide staff who have any client contact with at least eight hours of approved training in issues relating to abuse, neglect, exploitation, illegal, unprofessional, and unethical conduct. This training shall comply with the interagency memorandum of understanding on abuse training (see §148.118 of this title relating to Training Requirements Relating to Abuse, Neglect, and Unprofessional or Unethical Conduct).

(d) All direct care staff shall complete HIV training based on the commission's AIDS/HIV Model Workplace Guidelines.

(e) (No change.)

(f) All direct care employees in residential programs shall have current certification in CPR.

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

(g)-(h) (No change.)

(i) Supervisors shall observe and document that counselors demonstrate competency in the facility's treatment modalities before working without immediate supervision.

(j) Each employee who conducts intakes or screenings shall complete eight hours of training in the program's intake and screening procedures annually. An employee shall not conduct screening or intake unless training is complete and current.

(k) All direct care employees working in detoxification programs shall complete detoxification training which shall:

(1) be provided by a physician, physician assistant, advanced practice nurse, or registered nurse with at least one year of documented experience in detoxification;

(2) include:

(A) signs of withdrawal;

(B) pregnancy-related complications (if the program admits females of child-bearing age);

(C) observation and monitoring procedures;

(D) appropriate intervention; and

(E) complications requiring transfer.

(l) All programs that admit females of child-bearing age shall have at least one staff person with documented knowledge of pregnant substance-abusing females and their care. When a pregnant female is admitted, all members of the treatment team shall receive information needed to provide appropriate care.

(m) (No change.)

§148.115. Students and Other Volunteers.

(a) The facility shall ensure that volunteers (which include students) comply with standards of performance and conduct.

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

(e) Volunteers shall be appropriately supervised by staff. Direct care volunteers in residential programs who do not have certification in CPR shall have immediate supervision from certified staff.

§148.116. Personnel Files and Training Records.

(a) The facility shall ensure that staff are qualified, trained, and supervised to perform assigned duties.

(b) The facility shall maintain current personnel documentation on each employee that includes, as applicable:

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

(7) records of direct supervision for all counselor trainees and interns;

(8)-(9) (No change.)

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

§148.117. Basic Staffing Requirements.

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

(e) All chemical dependency counselor trainees and interns shall work under the direct supervision of a qualified credential counselor.

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

(f) Counselors providing group or individual counseling focused on trauma, abuse, or sexual issues shall have specialized education and training which is defined in writing by the program.

(g) One or more direct care staff trained in non-violent crisis intervention shall be on duty at all times that the program is in operation. In residential programs, one or more direct care staff certified in CPR must also be on duty at all times that the program is in operation.

(h) Staff included in staff-to-client ratios shall not have job duties that interfere with effective client supervision.

(i) The facility shall not allow its clients to serve as staff.

(j) The facility shall ensure that personnel do not endanger the health, safety or well-being of clients and do not use mood-altering substances which interfere with their job performance.

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

Issued in Austin, Texas, on September 17, 1997.

TRD-9712355
Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
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Proposal publication date: July 1, 1997
For further information, please call: (512) 349–6609

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Subchapter D. Programs Services

Treatment Levels

40 TAC §§148.211–148.214

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§148.211-148.214, concerning treatment levels. Sections 148.212-148.214 are adopted with changes to the proposed text as published in the July 8, 1997, issue of the *Texas Register* (22 TexReg 6415). Section 148.211 is adopted without changes and will not be republished.

The amendments are adopted to require Level II, III, and IV programs to provide counseling, to limit counselor caseloads to 20 clients in residential Level IV programs, and to clarify existing requirements.

Language has been restored to §§148.212, 148.213, and 148.214 describing the type of client appropriate for each level of treatment. The counseling hours required in §148.212 and 148.214 have been lowered from the proposed version. Section

148.214 expands allowed services to include life skills training as is allowed in the other levels of service.

These rules describe service requirements that apply to four specific levels of service.

The commission received comments from the Association of Substance Abuse Service Providers of Texas, Burke Center, and Christian Farms Treehouse, which are summarized below.

Comment: Do not omit language that describes the type of client appropriate for each level of treatment.

Response: The commission accepts this suggestion.

Comment: The proposed rules specifies minimum hours of counseling for each level. There appears to be a hybrid activity that is not purely counseling or education in the traditional sense. This activity combines elements of counseling and education and plays a significant role in various treatment modalities. In the context of an overall program, we believe this activity needs to be recognized.

Response: The commission believes most of these hybrid activities would be classified as "life skills training". Recognizing that such activities can be as important as traditional counseling, the rules have been revised to require three hours of counseling and fourteen hours of additional counseling, education, or life skills training for Level II, and two hours of counseling and eight hours of additional counseling, education, or life skills training for Level III. It is believed this will give providers greater flexibility in implementing their programs.

Comment: As written, this standard does not allow for sufficient flexibility to provide for decreasing transitional services and PRN drop in counseling. The concept of "averaging" is fine in theory, however, in real life it sets up a tendency to "front load" services that may or may not really be necessary. The recommendation was to not require minimum hours of service; instead allow for the program to implement services sufficient to meet the clients individual needs as identified in the treatment plan.

Response: The commission believes that eliminating all requirements for minimum hours does not ensure clients will receive adequate treatment. While many providers would provide excellent care without any rules whatsoever, we are charged with the responsibility to protect clients from those who are unable to deliver appropriate treatment without some structure. The concept of averaging hours over the course of a client's stay allows a smoother transition from one level of service to another and also accommodates other fluctuations in the intensity of services needed by an individual client during treatment. The number of hours required at each level was recommended by a diverse group of providers, and the recommendations were built around the concept of averaging. It is expected that most clients at a given level of treatment will need more than the listed number of hours during some phases and less than the listed number during others.

Comment: It is agreed that the requirement of one hour per week of individual counseling constitutes sound practice of this level of care; however, there is concern that meeting this requirement will force hiring of additional staff and add to the expense of providing services to a program which is already woefully underfunded.

Response: The commission does not think a provider can meet the requirements for individualized treatment without at least one hour of individual counseling per week. The program is required to develop an individualized treatment plan, review the client's progress and make revisions to the plan, develop an individualized discharge plan, and help clients resolve individual issues during the course of treatment. These activities cannot take place without regular one-to-one contact.

The amendments are adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the adopted rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

§148.212. Level II Treatment.

(a) All clients admitted to Level II shall be:

(1) medically stable; and

(2) able to participate in treatment.

(b) The program shall have enough staff to provide close supervision and individualized treatment.

(c) Counselor caseloads shall not exceed ten clients for each counselor.

(d) Direct care staff shall be awake and on site during all hours of program operation. The direct care staff-to-client ratio shall be at least 1:16 during:

(1) the hours clients are awake in residential programs; and

(2) all hours of operation in outpatient programs.

(e) Counselors shall complete a comprehensive client assessment within three individual service days of admission for all clients transferred from Level I or admitted directly to a Level II program.

(f) An individualized treatment plan shall be completed for all clients within five individual service days of admission.

(g) The facility shall deliver an average of 20 hours of structured activities per week for each client, including:

(1) three hours of chemical dependency counseling (including at least one hour of individual counseling);

(2) 14 hours of additional counseling, chemical dependency education, or life skills training; and

(3) three hours of structured social and/or recreational activities.

(h) Each residential client shall have an opportunity to participate in physical recreation at least weekly.

(i) Program staff shall offer related services to identified significant others.

§148.213. Level III Treatment.

(a) All clients admitted to Level III shall be:

(1) medically stable, and

(2) able to function with limited supervision and support.

(b) The program shall have enough staff to meet treatment needs within the context of the program description.

(c) Counselor caseloads shall not exceed 16 clients per counselor.

(d) Direct care staff shall be awake and on site during all hours of program operation. The direct care staff-to-client ratio shall be at least 1:16 during:

(1) the hours clients are awake in residential programs; and

(2) all hours of operation in outpatient programs.

(e) For clients transferred from Level I or admitted directly to this level of treatment, counselors shall complete a comprehensive client assessment within five individual service days of admission.

(f) All clients shall have an individualized treatment plan within seven individual service days of admission.

(g) The facility shall deliver an average of ten hours of structured activities per week for each client, including at least two hours of chemical dependency counseling (with at least one hour of individual counseling every two weeks) and eight hours of additional counseling, chemical dependency education, or life skills training.

§148.214. Level IV Treatment.

(a) All clients admitted to Level IV programs shall be:

(1) medically stable; and

(2) able to function with minimal structure and support.

(b) A Level IV program shall not admit a client transferred directly from Level I without written justification in the client record.

(c) The program shall have enough staff to provide clients with adequate support and guidance.

(d) Counselor caseloads shall not exceed 20 clients per counselor in residential programs. Outpatien

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

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TRD-9712356

Mark S. Smock

Deputy for Finance and Administration

Texas Commission on Alcohol and Drug Abuse

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For further information, please call: (512) 349–6609

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Subchapter E. Treatment Process

Admission

40 TAC §§148.281-148.283

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§148.281-148.283, concerning admission practices. Sections 148.281 and 148.283 are adopted with changes to the proposed text as published in the July 4, 1997, issue of the *Texas Register* (22 TexReg 6261). Section 148.282 is adopted without changes and will not be republished.

The amendments are adopted to clarify existing requirements and to require use of the Diagnostic and Statistical Manual of Mental Disorders and implementation of a referral log. Section 148.281 has been revised to permit chemically dependent persons in need of crisis stabilization to be admitted to a Level I program for up to 72 hours. Language in §148.283 has been revised to allow written information to be provided to clients in documents other than the consent form.

These rules establish requirements relating to admission, screening, and intake and consent to treatment.

The Commission received comments from the Burke Center and Christian Farms Treehouse, which are summarized below:

Comment: The proposed change is opposed as it would eliminate crisis stabilization as a criteria for Level I services. When an individual enters Level II services we expect the person to be high functioning-able to attend classes and group sessions and participate fully in treatment activities-whereas a person entering Level I services may not be able to function independently or may not be able to participate at all due to his/her physical or emotional state. Individuals in crisis need a high level of individualized attention and support services to ensure continued treatment and provide a grounding orientation to chemical dependency treatment. Level I has a higher direct-care staff to patient ratio than Level II (l:12 vs. l:16), and requires progress notes to be documented during each shift. We believe that this level of service is appropriate for an individual in crisis.

Response: The commission accepts this comment and has revised the rule to allow a chemically dependent person in need of crisis stabilization to be admitted to a Level I program for up to 72 hours.

Comment: Is was asked if there is a requirement or need for training on use of the DSM IV.

Response: Individuals performing screening and intake are required to have eight hours of training per year. This could include training on the use of DSM IV.

Comment: As worded, this standard regarding consent to treatment appears to require all of the specific information to actually be on the form, rather than documenting that the client has received all of the specific information. Recommend it be worded as "A consent form will be prepared for each client before admission. The form shall contain evidence, by the client/consenter's signature, that all of the following information was explained to them Š"

Response: The commission accepts this recommendation and has revised the rule.

Comment: Do not require the name of the primary counselor to be on the consent form. It is inappropriate for intake counselors to name the primary counselor; this should be a staff decision.

Response: This is required by law. If the primary counselor cannot be identified at the time of admission, an interim contact should be listed on the form.

The amendments are adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the adopted rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

§148.281. Admission.

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

(c) Every individual admitted to a Level I treatment program shall meet the DSM-IV criteria for substance intoxication or withdrawal. Persons in need of crisis stabilization who meet the criteria for substance dependence may be admitted to Level I services for up to 72 hours.

(d) Every person admitted to a Level II, III, or IV treatment program shall meet the DSM-IV criteria for substance abuse or dependence.

§148.283. Intake and Consent to Treatment.

(a) (No change.)

(b) The facility shall obtain written authorization from the consenter before providing any treatment or medication.

(c) A consent form will be prepared for each client before admission. The form must document that the client has received the following information written in simple, non-technical terms:

(1) the specific condition to be treated;

(2) the program's services and treatment process;

(3) the expected benefits of the treatment;

(4) the probable health and mental health consequences of not consenting;

(5) the side effects and risks associated with the treatment;

(6) any generally accepted alternatives and whether an alternative might be appropriate;

(7) the estimated average daily charge, including an explanation of any services that may be billed separately;

(8) the qualifications of the staff who will provide the treatment;

(9) the name of the primary counselor;

(10) expectations for client participation; and

(11) the Client Bill of Rights as specified in §148.142 of this title (relating to Client Bill of Rights).

(d) This information will be explained to the client and consenter in simple, non-technical terms. If possible, all information shall be provided in the consenter's primary language.

(e) The consent form shall be dated and signed by:

(1) the client;

(2) the consenter; and

(3) the staff person providing the information.

(f) The facility shall not use coercive or undue influence to obtain consent.

(g) The facility shall not knowingly misrepresent the amount of insurance coverage available or the amount and percentage of a charge for which the prospective client will be responsible.

(h) The consenter may revoke consent at any time and for any reason.

(i) The consenter has the right to refuse treatment or medication unless a physician treating the patient orders medication to prevent imminent serious physical harm to the client or to another individual.

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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Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
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For further information, please call: (512) 349–6609

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Stabilization Process (Level I)

40 TAC §148.291

The Texas Commission on Alcohol and Drug Abuse adopts an amendment to §148.291, concerning detoxification, without changes to the proposed text as published in the July 8, 1997, issue of the *Texas Register* (22 TexReg 6417).

The amendments are adopted to clarify existing requirements.

These rules describe requirements for the detoxification history.

No comments were received regarding adoption of the amendment.

The amendments are adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the adopted rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

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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Mark S. Smock
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Primary and Transitional Treatment Process (II, III, and IV)

40 TAC §§148.301, 148.303, 148.304

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§148.301, 148.303, and 148.304, concerning the treatment process. Sections 148.301 and 148.303 are adopted with changes to the proposed text as published in the July 1, 1997 issue of the *Texas Register* (22 TexReg 6182). Section 148.304 is adopted without changes and will not be republished.

The amendments are adopted to clarify existing requirements and require a transfer note when a client moves from one level of service to another. Section 148.301 has been revised to clarify that a medical history and physical completed no more than 96 hours before admission does not need to be updated. The list of specific professionals qualified to review a history and physical has been replaced with the term "licensed health professional". Reference to evaluation by a physician assistant or advanced nurse practitioner has been added to be consistent with similar requirements in other sections of the rules. Section 148.303 has been revised to require that a separate progress note be recorded for each individual counseling session.

These rules describe requirements regarding client history and assessment, progress notes, and treatment plan reviews.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Health and Safety Code, Title 6, Chapter 464, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency treatment facilities.

The code affected by the adopted rules is the Texas Health and Safety Code, Title 6, Subtitle B, 464.

§148.301. Client History and Assessment.

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

(e) For residential clients, a medical history and physical examination shall be completed and filed in the client record within 96 hours of admission.

(1) The facility may use a medical history and physical examination completed up to 30 days before admission or received from the referring facility. If the examination was completed more than 96 hours before admission, a licensed health professional must review the information with the client and document an update within 96 hours of admission.

(2) When the update reflects a significant change in the client's status, the client shall receive further evaluation from a physician, physician assistant, or advanced practice nurse.

§148.303. Progress Notes.

(a) (No change.)

(b) Program staff shall document services provided to the client. This may be done by filing a copy of the program schedule in the client record and documenting the client's level of participation in the progress notes. The record shall include individual documentation of all group services if the schedule of services is not followed.

(c) All documentation shall be filed in the client record and shall include the date, nature, and duration of the contact, as well as the signature and credentials (if applicable) of the person providing the services.

(d) Counselors shall write a progress note at least weekly when services are provided. Weekly notes shall describe the client's progress toward stated treatment plan goals and other significant information.

(e) A separate progress note must be recorded for each individual counseling session.

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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Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
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For further information, please call: (512) 349–6609

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Part XX. Texas Workforce Commission

Chapter 803. Skills Development Fund

The Texas Workforce Commission (Commission) adopts the repeal of § 803.1 and new §§803.1-803.3, §§803.11-803.15 and §§803.31-803.35, concerning Requirements for Skills Development Fund, with changes to the proposed text as published in the August 1, 1997, issue of the *Texas Register* (22 Tex Reg 7147).

New §§803.1, 803.3, 803.11, 803.12, 803.13, 803.15 and §§803.31-803.35 are adopted without changes and new §803.2 concerning Definitions and §803.14 concerning Procedure for Requesting Funding are adopted with changes. In §803.2, the proposed second sentence is deleted to remove superfluous language and §803.14(a) is changed to include language clarifying the local workforce development boards' role in the funding process.

The purpose of these rules is to implement Texas Labor Code, Chapter 303, relating to the operation of the Skills Development Fund. New Subchapter A concerning the General Provisions adds that the Texas Engineering Extension Service (TEEX) may respond to industry and workforce training needs and provide customized assessment and training as authorized by Senate Bill 1712, 75th Legislature, Regular Session.

New § 803.2, concerning Definitions, adds a definition for the Texas Engineering Extension Service (TEEX), and adds references to TEEX in the definitions of: Customized Training Program, Grant Recipient, Prospective Private Partner, and Training Provider. The definition for Director is also changed to clarify that it may refer to the Executive Director's designee.

New § 803.3, concerning Uses of the Fund, adds that TEEX may use the Skills Development Fund as start-up or emergency

funds to develop customized training programs and to sponsor small and medium-sized business networks and consortiums; that TEEX shall focus on statewide training programs that are not available from a local community or technical college or a consortium of junior college districts; that TEEX may participate with a consortium of junior college districts or with a technical college; that technical college training activities shall focus on statewide programs that are not available from a local community college, except in the technical college's local service area; that travel and drug testing are not eligible costs under the program since these are not considered costs related to direct training or to the administration of the grant; and that lease of equipment is not an allowable cost if the lease transaction meets any of the four criteria in the rule that would characterize the lease as a proprietary or production equipment purchase in which substantially all of the risks and benefits of ownership are assumed by the lessee.

New Subchapter B is added, concerning Program Administration.

New § 803.11 concerning Grant Administration adds that the Executive Director or a designated employee or employees of the Commission may allocate the use of funds during the biennium on a quarterly basis. New § 803.12 concerning Limitations on Awards adds the Commission's authority to limit the amount of awarded funds, including limits on single employer training programs, caps on allowable purchases of proprietary or production equipment and on administrative costs.

New § 803.13 concerning Program Objectives adds the following program objectives: to ensure that program funds are spent in all areas of this state, to respond to the training needs of business consortiums consisting of micro-businesses to medium-sized businesses; to develop projects that will create jobs in Local Workforce Development Areas where the unemployment rate is above the state's annual average; to facilitate projects eligible for the Self-Sufficiency Fund; to sponsor pilot programs in allied health professions to certain recipients of financial assistance under Human Resources Code, Chapter 31; to develop projects that at completion of training will result in wages greater than the prevailing wage and employment benefits; to develop projects that will result in employment benefits for participants, to facilitate the statewide growth of industry and emerging occupations; to sponsor creation and attraction of high value, high skill jobs for the state, to ensure retention of jobs; to develop projects that include contributions from other resources; and to ensure that available resources are utilized to respond to workforce training needs.

New § 803.14 concerning Procedure for Requesting Funding, adds language to allow TEEX to present a joint proposal with a prospective private partner requesting skills development funds; to require prior consultation with a local workforce development board, to allow TEEX to be a non-local partner in a joint training proposal as long as the training proposal does not duplicate a training program available in the local workforce development area; to add a reference to TEEX in the information that is included in the proposal; and to require a written proposal that indicates the number of proposed jobs created and preserved, the skills acquired through training, the occupations and wages at the end of the training, the amount of the private partner's contribution, a comparison of program costs, and a list of the employment benefits.

New § 803.15 concerning Procedure for Proposal Evaluation adds the list of the following additional factors in the Commission's evaluation of a proposal: the program objectives, the information contained in the proposal, the prevailing wage for occupations in the local labor market area, the financial stability of the prospective private partner, and the regional economic impact. The section also authorizes the Executive Director to enter into a contract with the grant recipient if a contract is approved for funding.

New Subchapter C is added relating to Program Administration After Award of Contract.

New § 803.31 concerning Grant Recipient Responsibilities, adds subsection (b) requiring that contractors maintain fiscal data needed for independent verification of expenditures; and subsection (c) requiring that contract amendments be requested and approved in writing before a change to the contract is implemented.

New § 803.32 concerning Contract Completion Reports, clarifies that the 90 day requirement to submit a final report is tied to the end of the contract period instead of the completion of the customized training program. The new section also adds that the occupations trainees were placed in and wages for those occupations need to be included in the final report from the Contractor and clarifies that the final report from the Contractor should summarize the training program results, including the results of the training objectives and outcomes specified in the contract to ensure that the contractual obligations were met and may include an evaluation of the effectiveness of the training program from the private partner since the business will be affected by the outcome of the customized training program. New § 803.32 also adds that payroll records and/or reports certified by an independent auditor must be provided that include the name, social security number, occupation, and trainee's wage or a statement that each trainee's wage is equal to the prevailing wage for that occupation.

New § 803.33 concerning Contract Payment adds language authorizing the Executive Director to allow an attrition rate of 15% based on the total number of trainees outlined in the contract.

New § 803.34 concerning Notice to Texas Higher Education Coordinating Board adds a reference to TEEX.

New § 803.35 concerning Waivers provides the Executive Director with the authority to suspend or waive a section, not statutorily imposed, if there is a showing of good cause and a finding that the public interest would be served by such a suspension or waiver.

The following comments were received from Mr. Robert Prock, Assistant Agency Director, Texas Engineering Extension Service, Texas A&M University System, from Dr. Sandy Shugart, of the North Harris/Montgomery Community College District, and from Texas Workforce Commission staff, concerning the proposed rules. Following the comments are the Commission's responses.

Comment: One commenter did not indicate a position for or against the rules, but expressed concern that new § 803.3(d)(4), which prohibits use of the Skills Development Fund to pay for trainee or instructor travel costs, assigns an unfair cost to rural or remote businesses.

Response: The Commission believes the intent of the Skills Development Fund is to provide initial funding to cover part of the expenses directly related to approved training. The start-up funding from the Skills Development Fund is intended to be a portion of multiple funding sources for a training project. In establishing its rules on the uses of the Skills Development Fund, the Commission is seeking to limit administrative expenses to those directly related training costs. The Commission believes that travel costs are not a directly related training cost, and no change is made to the rule.

Comment: The same commenter expressed a concern that new § 803.3(d)(4) which also prohibits use of the Skills Development Fund to pay for trainee drug testing will add costs to the program, in that if potential employees fail a drug test, the training funds are wasted.

Response: The Commission believes that the provision of trainee drug tests should be negotiated between the training provider and the private partner in developing their partnership to propose a customized training program. Because the Skills Development Fund is only intended to provide initial funding for a customized training program, trainee drug test funding should be from other sources available to the training provider or private partner. The Commission believes that trainee drug test costs are not a directly related training cost, and no change is made to the rule

Comment: A second commenter did not indicate a position for or against the rules, but expressed a concern that a local community college should have the right of first refusal for training that is within the local community college's capacity to deliver, before another agency, such as TEEX, is funded for training in that area.

Response: The Commission believes that the commenter's concern is sufficiently addressed by statutory and rule safeguards which will be implemented by agency staff administering the Skills Development Fund. Texas Labor Code, § 303.003(f), limits TEEX's training activities to statewide projects, or to programs that are not available from a local junior college district, a local technical college, or a consortium of junior college districts. The Commission's new § 803.3(b) and (c), concerning Uses of the Fund, reinforce the statutory limitation by requiring TEEX training activities to focus on statewide projects or programs that are not available from a local junior college district. The Commission's new § 803.14(b), concerning Procedure for Requesting Funding, provides that a proposal from TEEX or a technical college must not duplicate a training program in the local workforce development area. The Commission staff will ensure that such limitations and safeguards are strictly implemented, and no change is made to the rule.

Comment: The Commission staff indicated a position in support of the rules but stated that new § 803.2, concerning Definitions, contained superfluous language in defining Public Community Colleges.

Response: The Commission believes that the initial sentence in the definition of Public Community Colleges accurately describes such entities, and that deletion of the second proposed sentence would provide a clearer definition. The Commission will delete the last sentence in the proposed definition of Public Community Colleges.

Comment: The Commission staff also expressed concern that new § 803.14(a), concerning Procedure for Requesting Funding, did not reflect the intent that training must be coordinated within a local workforce development area.

Response: The Commission believes that in order to clarify the intent of the rule, § 803.14(a) should be amended to expressly provide that prior to submission of a joint proposal requesting funding the prospective private partner and the public community or technical college must consult with a local workforce development board.

Subchapter

40 TAC §803.1

The repeal is adopted under Texas Labor Code, § 301.061, which provides the Texas Workforce Commission with the authority to adopt, amend or rescind such rules as it deems necessary for the effective administration of Texas Labor Code, Title 4.

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

Issued in Austin, Texas, on September 16, 1997.

TRD-9712330
J. Randel Hill
General Counsel
Texas Workforce Commission
Effective date: October 6, 1997
Proposal publication date: August 1, 1997
For further information, please call: (512) 463–2291

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Subchapter A. General Provisions Regarding the Skills Development Fund

40 TAC §§803.1–803.3

The new rules are adopted under Texas Labor Code, §301.061, which provides the Texas Workforce Commission with the authority to adopt, amend or rescind such rules as it deems necessary for the effective administration of Texas Labor Code, Title 4.

§803.2 Definitions.

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

Assessment – The evaluation of an employer's workforce needs and requirements.

Customized Training Program– A program designed by a private business or trade union in partnership with a public community or technical college or TEEX for the purpose of providing specialized workforce training to employees or prospective employees of the

private business or members of the trade union with the intent of either adding to the workforce or preventing a reduction in the workforce.

Director– The Executive Director of the Texas Workforce Commission or the Executive Director's designee.

Grant Recipient – Any public community or technical college or TEEX awarded a grant from the skills development fund.

Non-Local Public Community and Technical College – A public or community technical college providing training outside of its local taxing district.

Prospective Private Partner – Any person, sole proprietorship, partnership, corporation, association, consortium, or private organization that submits a joint proposal for a customized training program in partnership with a public community or technical college or TEEX.

Public Community Colleges – Two-year institutions primarily serving their local taxing districts and service areas in Texas and offering vocational, technical and academic courses for certification or associate degrees.

Public Technical Colleges– Coeducational institutions of higher education offering courses of study in vocational and technical education, for certification or associate degrees.

Texas Engineering Extension Service (TEEX) – A higher education agency and service established by the Board of Regents of the Texas A&M University System.

Trade Union – Any organization, agency, or employee committee, in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Training Provider – Any public community or technical college or TEEX that provides training; or any person, sole proprietorship, partnership, corporation, association, consortium, governmental subdivision or public or private organization with whom a public community or technical college or TEEX has subcontracted to provide training.

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

Issued in Austin, Texas, on September 16, 1997.

TRD-9712331
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Effective date: October 6, 1997
Proposal publication date: August 1, 1997
For further information, please call: (512) 463–2291

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Subchapter B. Program Administration

40 TAC §§803.31–803.35

The new rules are adopted under Texas Labor Code, §301.061, which provides the Texas Workforce Commission with the authority to adopt, amend or rescind such rules as it deems necessary for the effective administration of Texas Labor Code, Title 4.

§803.14 Procedure for Requesting Funding.

(a) After consultation with a local workforce development board, a prospective private partner together with a public community or technical college or TEEX shall present to the director a joint proposal requesting funding for a customized training program or other appropriate use of the fund.

(b) TEEX, or the public community or technical college that is a partner to a joint training proposal for a grant from the Skills Development Fund may be non-local, but the training proposal must not duplicate a training program available in the local workforce development area in which the prospective private partner is located.

(c) Proposals shall be written and contain the following information:

(1) the number of proposed jobs created or retained;

(2) a brief outline of the proposed training program, including the skills acquired through training;

(3) a brief description of the measurable training objectives;

(4) the occupation and wages for participants who complete the customized training program;

(5) a budget summary, disclosing anticipated program costs and resource contributions, including the dollar amount the prospective private partner is willing to commit to the project;

(6) an outline of the agreement between the prospective private partner and the public community or technical college or TEEX;

(7) a statement explaining the basis for the determination that there is an actual or projected labor shortage in the occupation in which the proposed training program will be provided that is not being met by an existing institution or program in the local workforce development area;

(8) a comparison of costs per trainee for the customized training program to the public community or technical college's or TEEX' costs for similar instruction;

(9) a statement describing the prospective private partner's equal opportunity employment policy;

(10) a list of the proposed employment benefits; and

(11) any additional information deemed necessary by the Commission to complete evaluation of a proposal.

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

Issued in Austin, Texas, on September 16, 1997.

TRD-9712329
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Effective date: October 6, 1997
Proposal publication date: August 1, 1997
For further information, please call: (512) 463–2291

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Subchapter C. Program Administration After Award of Contract

40 TAC §§803.31–803.35

The new rules are adopted under Texas Labor Code, §301.061, which provides the Texas Workforce Commission with the authority to adopt, amend or rescind such rules as it deems necessary for the effective administration of Texas Labor Code, Title 4.

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

Issued in Austin, Texas, on September 16, 1997.

TRD-9712328
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Effective date: October 6, 1997
Proposal publication date: August 1, 1997
For further information, please call: (512) 463–2291

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

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

Texas Department of Insurance

PROPOSED ACTION

The Commissioner of Insurance, at a public hearing under Docket No. 2305 scheduled for November 3, 1997 at 10:00 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or adjusted 1996-97 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-0997-27-I) was filed on September 19, 1997.

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 listed 1996-97 model vehicles.

A copy of the petition, including a 74-page exhibit with the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 463-6326; refer to (Ref. No. A-0997-27-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the Texas Register, to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Property and Casualty Insurance Lines, Texas Department of Insurance, P.O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

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).

Issued in Austin, Texas, on September 19, 1997.

TRD-9712581

Lynda H. Nesenholtz

Assistant General Counsel

Texas Department of Insurance

Filed: September 22, 1997

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PROPOSED ACTION

The Commissioner of Insurance, at a public hearing under Docket No. 2306 scheduled for November 3, 1997 at 10:00 a.m., in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), to adopt a new Rule 17 to implement motor vehicle repair notice requirements of the Insurance Code, Article 5.07-1, as amended by House Bill 423 of the 75th Legislature. Staff's petition (Ref. No. A-0997-28-I) was filed on September 19, 1997.

Staff proposes for the Manual a new Rule 17 to set forth how an insurer (including a person acting on behalf of an insurer) must give notice to a beneficiary or third-party claimant regarding motor vehicle repair rights under the Insurance Code, Article 5.07-1. The proposed rule requires the insurer to provide the notice to a beneficiary or third-party claimant. One requirement is for an insurer to give a copy of the prescribed notice to any claimant at the time the vehicle is presented to the insurer in connection with a claim for damage repair. If such a presentation is made, the notice must be given at that time.

In order to further the goal that all claimants receive notice of their rights, the proposed rule alternatively provides that if the claim is made by means other than presentation of the vehicle to the insurer, then the insurer must mail the prescribed notice to any claimant who is not otherwise given the notice within three business days from the making of the claim. In such a case, the insurer must mail the notice within three business days of receiving notice of the claim by other means (such as in writing or by telephone), unless otherwise delivered within that time.

If an insurer chooses to address the liability issue at the time of the claim filing, it may send or deliver its own letter along with the notice, which may include the Optional Provision shown in the rule. The

notice must be on a separate page from any letter or other material, except as otherwise provided in the proposed rule. The proposed rule provides that the notice may be printed on the reverse side of a copy of the Insurance Code, Article 5.07-1, or it may be attached to such copy. The proposed rule is shown in the exhibit attached to Staff's petition.

A copy of the petition containing the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 463-6326; refer to (Ref. No. A-0997-28-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the Texas Register, to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Property and Casualty Insurance Lines, Texas Department of Insurance, P. O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

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).

Issued in Austin, Texas, on September 19, 1997.

TRD-9712582
Lynda H. Nesenholtz
Assistant General Counsel
Texas Department of Insurance
Filed: September 22, 1997

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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.

Graphic Material will not be reproduced in the Acrobat version of this issue of the *Texas Register* due to the large volume. To obtain a copy of the material please contact the Texas Register office at (512) 463-5561 or (800) 226-7199.

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the ***Texas Register***.

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

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the ***Texas Register***.

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

State Office of Administrative Hearings

Monday, September 29, 1997, 1:00 p.m.

1700 North Congress Avenue

Austin

Utility Division

AGENDA:

A Prehearing conference is scheduled for the above date and time in: SOAH Docket Number 473–97–1688 — Petition of SOUTHWESTERN PUBLIC SERVICE COMPANY for Authority to Surcharge Under-Recoveries of Fuel Expenses and for a Related Good Cause Waiver (PUC Docket Number 17410).

Contact: William G. Newchurch, P.O. Box 13025, Austin 78711–3025; (512) 936–0728.
Filed: September 18, 1997, 10:29 a.m.

TRD-9712441

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Texas Department on Aging

Wednesday, October 8, 1997, 10:00 a.m.

4900 North Lamar Boulevard, Room 3501

Austin

Area Agency on Aging Operations Committee

AGENDA:

Call to order.

Minutes of last meeting.

Corrective Action Plan and time line to ensure accuracy of future performance measure reporting to Legislative Budget Board

Rulemaking philosophy

Performance standard protocol.

Adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78751, (512) 424–6840.
Filed: September 19, 1997, 3:53 p.m.

TRD-9712552

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Thursday, October 9, 1997, 10:00 a.m.

4900 North Lamar Boulevard, Room 1530

Austin

Planning Committee

AGENDA:

Consider and possibly act on:

Call to order.

Minutes of September 10, 1997 meeting.

Access and Assistance vision with discussion of potential new position paper.

Issues docket

Current Strategic Plan elements.

Aging Texas Well Project

Current operating environment

Adjourn

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78751, (512) 424–6840.
Filed: September 19, 1997, 3:58 p.m.

TRD-9712554

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Texas Department of Agriculture

Tuesday, September 30, 1997, 10:00 a.m.

1700 North Congress, Room 924A

Austin

AGENDA:

Administrative hearing to review alleged violation of Texas Department of Agriculture Code Annotated §§103.001–.015 (Vernon Supplement 1997) by Produce International, Inc., as petitioned by Leona Valley Produce.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463–7583.
Filed: September 16, 1997, 2:44 p.m.

TRD-9712325

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Texas Agricultural Experiment Station

Tuesday, September 30, 1997, 10:00 a.m.

Texas A&M University, Rudder Tower, Room 510

College Station

Feed and Fertilizer Control Service Advisory Task Force

AGENDA:

Review the Feed and Fertilizer Control Services' statutory and regulatory authority. Review the Feed and Fertilizer Control Services's scope and mission.

Contact: James G. Butler, College Station, Texas 77843–2147, (409) 845–7980.
Filed: September 19, 1997, 10:38 a.m.

TRD-9712484

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Texas Alcoholic Beverage Commission

Friday, September 26, 1997, 1:30 p.m.

5806 Mesa Drive, Suite 185

Austin

AGENDA:

1:30 p.m.- Call to order, Convene in open meeting. Announcement of executive session.

1. Executive session:

a. briefing regarding operation of the general counsel's office

Continue open meeting.

2. Take action, including a vote if appropriate, on topics listed for discussion under executive session.

3. Recognition of agency employees with 20 or more years of service.

4. Approval of minutes of August 5, 1997 meeting; discussion, comment, possible vote.

5. Administrator's report.

6. Consider publication of proposed new 16 TAC §33.7 in Texas Register; discussion, comment, possible vote. (Warning Sign Requirements)

7. Consider publication of new 16 TAC §37.46 in Texas Register; discussion, comment, possible vote. (Public Participation in Hearings)

8. Consider publication of proposed new 16 TAC §37.61 in Texas Register; discussion, comment, possible vote. (Suspensions)

9. Public comment.

10. Adjourn.

Contact: Doyne Bailey, P.O. Box 13127, Austin, Texas 78711, (512) 206–3217.
Filed: September 17, 1997, 8:25 a.m.

TRD-9712347

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Texas Council on Alzheimer's Disease and Related Disorders

Wednesday, September 24, 1997, 10:00 a.m.

Main Building, Room G-107, Texas Department of Health, 1100 West 49th Street

Austin

AGENDA:

The Council will discuss and possibly act on: approval of the minutes of the February 17, 1997 meeting; update (House Bills 2509 and 2510); mental health on aging coalition; biennial report; governor's conference on aging; announcements and public comments.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Veronda L. Durden, 1100 West 49th Street, Austin, Texas 78756, (512) 458–7534.
Filed: September 16, 1997, 9:49 a.m.

TRD-9712305

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Texas School for the Blind and Visually Impaired

Friday, September 26, 1997, 8:15 a.m.

1100 West 45th Street, Room 116

Austin

Board of Trustees, Subcommittee on Finance and Audit

AGENDA:

Approval of Minutes

1. Approval of Minutes from August 1, 1997

Finance Issues

1. Nolan County Farm Contracts

2. Draft Policy CDCA- Gifts and Donations-Legacy Fund

3. Legacy Revenue Report

4. Investments Report

5. Legacy Budget Report

6. Operating Revenue Report

7. Operating Budget Report

8. Contingency Fund Report

9. Fiscal Year 1997–1998 Operating Budget

10. Fiscal Year 1997–1998 Legacy Budget

Audit Items

1. Report from Internal Auditor

Contact: Marjorie L. Heaton, 1100 West 45th Street, Austin, Texas 78756, (512) 206–9133.
Filed: September 17, 1997, 8:25 a.m.

TRD-9712348

♦ ♦ ♦

Friday, September 26, 1997, 9:00 a.m.

1100 West 45th Street, Room 116

Austin

Board of Trustees, Subcommittee on Finance and Audit

AGENDA:

Approval of Minutes

1. Approval of Minutes from August 1, 1997

Finance Issues

1. Nolan County Farm Contracts

2. Draft Policy CDCA- Gifts and Donations-Legacy Fund

3. Legacy Revenue Report

4. Investments Report

5. Legacy Budget Report

6. Operating Revenue Report

7. Operating Budget Report

8. Contingency Fund Report

9. Fiscal Year 1997–1998 Operating Budget

10. Fiscal Year 1997–1998 Legacy Budget

Audit Items

1. Report from Internal Auditor

Contact: Marjorie L. Heaton, 1100 West 45th Street, Austin, Texas 78756, (512) 206–9133.
Filed: September 17, 1997, 8:25 a.m.

TRD-9712349

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Friday, September 26, 1997, 9:00 a.m.

1100 West 45th Street, Room 110

Austin

Board of Trustees, Subcommittee on Policies

AGENDA:

1. Review and Discussion of Policies on September 26, 1997 Agenda:

BDA- School Board Internal Organization: Board Officers and Officials (Amend)

BDAB- Officers and Officials: Duties and Requirements of President (Amend)

BDB- Board Internal Organization: Committees (Amend)

CDCA- Other Revenues: gifts and Donations: Legacy Fund (Adopt)

CE- Annual Operating Budget (Amend)

CF- Accounting (Amend)

CFA- Accounting: Financial Reports and Statements (Amend)

CFC- Accounting: Audits (Amend)

CFEA- Payroll Procedures: Salary Deductions (Amend)

CRB- Board Member and Officer Liability Insurance (Amend)

DAFA- Personnel Welfare: Health (Amend)

DBDA- Conflict of Interest: Dual Employment (Amend)

DEC- Compensation and Benefits: Leaves and Absences (Amend)

DECA- Leaves and Absences: Sick Leave Pooling (Amend)

DFAC- Probationary Contracts: Return to Probationary Status (Amend)

DNA- Performance Appraisal: Evaluation of Teachers (Amend)

DNB- Performance Appraisal: Evaluation of Other Professional Employees (Amend)

DNB-E- Performance Appraisal: Evaluation of Other Professional Employees (Amend)

EMJ- Miscellaneous Instructional Policies: Management of Student Behavior (Adopt)

FFAB- Health Requirements and Services: Immunizations (Amend)

FFAC- Health Requirements and Services: Medical Treatment (Amend)

FFHA- Student Welfare: Sexuality (Amend)

FL- Student Records (Amend)

GE- Relations with Parents or Parents' Organizations (Amend)

Contact: Marjorie L. Heaton, 1100 West 45th Street, Austin, Texas 78756, (512) 206–9133.
Filed: September 17, 1997, 8:53 a.m.

TRD-9712371

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Friday, September 26, 1997, 9:00 a.m.

1100 West 45th Street, Room 151

Austin

Board of Trustees, Subcommittee on Personnel

AGENDA:

1. Consideration of Personnel Policies:

DAFA- Personnel Welfare: Health

DBDA- Conflict of Interest: Dual Employment

DEC- Compensation and Benefits: Leaves and Absences

DECA- Leaves and Absences: Sick Leave Pooling

DFAC- Probationary Contracts: Return to Probationary Status (Amend)

DNA- Performance Appraisal: Evaluation of Teachers (Amend)

DNB- Performance Appraisal: Evaluation of Other Professional Employees (Amend)

DNB-E- Performance Appraisal: Evaluation of Other Professional Employees (Amend)

2. Approval of new contract staff

Steve Allen

Maylene Tompkins

Michelle Rule

Ann Furney

Denise Elliot

3. Consideration of Approval of a Teacher Appraisal System

Contact: Marjorie L. Heaton, 1100 West 45th Street, Austin, Texas 78756, (512) 206–9133.
Filed: September 17, 1997, 9:11 a.m.

TRD-9712376

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Friday, September 26, 1997, 10:00 a.m.

1100 West 45th Street, Room 116

Austin

Board of Trustees

AGENDA:

Approval of Minutes of August 1–2, 1997 Board Meeting; Approval of Board Policies; Consideration of Approval of TSBVI Organizational Chart; Consideration of Approval of Consultants' Contracts over $5,000; Consideration of Approval of a Teacher Appraisal System; Consideration of Approval of Appointment of a Textbook Committee

Contact: Marjorie L. Heaton, 1100 West 45th Street, Austin, Texas 78756, (512) 206–9133.
Filed: September 17, 1997, 9:35 a.m.

TRD-9712381

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Texas Commission for the Deaf and Hard of Hearing

Friday, September 26, 1997, 9:00 a.m.

Brown Heatly Building, Room 7230, 4900 North Lamar

Austin

AGENDA:

Call to Order; Establish a Quorum; Public Comment. Members of the public are invited to make comments not to exceed five minutes on subjects relevant to the business of the Commission; Approval of Minutes of July 25, 1997 Meeting (ACTION); Executive Director's Report including Discussion and Possible action Regarding Sending a Letter to the Round Rock School District regarding Use of Level II Interpreters (ACTION); Deafness Task Force Meeting, and Self-Evaluation Report to the Texas Sunset Advisory Commission; BEI Report including Discussion and Possible Action on Adoption of Amendment to 40 TAC §183.157, Recertification Process (ACTION), and Approval of Certification, Recertification, Revocation of Interpreters; Direct Services Report including Discussion and Possible Action on Proposal of 40 TAC §181.28, Camp SIGN (ACTION), Discussion and Possible Action on Adoption of 40 TAC §181.29, Certification of Deafness for Tuition Waiver (ACTION), Approval of Contract for Facilitation of Services Between State Agencies and Consumers (ACTION) and Approval of Region I Direct Services Reallocation for FY 1998 (ACTION); specialized Telecommunications Devices Assistance Program Report including Discussion and Possible Action on Adoption of 40 TAC §182.1, Purpose (ACTION), Discussion and Possible Action on Adoption of 40 TAC §182.2, Statutory Authority (ACTION), Discussion and Possible Action on Adoption of 40 TAC §182.20, Eligibility (ACTION), Discussion and Possible Action on Adoption of 40 TAC §182.21 Entities Authorized to Certify Disability (ACTION), Discussion and Possible Action on Adoption of 40 TAC §182.22 Fees (ACTION), Discussion and Possible Action on Adoption of 40 TAC §182.23, Vouchers (ACTION), Discussion and Possible Action on Adoption of 40 TAC §182.24 Determination of Voucher Value (ACTION), Discussion and Possible Action on Adoption of 40 TAC §182.25 Redeeming a Voucher (ACTION), and Discussion and Possible Action on Adoption of 40 TAC §182.26, Vendor Listing (ACTION); Setting Dates for Future Commission Meetings, Announcements; Adjournment.

Contact: Margaret Susman, 4800 North Lamar, #310, Austin, Texas 78756, (512) 451–8494.
Filed: September 22, 1997, 9:53 a.m.

TRD-9712587

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Employee Retirement System of Texas

Wednesday, September 24, 1997, 10:00 a.m.

ERS Auditorium-ERS Building, 18th and Brazos

Austin

ERS Board of Trustees

AGENDA:

1. Advisor Sanford C. Bernstein & Company, Inc., Value Portfolio Recommended Universe of Eligible Stocks

2. Consideration of Recommended Revisions to the Investment Policy

3. Recommendations and Approval for the Texas Employees Uniform Group Insurance Program Vendor Selection Process for Fiscal Years After August 31, 1998

4. Executive Director's Report

5. Set Date of Next ERS Board of Trustees Meeting

6. Adjournment

Contact: William S. Nail, 18th and Brazos, Austin, Texas 78701, (512) 867–3336.
Filed: September 16, 1997, 11:56 a.m.

TRD-9712313

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Texas Funeral Service Commission

Tuesday, Wednesday, September 16–17, 1997, 1:00 p.m.

510 South Congress, Commissioner's Board Room

Austin

AGENDA:

Tuesday's meeting: 1 p.m.- Orientation for new commissioners and procedural guidance for Commission meetings (Chairman McNeil). 2:30 p.m.- break. 3:00 p.m.- Preparation for the training session on Wednesday (facilitator: Charles Locklin). 4:30 p.m.- Adjourn.

Wednesday's meeting: 1 p.m.- Administration of the "Oath of Office. 1:30 p.m.- Beginning the group training process: Exploring training expectations and identifying objectives together (facilitator: Charles Locklin). 3 p.m.- break. 3:15 p.m.-Establishing a public service commitment plan through group discussion (facilitator: Charles Locklin) 5 p.m.- Adjourn.

The Training Facilitator: The training facilitator will be Charles Locklin, ACSW, LMSW. He is an independent Health and Human Services Consultant, who specializes in managed healthcare, juvenile treatment programs, advocacy representation, public policy lobbyist, and management planning services. He has extensive experience as an administrator/manager of public agencies and as a facilitator/trainer of administrative planning involving group process.

Editor's Note: This meeting was inadvertently left out of the September 12, 1997 issue.

Contact: Eliza May, M.S.S.W., 510 South Congress Avenue, Suite 206, Austin, Texas 78704–1716, (512) 479–7222.
Filed: September 5, 1997, 2:03 p.m.

TRD-9711740

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Texas Department of Health

Monday, September 29, 1997, 9:30 a.m.

Moreton Building, Room M-618, Texas Department of Health, 1100 West 49th Street

Austin

Midwifery Board, Education Rules Committee

AGENDA:

The committee will discuss and possibly act on: the introduction of committee members; adoption of operational procedures for the committee; and new education rule recommendations.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Belva Alexander, 1100 West 49th Street, Austin, Texas 78756, (512) 458–7111 Extension 2067.
Filed: September 19, 1997, 8:16 a.m.

TRD-9712472

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Texas Health Care Information Council

Tuesday, September 30, 1997, 8:00 a.m.

Joe C. Thompson Center, 26th and Red River Streets

Austin

Non-Hospital Discharge Data and Extended Information Plan Committee

AGENDA:

The Texas Health Care Information Council's Non-Hospital Discharge Data and Expanded Information Plan Committee will convene in open session, deliberate and possibly take formal action on the following items:

Approval of September 5, 1997 minutes; report from HMO TAC, including reconsideration of recommended HEDIS reporting requirements; discussion and recommendation concerning acquisition of consultant's services relating to 25 TAC 1301.31–1301.35; update report concerning proposed HMO/HEDIS training seminar; formal proposal of amendments and rules relating to HMO HEDIS data rules published at 22 TexReg 6442 (July 8, 1997); and consideration and vote concerning required HEDIS performance measures, as specified in 25 TAC 1301.31–1301.35.

Contact: Jim Loyd, 4900 North Lamar OOL-3407, Austin, Texas 78751, (512) 424–6491.
Filed: September 19, 1997, 10:03 a.m.

TRD-9712479

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Tuesday, September 30, 1997, 8:00 a.m.

Joe C. Thompson Center, 26th and Red River Streets

Austin

Hospital Discharge Data Committee

AGENDA:

The Texas Health Care Information Council's Hospital Discharge Data Committee will convene in open session, deliberate and possibly take formal action on the following items:

Approval of September 5, 1997 minutes; status report on hospital discharge data rules proposed September 5, 1997 (published in September 19, 1997 Texas Register); report on information system design and data warehouse project; report from Quality Methods and Consumer Education TAC; and report from Health Information Systems TAC.

Contact: Jim Loyd, 4900 North Lamar OOL-3407, Austin, Texas 78751, (512) 424–6491.
Filed: September 19, 1997, 10:03 a.m.

TRD-9712480

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Tuesday, September 30, 1997, 8:00 a.m.

Joe C. Thompson Center, 26th and Red River Streets

Austin

Appointments Committee

AGENDA:

The Texas Health Care Information Council's Appointments Committee will convene in open session, deliberate and possibly take formal action on the following items:

Approval of September 5, 1997 minutes; discussion and formal recommendation on reconstitution of existing technical advisory committees; and discuss and possibly make revisions to missions and composition of technical advisory committees.

Contact: Jim Loyd, 4900 North Lamar OOL-3407, Austin, Texas 78751, (512) 424–6491.
Filed: September 19, 1997, 10:03 a.m.

TRD-9712482

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Tuesday, September 30, 1997, 9:00 a.m.

Joe C. Thompson Center, 26th and Red River Streets

Austin

Board

AGENDA:

The Texas Health Care Information Council will convene in open session, deliberate and possibly take formal action on the following items:

Approval of September 5, 1997 minutes; presentation by consultant concerning alternative action plans; committee reports; proposal of amendments and rules relating to HMO/HEDIS rules published at 22 TexReg 6442 (July 8, 1997); consideration and formal vote concerning required HEDIS performance measures, per 25 TAC 1301.31–1301.35; authorization to renew/revise Memorandum of Understanding with Texas Department of Health; technical advisory committee reports; review and revision of composition, missions, and sizes of all technical advisory committees; adoption of risk and severity adjustment methodology; staff report; and executive session.

Contact: Jim Loyd, 4900 North Lamar OOL-3407, Austin, Texas 78751, (512) 424–6491.
Filed: September 19, 1997, 10:03 a.m.

TRD-9712483

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Thursday, October 9, 1997, 9:00 a.m.

John Reagan Building, Room 106, 105 West 15th Street

Austin

Public Hearing to Receive Testimony on Proposed Rules Relating to 25 TAC §§1301.11, 1301.12, and 1301.14–1301.19.

AGENDA:

The Texas Health Care Information Council will receive public comments concerning proposed rules relating to 25 TAC §§1301.11, 1301.12, and 1301.14–1301.19. The proposed text is published in the September 19, 1997 Texas Register.

Contact: Jim Loyd, 4900 North Lamar OOL-3407, Austin, Texas 78751, (512) 424–6491.
Filed: September 19, 1997, 10:03 a.m.

TRD-9712481

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Texas Health Insurance Risk Pool

Friday, September 26, 1997, 9:30 a.m.

333 Guadalupe, Room 1264, Tower I, Texas Department of Insurance, Hobby Building

Austin

Board of Directors

AGENDA:

1. Welcome and Introductions — Some members will participate via teleconference because it is difficult or impossible for such members to attend the meeting.

2. Hiring/Staff matters. — Deliberation regarding the retention of outside legal counsel; Possible retention of outside legal counsel; Other matters relating to hiring/staffing.

3. Organization/Administrative Matters — Timelines/Future Meetings of Board/Subcommittees; Plan of Operation; Other general administrative matters

Contact: Rhonda Myron/ Kim Stokes, 333 Guadalupe Street, 333 Guadalupe Street, Austin, Texas 78711, (512) 463–6328.
Filed: September 18, 1997, 4:37 p.m.

TRD-9712470

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Texas Health Reinsurance System

Tuesday, September 30, 1997, 9:00 a.m.

333 Guadalupe, Room 1264, Tower I, Texas Department of Insurance

Austin

Board of Directors

AGENDA:

1. Consider Approval of the Minutes of the June 24, 1997 meeting.

2. Participation by the Public (At this time, the public will be invited to address the Board of Directors on any matter not listed on this Agenda).

3. Report from Administrator, TDI Staff, and Discussion

4. Report from the Actuarial Committee and Discussions

5. Report from the Operations Committee and Discussions- Consideration and Possible Action on Expenses of Board Members, Milliman and Robertson, Metrahealth, and Others.

6. Report from the Access Committee and Discussions

7. Report from the Audit Committee and Discussions

8. Consideration and Possible Action on Hiring Auditor(s) for the System.

9. Consideration and Possible Action on Assessment for System Deficit.

10. Setting the Agenda, Date and Location for Next Board Meeting.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: September 17, 1997, 11:37 a.m.

TRD-9712397

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Texas Higher Education Coordinating Board

Monday, September 29, 1997, 1:00 p.m.

The University of Texas at Dallas, 2601 North Floyd, Student Union Building, Room 2.602–A

Richardson

Special Committee on Texas Chiropractic College

AGENDA:

Introduction of Special Committee; Charge of Special Committee; and Discussion of Findings.

Contact: Marco Montoya, P.O. Box 12788, Capitol Station; Austin, Texas 78711, (512) 483–6540.
Filed: September 17, 1997, 11:37 a.m.

TRD-9712398

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Texas Historical Commission

Friday, September 26, 1997, 10:30 a.m.

Agriculture Museum Conference Room, Texas Capitol, First Floor, Room 1W.14

Austin

Texas Preservation Trust Fund Guardians

AGENDA:

1) Introductions

2) Overview of the 75th Legislative Session

3) Trust Fund Program Update

4) Discussion Session.

5) Closing Announcements

Contact: Stan Graves/Lisa Harvell, P.O. Box 12276, Austin, Texas 78701, (512) 463–6094.
Filed: September 18, 1997, 8:47 a.m.

TRD-9712436

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State Independent Living Council

Thursday-Friday, October 2–3, 1997, 6:00 p.m. and 8:00 a.m. respectively

Holiday Inn Town Lake, 20 Interregional Highway

Austin

AGENDA:

October 2

10:00 — Call to Order (Agenda, Minutes, Response to Questions, Future Meeting Dates)

10:30 — Reports (TRC, TCB, Financial)

11:00 — Committee Meetings

1:30 — Committee Reports

3:30 — Public Comment

4:30 — Full Council Discussion: Action Plan, Needs Assessment, State Plan

October 3

8:00 — Full Council Discussion (continued from previous day)

9:00 — Vote on Committee Recommendations

10:15 — Committee Assignments

10:30 — Committee Meetings

1:30 — Committee Reports/Action

3:00 — Adjourn

Contact: John Meinkowsky, 555 North Lamar, Suite J-125, Austin, Texas 78751, (512) 467–0744.
Filed: September 22, 1997, 9:35 a.m.

TRD-9712586

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Texas Department of Insurance

Monday, October 13, 1997, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454–97–0934.C. To consider whether disciplinary action should be taken against GEORGE LARRY INGRUM, Pampa, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License and a Local Recording Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: September 22, 1997 at 10:01 a.m.

TRD-9712594

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Wednesday, October 15, 1997, 1:00 p.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454–97–1563.C. To consider the application of BRUCE W. BRENNER, San Antonio, Texas, for a prepaid legal services license to be issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: September 22, 1997 at 10:01 a.m.

TRD-9712595

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Thursday, October 16, 1997, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454–97–1447.C. To consider whether disciplinary action should be taken against PAUL HOANG, Houston, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License issued by the Texas Department of Insurance. (Reset from 9/23/97).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: September 22, 1997 at 10:01 a.m.

TRD-9712596

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Tuesday, October 21, 1997, 1:00 p.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454–97–1629.C. To consider whether disciplinary action should be taken against MARK A. DERR, (Landmark Insurance Services of Texas Inc.) Bedford/Fort Worth, Texas, for a Local Recording Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: September 22, 1997 at 10:03 a.m.

TRD-9712597

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Wednesday, October 22, 1997, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454–97–1564.C. In the matter of WYLIE G. PORTERFIELD.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: September 22, 1997 at 10:03 a.m.

TRD-9712598

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General Land Office

Wednesday, September 24, 1997, 3:00 p.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 831

Austin

Veterans Land Board

AGENDA:

Approval of previous board meeting minutes; request by William E. Stephens for reinstatement of eligibility for the Housing Assistance Program; consideration of Resolution of the Veterans Land Board of the State of Texas authorizing preliminary matters in connection with the proposed issuance and sale of State of Texas Veterans' Housing Assistance Program, Fund II Series 1997A Bonds; consideration of resolution of the Veterans Land Board of the State of Texas authorizing preliminary matters in connection with the proposed issuance and sale of State of Texas Veterans' Housing Assistance Program, Fund 11 Series 1997B Taxable Bonds; consideration of resolution of the Veterans Land Board of the State of Texas authorizing preliminary matters in connection with the proposed issuance and sale of State of Texas Veterans' Land Bonds, Series 1998; approval and ratification of extension of Liquidity Agreement relating to State of Texas Adjustable Convertible Extendable Securities, Veterans' Housing Assistance Bonds, Series 1994A; approval and ratification of extension of Liquidity Agreement relating to State of Texas Veterans' Housing Assistance Program, Fund II Series 1995 Refunding Bonds; approval and ratification of substitution of bonds relating to the interest rate swap agreement of August 22, 1996 between AIG Financial Products Corporation and the Veterans Land Board of the State of Texas; quarterly investment report for the period ending June 30, 1997; Staff Reports.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Austin, Texas 78701, Room 836
Filed: September 16, 1997, 3:27 p.m.

TRD-9712332

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Texas Department of Licensing and Regulation

Thursday, September 25, 1997, 9:30 a.m.

E.O. Thompson Building, 920 Colorado, 4th Floor Conference Room

Austin

Water Well Drillers Advisory Council

AGENDA:

A. Call to Order

B. Roll Call and Certification of Quorum-Approval of Minutes — Meeting of July 25, 1997

C. Discussion of Water Well Driller program transfer- Tommy V. Smith, Executive Director

D. Discussion of qualifications and recommendations on applicants for certification

E. Discussion and recommendations on applications for driller-trainee registration

F. Staff Reports

G. Executive Session

H. Open Session/Public Comment

I. Discussion of date, time and location of next Council meeting

J. Adjournment

Persons who plan to attend this meeting and require assistance are requested to contact Caroline Jackson at (512) 463–7348 two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Steve Wiley, 920 Colorado, Austin, Texas 78711, (512) 463–8876.
Filed: September 17, 1997, 11:37 a.m.

TRD-9712400

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Monday, September 29, 1997, 1:30 p.m.

E.O. Thompson Building, 920 Colorado, 4th Floor Conference Room

Austin

Architectural Barriers Advisory Committee

AGENDA:

I. Call to Order

II. Record of Attendance

III. Approval of Minutes

IV. Staff Reports

A. Reviews

B. Inspections

C. Complaints

V. Public Comment

VI. Subcommittee Reports

A. Rules

B. Program Review

C. Standards

VII. New Business

VIII. Schedule Next Meeting

IX. Adjournment

Persons who plan to attend this meeting and require assistance are requested to contact Caroline Jackson at (512) 463–7348 two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Rick Baudoin, 920 Colorado, Austin, Texas 78711, (512) 463–3519.
Filed: September 17, 1997, 11:37 a.m.

TRD-9712399

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Tuesday, September 30, 1997, 10:30 a.m., rescheduled from Friday, August 8, 1997

E.O. Thompson Building, 920 Colorado, 4th Floor Conference Room 420

Austin

Consumer Protection Section, Auctioneering

AGENDA:

According to the complete agenda, the Department will hold Administrative Hearings to consider possible assessment of administrative penalties against the Respondents, Robert Dill and Steven T. Eddington, possible revocation of the Respondent's licenses, and reimbursement to the Auctioneer Education and Recovery Fund for failing to pay all amounts due the seller within 15 banking days in violation of Tex. Rev. Civ. Stat. Ann. art 8700 (the Act) §7(a)(4) and 16 Tex. Admin. Code (TAC) §67.101(4). The Department will also consider the complainant's claim against the Auctioneer Education and Recovery Fund in accordance with the Act, §5C. This Administrative Hearing will be held pursuant to the Act and Tex. Rev. Civ. Stat. Ann. art 9100; the Tex. Govt. Code, ch 2001 (APA); and 16 TAC ch 67.

Persons who plan to attend this meeting and require assistance are requested to contact Caroline Jackson at (512) 463–7348 two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463–3192.
Filed: September 19, 1997, 2:44 p.m.

TRD-9712539

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Wednesday, October 1, 1997, 9:00 a.m.

E.O. Thompson Building, 920 Colorado, First Floor Conference Room 108

Austin

Enforcement Division, Boilers

AGENDA:

According to the complete agenda, the Department will hold Administrative Hearings to consider the possible assessment of administrative penalties and inspection fees against the following Respondents: Clairmont Apartments; Days Inn Hobby Airport; Devonshire North Apartments; Eckerd (Irving); and The Oaks Apartments for failing to pay boiler inspection/certification fees to obtain certificates of operation for Respondents' boiler(s), a violation of Tx.Health & Safety Code Ann. (the Code) ch. 755 and 16 Tex. Admin. Code (TAC) Ch. 65, pursuant to the Code and Tex. Rev. Civ. Stat. Ann. art. 9100; Tex. Govt. Code ch. 2001 (APA); and 16 TAC ch. 65.

Persons who plan to attend this meeting and require assistance are requested to contact Caroline Jackson at (512) 463–7348 two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Paula Hamje, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463–3192.
Filed: September 19, 1997, 2:43 p.m.

TRD-9712537

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Wednesday, October 1, 1997, 1:00 p.m.

E.O. Thompson Building, 920 Colorado, First Floor Conference Room 108

Austin

Enforcement Division, Boilers

AGENDA:

According to the complete agenda, the Department will hold Administrative Hearings to consider the possible assessment of administrative penalties and inspection fees against the following Respondents: El Paso Community College, Elm Street Apartments; Fabri Care Cleaners; Famous Cleaners; Fifth Avenue Cleaners; and First Korean United Methodist for failing to pay boiler inspection/certification fees to obtain certificates of operation for Respondents' boiler(s), a violation of Tx.Health & Safety Code Ann. (the Code) ch. 755 and 16 Tex. Admin. Code (TAC) Ch. 65, pursuant to the Code and Tex. Rev. Civ. Stat. Ann. art. 9100; Tex. Govt. Code ch. 2001 (APA); and 16 TAC ch. 65.

Persons who plan to attend this meeting and require assistance are requested to contact Caroline Jackson at (512) 463–7348 two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Paula Hamje, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463–3192.
Filed: September 19, 1997, 2:43 p.m.

TRD-9712538

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Texas Mental Health and Mental Retardation Board

Wednesday, September 24, 1997, 9:30 a.m.

909 West 45th Street (Auditorium)

Austin

Medicaid Committee

AGENDA:

1. Citizens Comment

2. Update on the Implementation of the New Rate Setting Methodology

3. Review and Approval of Medicaid Reimbursement Rates for the Home and Community-based Waiver Services- OBRA (HCS-O) Effective September 1, 1997, through August 31, 1998

4. Review and Approval of Medicaid Reimbursement for Non-State Operated Intermediate Care Facilities/Mental Retardation Model-Based Rates Effective January 1, 1997, through December 31, 1997

5. Executive Session under Texas Government Code §551.071 to Discuss Potential and Pending Litigation, Institute of Cognitive Development (Develo-cepts), Inc. and Carroll Stroman, dba Bitter Creek Farm v Texas Department of Mental Health and Mental Retardation.

6. Consideration and Possible Action Concerning the Emergency Adoption of New 25 TAC §§406.151, 406.155 and 406.156 of Chapter 406, Subchapter D, Governing ICF/MR Programs: Reimbursement Methodology, and the Contemporaneous Repeal of Existing 25 TAC §§406.151, 406.155. and 406.156, Subchapter D, Governing IVF/MR Programs: Reimbursement Methodology, Including a Possible Finding that Imminent Peril to Public Health, Safety or Welfare Requires Adoption on an Emergency Basis.

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206–4506, (voice of RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206–4506.
Filed: September 16, 1997, 5:03 p.m.

TRD-9712346

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Wednesday, September 24, 1997, 10:00 a.m.

909 West 45th Street (Auditorium)

Austin

Business and Asset Management Committee

AGENDA:

1. Citizens Comment

2. Update on Real Property Transactions Previously Approved by the Board: Lease of Bond-Funded Community Facilities; Lease at Kerrville State Hospital to the Alamo Junior College District; Lease at Kerrville State Hospital to the YMCA of San Antonio; Implementation of the Asset Management Policy

3. Update on Workers Compensation and Risk Management

4. Consideration of Approval of a Capital Improvement Project at the Big Spring State Hospital (Animl Assisted Therapy Building)

5. Consideration of Approval of a Capital Improvement Project at the San Antonio State Hospital (Shade Shelters)

6. Consideration of Approval of the Transmittal of the Annual Report Concerning the Use and Proceeds of Community MHMR Center Bond Issues

7. Consideration of Approval of the Submission of $26,020,000 in General Obligation Bond Financing of the FY 1998–1999 Repair or Rehabilitation of Buildings and Facilities Project to the Texas Public Finance Authority and the Bond Review Board.

8. Consideration of a Proposal to Convey Real Property at the Big Spring State Hospital for the Purpose on Constructing a Veterans' Home.

9. Consideration of Items Related to Central Park in Austin, Texas: A. Amendment to the MedCath Sublease: B. Proposal by W. 38th Street. Ltd., to Amend the MedCath Site Plan

10. Consideration of Items Related to Triangle Square in Austin, Texas: A. Amendments to the Master Lease Agreement with Triangle Retail, Ltd; B. Approval of Amendments to the Conceptual Site Plan — or- Designation of Authority to Approve Amendments to the Conceptual Site Plan to the Commissioner; C. Summary of Sublease Terms with Barnes & Noble Bookseller

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206–4506, (voice of RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206–4506.
Filed: September 16, 1997, 5:03 p.m.

TRD-9712345

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Wednesday, September 24, 1997, 1:00 p.m.

909 West 45th Street (Auditorium)

Austin

Audit and Financial Oversight Committee

AGENDA:

1. Citizens Comment

2. Audit Activity Update

3. Consideration of Approval of the FY 1998–1999 Workload

4. Consideration of Approval of the FY 1998 Budget for the Office of Internal Audit

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206–4506, (voice of RELAY TEXAS),Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206–4506.
Filed: September 16, 1997, 5:03 p.m.

TRD-9712344

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Wednesday, September 24, 1997,, 1:30 p.m.

909 West 45th Street (Auditorium)

Austin

Planning and Policy Development Committee

AGENDA:

1. Citizens Comment

2. Briefing on the Rules Sunset Process

3. Legislative Update and Briefing on the Sunset Process

4. Update on the Strategic Planning Process

5. Consideration of Approval of the Designation of Single Portal Authority to MHMRA of Harris County

6. Consideration of Approval of the Submission of the Agency's Biennial Operating Plan for Information Resources to the Department of Information Resources

7–12. Consideration of Approval of the following: Adoption of New Chapter 401, Subchapter G, Governing Community Mental Health and Mental Retardation Centers, with the Contemporaneous Repeal of Existing §§401.451–401.463, 401. 465, and 401.466; Adoption of Repeal of §§401.46, 401.55, and 401.56 of Chapter 401, Subchapter B, concerning Interagency Agreements; Adoption of Repeal of §405.725, Concerning Determination of the Least Restrictive Environment, of Chapter 405, Subchapter BB, Concerning Admissions, Transfers, Furloughs, and Discharges- State Schools for the Retarded; Adoption of Repeal of §§405.821–405.835 of Chapter 405, Subchapter GG, Concerning Prescribing of Psychoactive Drugs; Adoption of Repeal of §§402.281–402.298 of Chapter 402, Subchapter H, Concerning Placement Appeals; Approval of the Emergency Adoption of Amendments to Chapter 405, Subchapter J, Governing Surrogate Decision-making for Community-based ICF/MR/RC Facilities.

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206–4506, (voice of RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206–4506.
Filed: September 16, 1997, 5:03 p.m.

TRD-9712343

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Thursday, September 25, 1997, 9:00 a.m.

909 West 45th Street (Auditorium)

Austin

Facilities Governance Committee

AGENDA:

1. Citizens Comment

2. Update Regarding Mental Retardation Facilities Governing Body Activities: Client Mix Factors; Projected Facility Census Targets; Admissions; Budget Issues for FY 98; Partnering Activities; Other Items: Special Characteristics by Facility; Client Mix Trends, Third Quarter Performance Indicator Summary; MR Facilities FY 1998 Operating Plan

3. Update Regarding Mental Health Facilities Governing Body Activities: Governing Body Bylaws; Consolidation of Vernon State Hospital and Wichita Falls State Hospital (Update): RAJ Status Report; FY 1998 Target Revenues; Census Trends; Employee Caps; Third Quarter Performance Indicator Summary

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206–4506, (voice of RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206–4506.
Filed: September 16, 1997, 5:03 p.m.

TRD-9712342

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Thursday, September 25, 1997 — 10:30 a.m.

909 West 45th Street (Auditorium)

Austin

AGENDA:

I. Call to Order: Roll Call

II. Citizen's Comments

III. Approval of the Minutes of the August 7, 1997 meeting

IV. Issues to be considered:

1. Chairman's Report: Consideration of Approval of Meeting Dates for Calendar Year 1998

2. Commissioner's Report: Announcement of Appointment of Members to the House Bill 1734 Committee: Presentation on the Dallas 1915(b) Project; Medical Director's Report

Items #3–20 Approval items to be considered per agenda.

21. Executive Session under Texas Government Code §551.071 to Discuss Potential and Pending Litigation, RAJ v. Gilbert, Institute of Cognitive Development, (Develo-cepts, Inc. and Carroll Stroman, dba Bitter Creek Farm v. Texas Department of Mental Health and Mental Retardation.

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206–4506, (voice of RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206–4506.
Filed: September 16, 1997, 5:03 p.m.

TRD-9712341

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Texas Military Facilities Commission

Saturday, October 4, 1997– Personnel Committee — 9:00 a.m., Full Commission, 1:00 p.m.

2200 West 35th Street, Building 64

Austin

Personnel and Full Commission Meetings

AGENDA:

1. Administrative Matters

2. Executive Directors Update

3. Property Matters

4. Executive Session

5. Public Comments, set next meeting, close of business

Persons with disabilities who require ADA accommodation for the meeting, please contact Julie Wright at least three days prior to the meeting — (512) 406–6971.

Contact: Julie Wright, P.O. Box 5426, Austin, Texas 78763, (512) 406–6971.
Filed: September 22, 1997, 8:40 a.m.

TRD-9712563

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Texas Natural Resource Conservation Commission

Wednesday, October 1, 1997, 9:30 a.m. and 1:00 p.m.

Room 201S, Building E, 12100 Park 35 Circle

Austin

AGENDA:

The Commission will consider approving the following matters on the agenda: Budget; District Matter; Hearing Request; Class 2 Modification; Agreed Air Enforcements; Resolutions; Rules; Executive Session; the Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time. (Registration for 9:30 agenda starts 8:45 until 9:25). The Commission will consider approving Administrative Law Judge's Proposal for Decision; Motions for Rehearing. (Registration for 1:00 p.m. Agenda Starts 12:30 p.m. until 1:00 p.m..)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239–3317.
Filed: September 19, 1997, 2:42 p.m.

TRD-9712536

♦ ♦ ♦

Wednesday, October 1, 1997, 9:30 a.m.

Room 201S, Building E, 12100 Park 35 Circle

Austin

REVISED AGENDA:

The Commission will consider approving the following matters on the agenda: Resolution.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239–3317.
Filed: September 19, 1997, 3:49 p.m.

TRD-9712546

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Tuesday, October 7, 1997, 10:00 a.m.

1700 North Congress Avenue, 11th Floor, Suite 1100, Stephen F. Austin Building

Austin

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application filed with the Texas Natural Resource Conservation Commission by DAVIS BAYOU SERVICE COMPANY, d/ba CYPRESS LAKES WATER SYSTEM for a change in water and sewer rates effective April 1, 1997 for its service area located in Liberty County, Texas. The Commission staff has requested a public hearing on its own motion under §13.187(b) of the Texas Water Code. SOAH Docket number 582–97–1585.

Contact: Pablo Carrasquillo, P.O. Box 13025, Austin, Texas 78711–3025, (512) 475–3445.
Filed: September 19, 1997, 1:25 p.m.

TRD-9712511

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Thursday, October 23, 1997, 10:00 a.m.

13302 Sixth Street, Mae S. Bruce Library

Santa Fe

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application filed with the Texas Natural Resource Conservation Commission by WASTE MANAGEMENT OF TEXAS, INC. for an amendment to their existing municipal solid waste permit. This permit amendment is designated as MSW1721–A, and if approved, will authorize an

increase in the permitted height from 79 feet mean sea level to a maximum elevation of 273 feet mean sea level. The proposed facility will have a maximum height above the existing ground of approximately 240 feet. The proposed redesign decreases the area within the facility permitted boundary from 348 to 279 acres. The permitted disposal area within the boundary is proposed to increase from 70 acres to 170 acres. The permittee is authorized to dispose of municipal solid waste resulting from or incidental to municipal, community, commercial, institutional and recreational activities; municipal solid waste resulting from construction or demotion projects, Class 1 industrial solid waste, Class 2 industrial solid waste, Class 3 industrial solid waste and special wastes that are properly identified. The acceptance of Class 1, 2 or 3 industrial solid waste, and/or special waste is contingent upon such waste being handled in accordance with 30 TAC §§330.136 and 330.137, and in accordance with limitations and special provisions provided in the permit and application. Solid waste may be initially accepted for disposal at a rate of approximately 155,500 yards per month, but not limited to this amount. The facility is located directly north of State Highway 6, approximately one half (1/2) mile east of the city limits of Alvin in Galveston County, Texas. Further described as 17 miles south of Houston, Texas. SOAH Docket Number 582–97–1584.

Contact: Pablo Carrasquillo, P.O. Box 13025, Austin, Texas 78711–3025, (512) 475–3445.
Filed: September 16, 1997, 9:11 a.m.

TRD-9712322

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Thursday, October 23, 1997, 6:30 p.m.

Town Hall in City Hall, 118 East Tyler

Harlingen

Office of the Chief Clerk

AGENDA:

For an informal public meeting concerning an application by the CITY OF HARLINGEN to the Texas Natural Resource Conservation Commission (TNRCC) for a registration (Proposed Registration Number MSW40110) to construct and operate a Type I municipal solid waste transfer station. The proposed site contains about 4.5 acres of land and, if approved will receive approximately 270 tons of municipal solid waste per day. The proposed facility will be located on the east side of the City of Harlingen, approximately 0.8 miles east of the intersection of Loop 409 and FM 106, and located between FM106 and Arroyo Colorado in Cameron County, Texas.

Contact: Office of Public Assistance, Mail Code 108, P.O. Box 13087, Austin, Texas 78711–3087, 1–800–687–4040.
Filed: September 19, 1997, 10:38 a.m.

TRD-9712486

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Texas Council on Offenders with Mental Impairments

Monday, October 6, 1997, 9:30 a.m.

DoubleTree Hotel, Phoenix South Ballroom, 6505 IH35 North

Austin

Planning/Legislative and Program/Research Committees

AGENDA:

I. Call to Order

II. Public Comments

III. Approval of Minutes

IV. House Bill 1747 Initiatives/Bill Analysis

V. Strategies for Addressing Senate Interim Charges

VI. Outstanding Policy/Procedural Issues

Adjourn

Contact: Marcia L. Powders, 8610 Shoal Creek Boulevard, Austin, Texas 78757, (512) 406–5406.
Filed: September 19, 1997, 2:49 p.m.

TRD-9712542

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Monday, October 6, 1997, 1:30 p.m.

DoubleTree Hotel, Phoenix South Ballroom, 6505 IH35 North

Austin

Full Council Meeting

AGENDA:

I. Call to Order

II. Roll Call

III. Public Comments/ Introduction of Guests

IV. Approval of Minutes

V. Committee Reports

• Executive Committee

• Planning/Legislative and Program/Research Committee

VI. Director's Report

• FY 1998 Program Report

• FY 1997 Special Needs Parole Overview

• FY 1997 Continuity of Care Overview and Statistics

• FY 1997 Contract Budgets Report

• Technical Assistance Manual

Adjourn

Contact: Marcia L. Powders, 8610 Shoal Creek Boulevard, Austin, Texas 78757, (512) 406–5406.
Filed: September 19, 1997, 2:49 p.m.

TRD-9712543

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Texas Board of Pardons and Paroles

Tuesday, September 23, 1997, 8:00 a.m.

1414 Colorado Street, Room 104, State of Texas Law Center

Austin

I. Regular Session

A. Recognition of Guests

B. Presentation by TDCJ-Parole Division

C. Consent Items

D. Board Committee and Staff Reports

E. Consideration and Action- Petition for Rule/Tussell Turner

F. Adoption of Proposed Rules as Published in the June 17, 1997 issue of the Texas Register (22 TexReg 5816).

G. Adoption of Proposed Amendments to 37 TAC Chapter 141, Chapter 149, and proposed new rules under 37 TAC Chapter 146, et.seq.

H. Adoption of Proposed Repeal of 37 TAC Chapter 145, et.seq.

II. Executive Session

A. Discussion with attorney concerning Garrett v. Byrd, et al.; Johnson v. Rodriguez, et al; McBride v. Johnson; and Martin v. Rodriguez cases. (Closed in accordance with §551.071, Government Code).

B. Discussion of matters made confidential under State Bar Disciplinary Rules of Professional Conduct. (Closed in accordance with §551.071, Government Code).

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Juanita Llamas, P.O. Box 13401, Austin, Texas 78711, (512) 463–1702l
Filed: September 15, 1997, 3:48 p.m.

TRD-9712296

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Texas Board of Private Investigators and Private Security Agencies

Monday, September 29, 1997, 8:30 a.m.

4930 South Congress, Suite C-305, Texas Board of Private Investigators

Austin

Board

AGENDA:

I. Executive Session to Consider, Review, Discuss, and Evaluate the Applications Received and the Applicants for the Executive Director Position Pursuant to §551.074, Texas Government Code.

II. Return to Open Session for Further Consideration, Review, Discussion, Evaluation or Action on the Applications Received and the Applicants for the Executive Director Position Pursuant to §551.074, Texas Government Code.

III. Executive Session to Consult with Attorney Concerning Pending or Contemplated Litigation, Pursuant to §551.071, Texas Government Code.

IV. Return to Open Session for Discussion and possible Board Action after consultation with Attorney Concerning Pending or Contemplated Litigation, Pursuant to §551.071, Texas Government Code.

Contact: Larry R. Shimek, P.O. Box 13509, Austin, Texas 78711, (512) 463–5545.
Filed: September 17, 1997, 2:10 p.m.

TRD-9712406

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Texas Department of Protective and Regulatory Services

Friday, September 26, 1997, 9:30 a.m.

701 West 51st Street, John H. Winters Building, Public Hearing Room, 125–W

Austin

Board of Protective and Regulatory Services

AGENDA:

1. Call to Order. 2. Reading, correction and approval of minutes of July 25, 1997 meeting. 3. Adult Protective Services and Baylor College of Medicine join forces to serve abused and neglected elders. 4. Public Testimony. 5. Report by Chairman. 6. Report by Executive Director. 7. Staff Reports: a. Budget/Finance Report. b. Consideration and approval of Fiscal Year 1998 Agency Operating Plan.* c. Automation Report. d. Consideration and approval of the Fiscal Year 1998 Internal Audit Plan.* 8. New Business. 9. Old business. 10. Adjourn. *Denotes Action Items.

Contact: Virginia Guzman, P.O. Box 149030, Mail Code E-554, Austin, Texas 78714–9030, (512) 438–3765.
Filed: September 17, 1997, 4:05 p.m.

TRD-9712423

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Texas Public Finance Authority

Wednesday, September 24, 1997, 10:30 a.m.

John H. Reagan Building, 105 West 15th Street, Room 106

Austin

Board

AGENDA:

1. Call to order.

2. Approval of Minutes of August 20, 1997 Board Meeting

3. Consider a request for financing from the State Preservation Board in the amount of approximately $10 million for the initial phase of construction of a State History Museum, and select a method of sale.

4. Consider an amendment to the General Services Commission's Request for Financing to increase the amount of the estimated project costs by approximately $1.5 million, from $59.5 million to $61 million, to finance Phase I of the renovation of the old State Insurance Building, located at 11th and San Jacinto Streets, Austin, Texas.

5. Consider the selection of an underwriting syndicate for a revenue bond issue of approximately $59.5 million to finance construction

projects for the General Services Commission and possible refunding and related matters.

6. Other business. Information Items from the Executive Director

1. Status of next SCSC defeasance

2. Status of Liquidity Agreement for MLPP CP Program

7. Adjourn.

Persons with disabilities, who have special communication or other needs, who are planning to attend the meeting should contact Jeanine Barron or Marce Watkins at (512) 463–5544. Requests should be made as far in advance as possible. If you need any additional information contact Jeanine Barron, (512) 463–5544, 300 West 15th Street, Suite 411, Austin, Texas 78701.

Contact: Jeanine Barron, 300 West 15th Street, Suite 411, Austin, Texas 78701, (512) 463–5544,
Filed: September 16, 1997, 10:15 a.m.

TRD-9712308

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Public Utility Commission of Texas

Tuesday, September 23, 1997, 9:00 a.m.

1701 North Congress Avenue

Austin

AGENDA:

There will be an Open Meeting for discussion, consideration and possible action regarding: Docket Number 17420, Petition for Expanded Local Calling Service from Brashear Exchange to the Exchange of Greenville; Project Number 17531– Rulemaking Concerning Schools, Libraries and Educational Discounts Pursuant to FCC Universal Service Fund Order; Docket Number 16189, Petition of MFS Communications Company, Inc. for Arbitration of Pricing of Unbundled Loops; Docket Number 16196, Petition of Teleport Communications Group, Inc. for Arbitration to Establish an Interconnection Agreement; Docket Number 16226, Petition of AT&T Communications of the Southwest, Inc. for Compulsory Arbitration to Establish an Interconnection Agreement between AT&T and Southwestern Bell Telephone Company; Docket Number 16285, Petition of MCI Telecommunication Corporation and Its Affiliate MCIMetro Access Transmission Services, Inc. for Arbitration and Request for Mediation Under the Federal Telecommunications Act of 1996; Docket Number 16290, Petition of American Communications Services, Inc. and Its Local Exchange Operating Subsidiaries for Arbitration with SWB Pursuant to the Telecommunications Act of 1996; Docket Number 16455, Petition of Sprint communications Company L.P. for Arbitration of Interconnection Rates, Terms, Conditions, and Prices from Southwestern Bell Telephone Company; Docket Number 17065, Petition of Brooks Fiber Communications of Texas, Inc. for Arbitration with SWB; Docket Number 17579, Application of AT&T for Compulsory Arbitration of Further Issues to Establish an Interconnection Agreement Between AT&T and SWB; Docket Number 17587, Request of MCI Telecommunications Corporation and Its Affiliate, MCIMetro Access Transmission Services, Inc. for Continuing Arbitration of Certain Unresolved Provisions of the Interconnection Agreement Between MCI and SWB; Docket Number 17781, Complaint of MCI Against SWB for Violation of Commission Order in Docket Number 16285 Regarding CABS Ordering and Billing Processing.

Contact: Rhonda Dempsey, 1701 N. Congress Avenue, Austin, Texas 78711, (512) 936–7308.
Filed: September 16, 1997, 9:11 a.m.

TRD-9712302

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Wednesday, September 24, 1997, 9:30 a.m.

Senate Chamber, State Capitol

Austin

AGENDA:

The Public Utility Commissioners will meet with the Senate Interim Committee on Economic Development, Chaired by Senator David Sibley, to participate in public testimony regarding the following issues: Status of Competition in the Local Market; Use of Resale, Facilities and Unbundled Network Elements; Universal Service and Access Charge Reform; Arbitration Agreements; Impact of the FCC's Ameritech Decision on Southwestern Bell Entering the InterLATA Long Distance Market; and Update on the Telecommunications Infrastructure Fund.

Contact: Barbara Henderson, Room 370, Sam Houston Building, Austin, Texas 78711, (512) 463–0365.
Filed: September 16, 1997, 1:20 p.m.

TRD-9712316

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Wednesday, September 24, 1997, 1:00 p.m.

1701 North Congress Avenue

Austin

AGENDA:

There will be an Open Meeting for discussion, consideration, and possible action regarding: Docket Number 17420, Petition for Expanded Local Calling Service from Brashear Exchange to the Exchange of Greenville; Docket Number 16189, Petition of MFS Communications Company, Inc. for Arbitration of Pricing of Unbundled Loops; Docket Number 16169, Petition of Teleport Communications Group, Inc. for Arbitration to establish an Interconnection Agreement; Docket Number 16226, Petition of AT&T Communications of the Southwest, Inc. for Compulsory Arbitration to Establish an Interconnection Agreement between AT&T and Southwestern Bell Telephone Company; Docket Number 16285, Petition of MCI Telecommunication Corporation and Its Affiliate MCIMetro Access Transmission Services, Inc. for Arbitration and Request for Mediation Under the Federal Telecommunications Act of 1996; Docket Number 16290, Petition of American Communications Services, Inc. and Its Local Exchange Operating Subsidiaries for Arbitration with SWB Pursuant to the Telecommunications Act of 1996; Docket Number 16455, Petition of Sprint Communications Company L.P. for Arbitration of Interconnection Rates, Terms, Conditions, and Prices from Southwestern Bell Telephone Company; Docket Number 17065, Petition of Brooks Fiber Communications of Texas, Inc. for Arbitration with SWB; Docket Number 17579, Application of AT&T for Compulsory Arbitration of Further Issues to Establish an Interconnection Agreement Between AT&T and SWB; Docket Number 17587, Request of MCI Telecommunications Corporation and Its Affiliate, MCIMetro Access Transmission Services, Inc. for Continuing Arbitration of Certain Unresolved Provisions of the Interconnection Agreement Be-

tween MCI and SWB; Docket Number 17781, Complaint of MCI Against SWB for Violation of Commission Order in Docket Number 16285 Regarding CABS Ordering and Billing Processing.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936–7308.
Filed: September 16, 1997, 1:38 p.m.

TRD-9712317

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Friday, September 26, 1997, 9:30 a.m.

Senate Chamber, State Capitol

Austin

AGENDA:

The Public Utility Commissioners will meet with the Senate Interim Committee on Economic Development, chaired by Senator David Sibley, to participate in public testimony regarding electric utility restructuring.

Contact: Barbara Henderson, Sam Houston Building, Room 370, Austin, Texas 78711, (512) 463–0365.
Filed: September 18, 1997, 2:07 p.m.

TRD-9712454

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Railroad Commission of Texas

Tuesday, September 30, 1997, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-–111

Austin

AGENDA:

According to the complete agenda, the Railroad Commission will consider various applications and other matters within the jurisdiction of the agency including oral arguments at the time specified on the agenda. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The Commission may meet in Executive Session on any items listed above as authorized by the Open Meetings Act.

Contact: Lindil C. Fowler, Jr. P.O. Box 12967, Austin, Texas 78711–2967, (512) 463–7033.
Filed: September 19, 1997, 4:34 p.m.

TRD-9712559

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Structural Pest Control Board

Friday, September 26, 1997, 2:00 p.m.

1106 Clayton Lane, Suite 100 LW

Austin

Non-Pesticidal Committee

AGENDA:

1. Discussion non-pesticidal use.

Contact: Benny Mathis, 1106 Clayton Lane, Suite 100 LW, Austin, Texas 78723, (512) 451–7200.
Filed: September 18, 1997, 2:57 p.m.

TRD-9712457

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Teacher Retirement System of Texas

Thursday, September 25, 1997, 8:30 a.m.

1000 Red River, Room 229E

Austin

Board of Trustees Audit Committee

AGENDA:

1. Approval of Minutes of the June 26, 1997 Audit Committee Meeting- Williamson

2. Quarterly Report of the Internal Audit Department-Henry

a. 1997 Plan Status

b. Status of Audit Recommendations

3. Consideration of Internal Audit Plan for 1997–1998–Henry

4. Discussion of 1997 Annual Financial Audit Plans-Bill Wood, State Auditor's Office

5. Review Internal Audit Department Reports

a. Investment Market Value

b. Claims Verification

6. Consideration of Audit Committee Charter-Williamson

7. Report of Investment Accounting System Implementation (PAM)-Pin

8. Consideration of Annual Performance Evaluation and Salary for the Director of Internal Audit (Executive Session)

For ADA assistance, call John R. Mercer, (512) 397–6418 or TDD (512) 397–6444 or (800) 841–4497 at least two days prior to the meeting.

Contact: John R. Mercer, 1000 Red River, Austin, Texas 78701–2698, (512) 397–6418.
Filed: September 17, 1997, 3:55 p.m.

TRD-9712419

♦ ♦ ♦

Thursday, September 25, 1997, 10:30 a.m.

1000 Red River, Room 514E

Austin

Board of Trustees Policy Committee

AGENDA:

1. Approval of Minutes of July 10, 1997 Meeting

2. Consideration of TRS Code of Ethics for Consultants and Agents

3. Consideration of Internal Audit Charter

4. Consideration of Soft Dollar Policy

5. Preliminary Review of By-laws for Board of Trustees

6. Review of Policy Plan for 1997–1998

For ADA assistance, call John R. Mercer, (512) 397–6418 or TDD (512) 397–6444 or (800) 841–4497 at least two days prior to the meeting.

Contact: John R. Mercer, 1000 Red River, Austin, Texas 78701–2698, (512) 397–6418.
Filed: September 17, 1997, 3:55 p.m.

TRD-9712420

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Thursday, September 25, 1997, 11:30 a.m.

1000 Red River, Room 229E

Austin

Board of Trustees Benefits Committee

AGENDA:

1. Approval of Minutes of July 24, 1997 Meeting

2. Report on BeST Project- Marian Miller and Amy Morgan

3. Items to Consider for Recommendation to the Board- Mrs. Koontz

a. Consideration of Finding under Government Code, §825.313(c) that Expenses with respect to the File Conversion Project are required to Perform the Fiduciary Duties of the Board and the Amount Needed for the Project Exceeds the Amounts Appropriated to TRS

b. Authorization of Transfer Funds from the Interest Account of the Teacher Retirement Fund to the Expense Account to Cover Expenses of the Project.

4. Report on Implementation of Legislation on Benefits Changes- Mrs. Featherston

For ADA assistance, call John R. Mercer, (512) 397–6418 or TDD (512) 397–6444 or (800) 841–4497 at least two days prior to the meeting.

Contact: John R. Mercer, 1000 Red River, Austin, Texas 78701–2698, (512) 397–6418.
Filed: September 17, 1997, 3:55 p.m.

TRD-9712421

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Thursday, September 25, 1997, 1:30 p.m.

1000 Red River, Fifth Floor Board Room

Austin

Board of Trustees Investment Committee

AGENDA:

1. Approval of Minutes of June 26, 1997 and July 25, 1997 Meeting

2. Review of Annual Real Estate Performance — Mr. Tom Elmer, Deloitte & Touche

3. Discussion of Investment Activities — Mr. Walker

4. Consideration of the Equity Approved Universe — Mr. Cooper

5. Consideration of Recommended Allocation of Cash Flow for Current Quarter — Mr. Cooper

a. Cash Flow Analysis

b. Staff Recommendation for Cash Flow

6. Review of Investments — Staff

a. Total Portfolio

b. Fixed Income Portfolio

c. Equity Portfolio

d. Real Estate Portfolio

e. Alternative Assets Portfolio

7. SEI Presentation and Discussion Trading Activities — Mr. Vasant Kamath

8. Review of Portfolio Performance — Mr. Record, Wellington Management

9. Review of Investment Outlook and Market Conditions — Mr. Record, Wellington Management

For ADA assistance, call John R. Mercer, (512) 397–6418 or TDD (512) 397–6444 or (800) 841–4497 at least two days prior to the meeting.

Contact: John R. Mercer, 1000 Red River, Austin, Texas 78701–2698, (512) 397–6418.
Filed: September 17, 1997, 3:56 p.m.

TRD-9712422

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Friday, September 26, 1997, 8:00 a.m.

1000 Red River, Room 229

Austin

Board of Trustees Nominations Committee

AGENDA:

1. Approval of Minutes of September 26, 1996 Meeting

2. Consideration of Selection of Nominee for Vice Chairman of TRS Board of Trustees

3. Consideration of Nominee for Trustee Representative to the Texas Growth Fund Board of Trustees

4. Report on Process to Fill the Position on the Retirees Advisory Committee to the Texas Public School Retired Employees Group Insurance Program — Mr. Di Lorenzo

For ADA assistance, call John R. Mercer, (512) 397–6418 or TDD (512) 397–6444 or (800) 841–4497 at least two days prior to the meeting.

Contact: John R. Mercer, 1000 Red River, Austin, Texas 78701–2698, (512) 397–6418.
Filed: September 17, 1997, 3:55 p.m.

TRD-9712418

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Friday, September 26, 1997, 8:00 a.m.

1000 Red River, Room 514E

Austin

Board of Trustees Real Estate Committee

AGENDA:

1. Approval of Minutes of August 22, 1997 Meeting

2. Consideration of Sale of Assets Owned by TRST Sun City, Inc. (Shopping Centers in Sun City, Arizona)

3. Review of Annual Real Estate Performance by Deloitte and Touche

4. Update on Portfolio, Including Mortgage Risk Ratings and Issues Affecting Corporate-Owned Properties

For ADA assistance, call John R. Mercer, (512) 397–6418 or TDD (512) 397–6444 or (800) 841–4497 at least two days prior to the meeting.

Contact: John R. Mercer, 1000 Red River, Austin, Texas 78701–2698, (512) 397–6418.
Filed: September 17, 1997, 3:55 p.m.

TRD-9712417

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Friday, September 26, 1997, 9:00 a.m.

1000 Red River, Fifth Floor Boardroom

Board

Austin

Roll Call of Board Members; Public Comments; Approval of Minutes of August 22, 1997 Meeting; Consideration of Board Member's Absence from August 22, 1997 Meeting; Consideration of Changes to Actuarial Assumptions to be used in the August 31, 1997 Valuation — Mr. Carter; consideration of Board Committee Appointments — Chairperson; Report of Nominations Committee — Mr. Cummings (a) Election of Vice Chairman (b) Election of Trustee Representative to the Texas Growth Fund Board of Trustees; Report of Audit Committee — Dr. Williamson (a) Consideration of 1997–1998 Annual Internal Audit Plan, (b) Consideration of Annual Performance and Salary for Director of Internal Audit; Report of Policy Committee — Dr. Stream (a) Consideration of Internal Audit Charter, (b) Consideration of Soft Dollar Policy; Report of Real Estate Committee — Dr. Youngblood; Report of Benefits Committee — Mr. Whittenburg (a) Consideration of Finding under Government Code, §825.13 (c) that Expenses with respect to the File Conversion Project are required to Perform the Fiduciary Duties of the Board and the Amount Needed for the Project Exceeds the Amounts Appropriated to TRS; (b) Authorization of Transfer of Funds form the Interest Account of the Teacher Retirement Fund to the Expense Account to Cover Expenses of the Project; Report of Investments Committee- Chairperson (a) Consideration of Equity Approved Universe, (b) Consideration of Allocation of Cash Flow for Current Quarter; Review of Investment Performance — Mr. Walker; Report on Progress in Implementation of PAM- Mr. Jung; Custodial Transition Status Report — Mr. Jung; Consideration of Extension of Fiduciary Liability and Directors and Officers Liability Insurance Policy — Mr. Fickel; Status Report of Benefit Services Transformation (BeST Project) — Mrs. Koontz; Report of Benefits Division — Mrs. Koontz (a) Approval of Members Qualified for Retirement; (b) Ratification of Minutes of Medical Board Meeting; (c) Consideration of Disability Earnings Report, (d) Report of Status of Retired Payroll; (e) Report of Texas Public School Employees Group Insurance; Report on 1995 Raise and Letter informing Retirees of Right to Request an Annuity Calculation Based on Actual Salaries — Mrs. Koontz; Report of Executive Director — Mr. Dunlap; Comments by Board Members; Report of General Counsel on Litigation — Mr. Baker.

For ADA assistance, call John R. Mercer, (512) 397–6418 or TDD (512) 397–6444 or (800) 841–4497 at least two days prior to the meeting.

Contact: John R. Mercer, 1000 Red River, Austin, Texas 78701–2698, (512) 397–6418.
Filed: September 17, 1997, 3:55 p.m.

TRD-9712416

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Texas A&M University System, Board of Regents

Friday, September 19, 1997 at 1:00 p.m.

Board of Regents Meeting Room, MSC Annex,, Clark Street

College Station

Board of Regents

AGENDA:

This is a special meeting with former regents to provide an update on the System.

Contact: Vicki Burt, The Texas A&M University System, College Station, Texas 77843, (409) 845–9600.
Filed: September 15, 1997, 3:49 p.m.

TRD-9712297

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Wednesday, September 24, 1997 at 1:00 p.m.

Board of Regents Meeting Room, Board of Regents Annex, Clark Street

College Station

Committee on Academic and Student Affairs

AGENDA:

The purpose of the meeting is to review admissions requirements and enrollment management at Prairie View A&M University, Tarleton State University, Texas A&M University-Kingsville, Texas A&M University-Corpus Christi, Texas A&M International University, West Texas A&M University, Texas A&M University-Commerce, Baylor College of Dentistry and Texas A&M University-Texarkana and take any necessary action for possible future changes

Contact: Vicki Burt, The Texas A&M University System, College Station, Texas 77843, (409) 845–9600.
Filed: September 19, 1997, 11:41 a.m.

TRD-9712494

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Thursday, September 25, 1997, 8:30 a.m., Reconvene September 26, 1997, 11:15 or upon adjournment of meeting of Campus Art Committee

MSC Room 292, Joe Routt Boulevard

College Station

Board of Regents

AGENDA:

Consider and Vote on: Fees, Appropriations; System Health Science Center; Endowments; Depositories; Gifts; Sale and Conveyance of Land; Lease Agreements; Name Facilities; Construction Projects; Centers and Institutes; Logos; Expand Divisions; Acad. Reorg; Change Name of College; Adm. Requirements; TAMU-CC Baseball Stadium, Sys Policies; Board Bylaws; Statue; VP/Student Affairs; Resolutions; Appt Peace Offr; Tenure; Appts Promotions; Minutes; Titles; Reports; Closed Sess Discuss: Consult w/Sys Attys on Pend and Prop Lit and Matters Rec as Atty-Client Conf and Priv; Real Property; Matters Inv Appt, Employ, Eval, Reassign, Duties, Discipline, or Dismissal, or to Hear Complaints or Charges Against Offr or Employee Including Report on Admin Compen. and Appoint of VP/Stud Affair; Adm contracts; Closed Session Conferences w/ Sys Employees to Receive Info

Contact: Vicki Burt, The Texas A&M University System, College Station, Texas 77843, (409) 845–9600.
Filed: September 19, 1997, 11:19 a.m.

TRD-9712489

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Thursday, September 25, 1997, 9:30 a.m., (or upon recess of the Board Meeting)

MSC Room 292, Joe Routt Boulevard

College Station

Committee on Audit

AGENDA:

Consider and Vote on the Adoption of Minor Revisions to System Policies, TAMUS; Amendments to the Bylaws of the Board of Regents, TAMUS; Adoption of Revision to Policy 21.03 (Internal Auditing), TAMUS.

Contact: Vicki Burt, The Texas A&M University System, College Station, Texas 77843, (409)845–9600.
Filed: September 19, 1997, 11:41 a.m.

TRD-9712495

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Thursday, September 25, 1997, 10:30 a.m., (or upon recess or adjournment of Committee on Audit)

MSC Room 292, Joe Routt Boulevard

College Station

Committee on Academic and Student Affairs

AGENDA:

Consider and Vote on: Close Ctr for Alt Fuels Res & Inst for Natl Drug Abatement Res, TEES; Establish Inst for Telecommunications & Information Technologies, TEES; New Logo, PVAMU; Expand Div of Architecture, PVAMU; Authorize Phase 1 of Acad. Reorganization Plan, PVAMU; Participate in NHMCCD Univ Ctr, PVAMU; Authorize TAMU to Undertake a Special Project to Strengthen and Enhance its Image in Field of Higher Ed, TAMU; Change Name of College/Geosciences & Maritime Studies to College of Geosciences, TAMU; Approve Admission Requirements for System Universities; Possible Action Regarding Proposed TAMU-CC Baseball Stadium, Reports on Collaborative Efforts and Cloning Research

Contact: Vicki Burt, The Texas A&M University System, College Station, Texas 77843, (409) 845–9600.
Filed: September 19, 1997, 1:07 p.m.

TRD-9712500

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Friday, September 26, 1997, 8:30 a.m.

MSC Room 292, Joe Routt Boulevard

College Station

Committee on Finance

AGENDA:

Consider and Vote on: Increase Feed Inspection Fee, TAES; Appropriation for Operating Equipment for ASTREC, Transportation Center Fleet Vehicles, Graphic Arts Services Equipment, Deferred Maintenance Projects, TAMU; Consolidation of Health-Related Components Into Systemwide Health Science Ctr; Appropriation to Purchase Furniture and Equipment for Evans Library, TAMUS; Establish Quasi-Endowment, TAMU; Approve Local Depository for TAMUG, TAMU; Accept Gifts, Grants, Loans and Bequests, TAMUS; Accept Report of Appropriations by the Chancellor, TAMUS

Contact: Vicki Burt, The Texas A&M University System, College Station, Texas 77843, (409)–845–9600.
Filed: September 19, 1997, 1:05 p.m.

TRD-9712498

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Friday, September 26, 1997, 9:30 a.m. (or upon adjournment of the Committee on Finance Meeting)

MSC Room 292, Joe Routt Boulevard

College Station

Committee on Buildings and Physical Plant

AGENDA:

Consider and Vote on: Sale of Land, Waller and Williamson Counties, TAMUS; Ground Lease Agreement, Hunt County, TAMUS; Convey Land, Bell Co., TAMUS; Lease Space Within IBT Bldg, TAMUS; Name Facilities at System Institutions, TAMUS; Approve POR, Appropriation for Design & Selection of A/E Design Team for the Physical Conditioning Lab, TAMU-K; Act on Bids for Aikin Bldg Expansion, TAMU-T; Approve Prelim Design for Natural Resources Informatics Lab, Blacklands Res Ctr, Temple, TAES; Approve Prelim Design for Child Care Ctr, TAMU; Act on BIDS for Athletic Facilites Revonations/Additions, Phase IV, TAMU; Act on Bids for Easterwood Airport Rescue and Firefighting Facility, TAMU; Reports

Contact: Vicki Burt, The Texas A&M University System, College Station, Texas 77843, (409)–845–9600.

Filed: September 19, 1997, 1:06 p.m.

TRD-9712608

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Friday, September 26, 1997, 11:00 a.m. (or upon adjournment or recess of Committee on Buildings and Physical Plant)

MSC Room 292, Joe Routt Boulevard

College Station

Campus Art & Aesthetic Improvement Committee

AGENDA:

Consider and Vote on: Creation and Placement of Statue of Lieutenant General James F. Hollingsworth, TAMU; and discuss any other matters relating to campus art and aesthetic improvement

Contact: Vicki Burt, The Texas A&M University System, College Station, Texas 77843, (409)–845–9600.
Filed: September 19, 1997, 1:06 p.m.

TRD-9712496

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Texas Southern University

Thursday, October 2, 1997, 10:00 a.m.

3100 Cleburne/Hannah Hall, Room 111

Houston

AGENDA:

Academic Affairs Committee

Meeting to Consider: Progress reports of academic activities and programs. Executive Session.

Contact: Janet Lightfoot, 3100 Cleburne, Houston, Texas 77004, (713) 529–8911.
Filed: September 19, 1997, 1:21 p.m.

TRD-9712504

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Thursday, October 2, 1997, 11:15 a.m.

3100 Cleburne/Hannah Hall, Room 111

Houston

Development Committee

AGENDA:

Meeting to Consider: Reports from the Administration on University Fund-Raising efforts.

Contact: Janet Lightfoot, 3100 Cleburne, Houston, Texas 77004, (713) 529–8911.
Filed: September 19, 1997, 1:21 p.m.

TRD-9712505

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Thursday, October 2, 1997, 11:45 a.m.

3100 Cleburne/Hannah Hall, Room 111

Houston

Personnel Committee

AGENDA:

Meeting to Consider: Ratification of appointments of instructions personnel, academic personnel changes. Executive Session.

Contact: Janet Lightfoot, 3100 Cleburne, Houston, Texas 77004, (713) 529–8911.
Filed: September 19, 1997, 1:21 p.m.

TRD-9712506

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Thursday, October 2, 1997, 12:15 p.m.

3100 Cleburne/Hannah Hall, Room 111

Houston

Student Services Committee

AGENDA:

Meeting to Consider: Progress reports to receive informational items. Executive Session.

Contact: Janet Lightfoot, 3100 Cleburne, Houston, Texas 77004, (713) 529–8911.
Filed: September 19, 1997, 1:21 p.m.

TRD-9712507

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Thursday, October 2, 1997, 1:15 p.m.

3100 Cleburne

Houston

AGENDA:

Finance and Buildings and Grounds Committee

Meeting to Consider: Matters relating to financial reporting systems, and budgets; fiscal reports from the administration; investments, contract awards; and informational items. Executive Session.

Contact: Janet Lightfoot, 3100 Cleburne, Houston, Texas 77004, (713) 529–8911.
Filed: September 19, 1997, 1:22 p.m.

TRD-9712508

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Friday, October 3, 1997, 8:30 a.m.

3100 Cleburne, Robert J. Terry Library, Fifth Floor

Houston

Board of Regents

AGENDA:

Meeting to Consider: Minutes; Report of the President; Report from standing committees; Executive Session.

Contact: Janet Lightfoot, 3100 Cleburne, Houston, Texas 77004, (713) 529–8911.
Filed: September 19, 1997, 1:22 p.m.

TRD-9712509

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Texas State Technical College System

Monday, September 22, 1997 at 10:00 a.m.

3801 Campus Drive

Waco

Board of Regents Telephone Conference

AGENDA:

Authorization to Advertise, Accept Bids, and Award a Contract for Construction of the Fentress Center Phase II Technology Building and the John B. Connally Technology Center.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (254) 867–4890.
Filed: September 16, 1997, 4:59 p.m.

TRD-9712340

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Texas Department of Transportation

Thursday, September 25, 1997, 9:00 a.m.

125 East 11th Street, First Floor, Dewitt C. Greer Building

Austin

Texas Transportation Commission

AGENDA:

Delegations: State Representative Glenn O. Lewis regarding Spur 303 in Fort Worth. Approve Minutes. Awards/Recognitions/ Resolutions: Presentation of donation from MBNA Bank, N.A. for Don't Mess with Texas antilitter campaign. Reports: IH27 Corridor-Phase II; Summary on Speed Limit Town Meetings. Commission Position Statement on Personnel Retention. Rulemaking: 43 TAC, Chapter 3, 6, 18, 23, and 28. Multimodal Transportation: Creation of ad hoc advisory committee; Establish goals for railroad safety program. Programs: 1997 All-Weather Pavement Markings Study; Addditional project information concerning Unified Transportation Program; Authorize loan to North Texas Tollway Authority. Capital Improvement Program for FYs 1998–1999. Contract Awards/ Rejections/Defaults/Assignments/Claims. Contested Cases. Routine Minute Orders. Executive Session for legal counsel consultation, land acquisition matters, and management personnel evaluations, designation, assignments and duties. Open comment period.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas, 78701, (512) 463–8630.
Filed: September 17, 1997, 1:58 p.m.

TRD-9702401

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University of Texas Health Science Center at San Antonio

Wednesday, September 24, 1997, 3:00 p.m.

7703 Floyd Curl Drive, Room 422A

San Antonio

Institutional Animal Care and Use Committee

AGENDA:

1. Approval of Minutes
2. Protocol for Review
3. Subcommittee Reports
4. Other Business

Contact: Molly Greene, 7703 Floyd Curl Drive, San Antonio, Texas 78284–7822, (210) 567–3717.
Filed: September 16, 1997, 1:58 p.m.

TRD-9712320

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University of Texas Health Center at Tyler

Thursday, October 2, 1997, Noon.

Highway 271 & Highway 155, Room 117

Tyler

Animal Research Committee

AGENDA:

Approval of Minutes

Chairman Report

Veterinarian Reports

Old Business

New Business

Adjournment

Contact: Lea Alegre, P.O. Box 2003, Tyler, Texas 75710, (903) 877–7661.
Filed: September 19, 1997, 2:42 p.m.

TRD-9712535

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University of Texas System

Thursday, September 25, 1997, 2:00 p.m.

201 West Seventh Street, Ninth Floor, Ashbel Smith Hall

Austin

Board of Regents

AGENDA:

The Board of Regents of The University of Texas System will convene in Open Session via telephone conference call to consider the two items set forth below which need to be resolved prior to the next regular meeting of the Board on November 12–13, 1997:

U.T. El Paso — Special Events Center: Request for Approval fo Name Building (Regents' Rules and Regulations, Part One, Chapter VIII, §1, Naming of Buildings and Other Facilities) (No Publicity)

U.T. Permian Basin: Recommendation for Approval to Name a Campus Street (Regents' Rules and REgulations, Part One, Chapter VIII, §1, Naming of Buildings and Other Facilities)

It is not possible to convene a quorum of the Board at one place to consider these items.

Contact: Arthur H. Dilly, 201 West Seventh Street, Austin, Texas 78701–2981, (512) 499–4402.
Filed: September 19, 1997, 2:49 p.m.

TRD-9712541

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Texas Board of Veterinary Medical Examiners

Thursday-Friday, October 2–3, 1997, 8:30 a.m.

Tower Two, William P. Hobby Building, Room 225, 333 Guadalupe Street

Austin

Board

AGENDA:

The Board will be taking action on Agreed Orders in disciplinary cases listed on the attached agenda. The Board will take action on those rules listed on the agenda. The Board will also consider the September Exam Results, elect officers, appoint April Examination Committees, and other items reflected on the attached agenda. The Board may go into executive session to discuss contemplated and pending litigation, and the responsibilities of the Executive Director.

Persons requiring reasonable accommodations are requested to contact Judy Smith, 333 Guadalupe, #2–330, Austin, Texas 78701–3998, (512) 305–7555 or TDD 1–800–735–2989 within 72 hours of the meeting to make appropriate arrangements.

Contact: Judy Smith, 333 Guadalupe, #2–330, Austin, Texas 78701–3998, (512) 305–7555.
Filed: September 18, 1997, 2:44 p.m.

TRD-9712540

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Texas Workers' Compensation Commission

Friday, September 19, 1997, 11:30 a.m.

208 Barton Springs Road, Hyatt Regency Hotel, Texas Ballroom V

Austin

Public Meeting

AGENDA:

1. Call to Order

2. EXECUTIVE SESSION: Pursuant to §551.074, Government Code, to consider personnel matters relating to the Executive Director, including but not limited to: (a) the selection of an acting Executive Director and the salary, other benefits, employment terms, title, and duties for an acting Executive Director; and (b) the process and the implementation of a process for selection of an Executive Director, and pursuant to §551.071, Government Code, to discuss matters relating to and to receive advice from counsel concerning privileged attorney-client communications, settlement offers, and/or contemplated and pending litigation.

3. Action on Matters considered in Executive Session

4. Adjournment

Contact: Bob Marquette, 4000 South IH35, Austin, Texas 78704, (512) 440–5690.
Filed: September 16, 1997, 9:22 a.m.

TRD-9712303

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Texas Workforce Commission

Wednesday, September 24, 1997, 9:00 a.m.

9821 Colonnade Boulevard, Omni San Antonio Hotel Boardroom, Second Floor

San Antonio

Texas Commission on Volunteerism and Community Service

AGENDA:

Reading and approval of minutes; Introduction of new Commissioners; Executive report, Nancy Weiss; State of the Commission Report, Barbara DuBose; Motion for change of by-laws; Reports of standing committees; Reports of task forces; Adjourn.

Contact: Dee Bednar, 101 East 15th Street, Austin, Texas 78778, (512) 463–9484.
Filed: September 16, 1997, 2:59 p.m.

TRD-9712327

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Thursday, September 25, 1997, 9:00 a.m.

Room 644, TWC Building, 101 East 15th Street

Austin

AGENDA:

Discussion, consideration and possible action relating to: (1) integration of eligibility determination and service delivery relative to House Bill 2777; (2) proposed incentive and sanction rule for local workforce boards; (3) potential and pending applications for certification of local workforce development boards; (4) recommendations to TCWEC of operational plans of local workforce development boards; (5) approval of local workforce board or private industry council nominees; (6) acceptance of donations of child care matching funds and (7) Employment and Training state plan. Discussion regarding: Revision of rules related to the TANF employment program; EXECUTIVE SESSION pursuant to Government Code and §551.071(2) concerning all matters identified in this agenda where the Commissioners seek the advice of its attorney as privileged communications under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas and to Discuss the Open Meetings Act and administrative Procedures Act; Actions, if any, resulting from executive session; Consideration and action on continuing jurisdiction and reconsideration of unemployment compensation cases, and higher level appeal in unemployment compensation cases on Docket 39; Consideration and adoption on hearing notices in drug cases, of policies on the adoption of precedent cases and revision of precedent manual; Discussion regarding standards of proof in unemployment benefits cases involving drug testing; and set date of next meeting.

Contact: J. Randel (Jerry) Hill, 101 East 15th Street, Austin, Texas 78778, (512) 463–7833.
Filed: September 17, 1997, 3:37 p.m.

TRD-9712413

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Regional Meetings

Meetings filed September 16, 1997

Austin-Travis County MHMR Center, Planning and Operations Committee, met at 1430 Collier Street, Board Room, Austin, September 19, 1997 at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 440–4031. TRD-9712311.

Burnet County Appraisal District, Board of Directors, met at 110 Avenue H, Suite 106, Marble Falls, September 25, 1997 at Noon. Information may be obtained from Barbara Ratliff, P.O. Drawer E, Burnet, Texas 78611, (512) 756–8291. TRD-9712318.

Central Texas Council of Governments, Executive Committee, met at 302 East Central Avenue, Belton, September 25, 1997 at 11:30 a.m. Information may be obtained from A.C. Johnson, P.O. Box 729, Belton, Texas 76513, (254) 939–1801. TRD-9712339.

Central Texas Water Supply Corporation, met at 4020 Lakecliff Drive, Harker Heights, September 23, 1997 at 7:00 p.m. Information may be obtained from Delores Hamilton, 4020 Lakecliff Drive, Harker Heights, Texas 76548, (254) 698–2779. TRD-9712312.

Education Service Center, Region XIII, Board of Directors, met at 5701 Springdale Road, Room H, Austin, September 22, 1997 at 11:00 a.m. Information may be obtained from Dr. Roy C. Benavides, 5701 Springdale Road, Austin, Texas 78723, (512) 919–5300. TRD-9712314.

Education Service Center, Region XIII, Board of Directors, met at 5701 Springdale Road, Room H, Austin, September 22, 1997 at 1:00 p.m. Information may be obtained from Dr. Roy C. Benavides, 5701 Springdale Road, Austin, Texas 78723, (512) 919–5300. TRD-9712315.

Gulf Bend Center, Board of Trustees, met at 1502 East Airline, Victoria, September 23, 1997 at Noon. Information may be obtained from Agnes Moeller, 1502 East Airline, Gulf Bend Center, Victoria, Texas 77901, (512) 582–2309. TRD-9712319.

Hansford County Appraisal District, Board of Directors, met at 709 West Seventh, Spearman, September 24, 1997, at 9:00 a.m. Information may be obtained from Alice Peddy, 709 West 7th Street, Spearman, Texas 79081, (806) 659–5575. TRD-9712309.

Lee County Appraisal District, Board of Directors, met at 218 East Richmond Street, Giddings, September 24, 1997 at 9:00 a.m. Information may be obtained from Roy L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942, (409) 542–9618. TRD-9712310.

Lee County Appraisal District, Appraisal Review Board, met at 218 East Richmond Street, Giddings, September 25, 1997 at 9:00 a.m. Information may be obtained from Delores Shaw, 218 East Richmond Street, Giddings, Texas 78942, (409) 542–9618. TRD-9712326.

North Texas Local Workforce Development Board, met at 4309 Jacksboro Highway, Suite 200, Wichita Falls, September 25, 1997 at Noon. Information may be obtained from Mona W. Statser, P.O. Box 5144, Wichita Falls, Texas 76307–5144, (940) 322–5281, fax: (940) 322–6743. TRD-9712304.

West Central Texas Council of Governments, Executive Committee, met at 1025 EN 10th Street, Abilene, September 24, 1997 at 12:45 p.m. Information may be obtained from Brad Helbert, 1025 EN 10th Street, Abilene, Texas 79601, (915) 672–8544. TRD-9712321.

Meetings filed September 17, 1997

Bexar Appraisal District, Board of Directors, met at 535 South Main Street, San Antonio, September 22, 1997 at 8:00 a.m. Information may be obtained from Beverly Houston, P.O. Box 830248, San Antonio, Texas 78283–0248, (210) 224–8511. TRD-9712411.

Central Appraisal District of Rockwall County, Appraisal Review Board, met at 106 North San Jacinto, Rockwall, September 24, 1997 at 8:30 a.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, (972) 771–2034. TRD-9712393.

Central Appraisal District of Rockwall County, Appraisal Review Board, met at 106 North San Jacinto, Rockwall, September 25, 1997 at 8:30 a.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, (972) 771–2034. TRD-9712392.

Central Counties Center for MHMR Services, Board of Trustees, met at 304 South 22nd Street, Temple, September 25, 1997. Joint Committee met at 5:30 p.m., full board at 7:00 p.m. Information may be obtained from Eldon Tietje, 304 South 22nd Street, Temple, Texas 76501, (817) 778–4841, extension 301.TRD-9712391.

Central Texas Opportunities, Inc., Board of Directors, met at 1200 South Frio, Coleman, September 23, 1997 at 7:00 p.m. Information may be obtained from Barbara E. Metcalf, P.O. Box 820, Coleman, Texas 76834, (915) 625–4167. TRD-9712402.

Coastal Bend Council of Governments, Membership, will meet at 2910 Leopard Street, Corpus Christi, September 26, 1997 at 1:00 p.m. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78469, (512) 883–5743. TRD-9712387.

East Texas Council of Governments, Board of Directors, met at 1150 North Newsome Street, Mineola, September 25, 1997 at 7:30 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984–8641. TRD-9712350.

Education Service Center, Region VII, Board of Directors, met at 440 Highway 79 South, Henderson, September 25, 1997 at Noon. Information may be obtained from Eddie J. Little, 818 East Main Street, Kilgore, Texas 75662, (903) 984–3071. TRD-9712394.

LRGV Development Council (LRGVDC), Board of Directors, met at Harlingen Chamber of Commerce, 311 East Tyler, Harlingen, September 25, 1997 at 1:30 p.m. Information may be obtained from Kenneth N. Jones, Jr., or Anna M. Hernandez, 311 North 15th Street, McAllen, Texas 78501, (956) 682–3481. TRD-9712412.

LRGV Development Council (LRGVDC), Board of Directors, will meet at Harlingen Chamber of Commerce, 311 East Tyler, Harlingen, September 28, 1997 at 1:30 p.m. Information may be obtained from Kenneth N. Jones, Jr., or Anna M. Hernandez, 311 North 15th Street, McAllen, Teas 78501, (956) 682–3481. TRD-9712410.

North Central Texas Council of Governments, Executive Board, met at Centerpoint Two, 616 Six Flags Drive, Second Floor, Arlington, September 25, 1997 at 12:45 p.m. Information may be obtained from Edwina J. Shires, P.O. Box 5888, Arlington, Texas 76005–5888, (817) 640–3300. TRD-9712351.

Pecan Valley MHMR Region, Board of Trustees, met at 108 Pirate Drive, Granbury, September 24, 1997 at 8:15 a.m. Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (254) 965–7806. TRD-9712405.

San Antonio-Bexar County Metropolitan Planning Organization, Transportation Steering Committee, met at International Conference Center of the Convention Center Complex, Intersection of Alamo and Market, San Antonio, September 22, 1997 at 1:30 p.m. Information may be obtained from Charlotte Roszelle, 603 Navarro, Suite 904, San Antonio, Texas, 78205, (210) 227–8651. TRD-9712396.

Southwest Milam Water Supply Corporation, Board, met at 114 East Cameron, Rockdale, September 22, 1997 at 7:00 p.m. Information may be obtained from Dwayne Jekel, P.O. Box 232, Rockdale, Texas 76567, (512) 446–2604. TRD-9712404.

Texas Automobile Insurance Plan Association, Governing Committee, met at the Omni Austin Hotel Southpark, 4140 Governor's Row, Austin, September 25, 1997 at 8:30 a.m. Information may be obtained from Dianna Brooks, P.O. Box 18447, Austin, Texas 78760, (512) 444–5999. TRD-9712395.

Meetings filed September 18, 1997

Ark-Tex Council of Governments, (ATCOG), Board of Directors, met at Hopkins county Regional Civic Center, 1200 Houston, Sulphur Springs, September 25, 1997, 2:00 p.m. Information may be obtained from Sandie Brown, P.O. Box 5307, Texarkana, Texas 75505, (903) 832–8636, fax: (903) 832–3441. TRD-9712443.

Atascosa County Appraisal District, Board of Directors, met at 4th and Avenue J, Poteet, September 25, 1997, 1:30 p.m. Information may be obtained from Curtis Stewart, P.O. Box 130, Poteet, Texas 78065–0139, (830) 742–3591. TRD-9712464.

Barton Springs/Edwards Aquifer Conservation District, Board of Directors, Called Meeting, met at 1124A Regal Row, Austin, September 25, 1997 at 12:30 p.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282–8441, fax: (512) 282–7016. TRD-9712435.

Burke Center, Board of Trustees, will meet at 4101 South Medford, Lufkin, September 30, 1997, at 1:00 p.m. Information may be obtained from Debra Fox, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639–1141. TRD-9712442.

Central Plains Center for MHMR & SA, Board of Trustees, met at 208 South Columbia, Plainview, September 25, 1997 at 6:00 p.m. Information may be obtained from Ron Trusler, 2700 Yonkers, Plainview, Texas 79072, (806) 293–2636. TRD-9712469.

Central Texas Council of Governments, KTUTS Planning Policy Board, met at 302 East Central (Classroom), Belton, September 24, 1997 at 2:00 p.m. Information may be obtained from Jim Reed, P.O. Box 729, Belton, Texas 76513, (254) 933–7075, extension 203. TRD-9712444.

Coastal Bend Area Chief Elected Officials Council, CEO Council, will meet at 2910 Leopard Street, Coastal Bend Council of Governments Offices, Corpus Christi, September 26, 1997 at 3:00 p.m. Information may be obtained from Robyn Saenz, 1616 Martin Luther King Drive, Corpus Christi, Texas 78401, (512) 889–5300, extension 264, TRD-9712456.

Comal Appraisal District, Board of Directors, met at 178 East Mill Street, #102, New Braunfels, Monday, September 22, 1997 at 5:30 p.m. Information may be obtained from Lynn E. Rodgers, P.O. Box 31222, New Braunfels, Texas 78131–31222, (830) 625–8597. TRD-9712453.

Community Action Committee of Victoria, Texas, CAC Board of Directors, met at 1501 North DeLeon, Suite A, Victoria, September 25, 1997 at 7:00 p.m. Information may be obtained from Vicki Smith, 1501 North DeLeon, Suite A, Victoria, Texas 77902–2142. TRD-9712468.

Education Service Center, Region 18, Board of Directors, will meet at 2811 LaForce Boulevard, Midland, October 2, 1997 at 7:00 p.m. Information may be obtained from Mr. Bryan LaBeff, P.O. Box 60580, Midland, Texas, 79711, (915) 563–2380. TRD-9712446.

Gulf Bend Center, Board of Trustees, met at 1502 East Airline, Victoria, September 23, 1997, at Noon with revised agenda. Information may be obtained from Agnes Moeller, 1502 East Airline, Victoria, Texas 77901, (512) 582–2309. TRD-9712455.

Hickory Underground Water Conservation District Number One, Board and Advisors, met at 2005 South Bridge, Brady, September 23, 1997 at 5:00 p.m. Information may be obtained from Stan Reinhard, P.O. Box 1214, Brady, Texas 76825, (915) 597–2785. TRD-9712439.

Hockley County Appraisal District, Appraisal Review Board, met at 1103 Houston Street, Levelland, September 22, 1997 at 7:00 a.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894–9654. TRD-9712445.

Liberty County Central Appraisal District, Board of Directors, met at 315 Main Street, Liberty, September 24, 1997 at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336–5722. TRD-9712433.

Lower Rio Grande Valley Development Council, Hidalgo County Metropolitan Planning Organization, met at TxDOT District Office, 600 West Expressway U.S.83, Pharr, September 25, 1997 at 7:00 p.m. Information may be obtained from Edward L. Molitor, 311 North 15th Street, McAllen, Texas, (956) 682–3481. TRD-9712440.

Lower Rio Grande Valley Tech Prep Associate Degree Consortium, Board of Directors, met at Best Western Palm Aire Motel, 415 South International Boulevard, Weslaco, September 24, 1997 at Noon. Information may be obtained from Pat Bubb, TSTC Conference Center, Harlingen, Texas 78550–3967, (210) 425–0729. TRD-9712451.

Lubbock Regional MHMR Center, Board of Trustees-Program Committee, met at 1602 10th Street, Board Room, Lubbock, September 23, 1997 at 4:00 p.m. Information may be obtained from Tami Swoboda, P.O. Box 2828, Lubbock, , Texas 79408, (806) 766–0217. TRD-9712465.

Lubbock Regional MHMR Center, Board of Trustees-Resources Committee,will meet at 1602 10th Street, Conference Room, Lubbock, September 29, 1997 at 11:00 a.m. Information may be obtained from Tami Swoboda, P.O. Box 2828, Lubbock, Texas 79408, (806) 766–0217. TRD-9712466.

Lubbock Regional MHMR Center, Board of Trustees, met at 1602 10th Street, Board Room, Lubbock, September 29, 1997 at Noon. Information may be obtained from Tami Swoboda, P.O. Box 2828, Lubbock, , Texas 79408, (806) 766–0217. TRD-9712467.

Sharon Water Supply Corporation, Special Board Meeting, met at the Office of Sharon Water Supply Corporation, Highway 37 South, Winnsboro, September 22, 1997 at 7:00 p.m. Information may be obtained from Gerald Brewer, Route 5, Box 50361, Winnsboro, Texas 75494, (903) 342–3525. TRD-9712448.

South Texas Workforce Development Board, met at 901 Kennedy Street, Zapata, September 25, 1997, 4:00 p.m. Information may be obtained from Myrna V. Herbst, P.O. Box 1757, Laredo, Texas 78044–1757, (210) 722–0546. TRD-9712458.

West Central Texas Municipal Water District, met at 410 Hickory, Abilene, September 24, 1997, 9:30 a.m. Information may be obtained from David E. Bell, P.O. Box 2362, Abilene, Texas 79604, (915) 673–8254. TRD-9712450.

Meetings filed September 19, 1997

Alamo Area Council of Governments, Area Judges, met at 118 Broadway, Suite 400, San Antonio, September 24, 1997 at 1:00 p.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (210) 225–5201. TRD-9712497.

Alamo Area Council of Governments, Board of Directors, met at 118 Broadway, Suite 400, San Antonio, September 24, 1997 at 1:30 p.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (210) 225–5201. TRD-9712493.

Andrews Center, Board of Trustees, met at 2323 West Front Street, Board Room, Tyler, September 25, 1997 at 3:00 p.m. Information may be obtained from Richard J. De Santo, P.O. Box 4730, Tyler, Texas 75712, (903) 535–7338. TRD-9712549.

Austin-Travis County MHMR Center, Planning and Operations Committee, met with Emergency Revised Agenda, at 1430 Collier Street, Board Room, Austin, September 19, 1997 at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 440–4031. TRD-9712471.

Austin-Travis County MHMR Center, Finance and Control Committee, met at 1430 Collier Street, Board Room, September 23, 1997, at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 440–4031. TRD-9712492.

Austin-Travis County MHMR Center, Revised Agenda, Finance and Control Committee, met at 1430 Collier Street, Board Room, September 23, 1997, at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 440–4031. TRD-9712561.

Capital Area Rural Transportation System (CARTS), met at 2010 East Sixth Street, CARTS Conference Room, Austin, September 25, 1997 at 9:00 a.m. Information may be obtained from Edna M. Burroughs, P.O. Box 6050, Austin, Texas 78702, (512) 389–1011. TRD-9712550.

Central Texas Water Supply Corporation, met at 4020 Lake Cliff Drive, Harker Heights, September 23, 1997 at 7:00 p.m., monthly meeting with revised agenda. Information may be obtained from Delores Hamilton, 4020 Lake Cliff Drive, Harker Heights, Texas 76548, (254) 698–2779. TRD-9712491.

Central Texas Workforce Development Board met at 301 West Loop 121 (Bell County Expo Center), Belton, September 25, 1997 at 9:00 a.m. Information may be obtained from Susan Kamas, P.O. Box 450, Belton, Texas 76513, (254) 939–3771. TRD-9712485.

Comal Independent School District, Board of Trustees, met at 1421 North Business 35, New Braunfels, September 24, 1997, 7:30 p.m. Information may be obtained from Abel Campos, 1421 North Business 35, New Braunfels, Texas 78130, (210) 625–8081. TRD-9712473.

Edwards Aquifer Authority, Comprehensive Management Planning Committee, met at 1615 North St. Mary's Street, San Antonio, September 23, 1997 at 1:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222–2204. TRD-9712544.

Edwards Aquifer Authority, Administrative Committee, met at 1615 North St. Mary's Street, San Antonio, September 23, 1997 at 3:30 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222–2204. TRD-9712545.

Edwards Aquifer Authority, Research and Technology Committee, met at 1615 North St. Mary's Street, San Antonio, September 24, 1997 at 10:00 a.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222–2204. TRD-9712548.

Edwards Aquifer Authority, Aquifer Management Planning Committee, met at 1615 North St. Mary's Street, San Antonio, September 24, 1997 at 3:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222–2204. TRD-9712547.

Golden Crescent Private Industry Council, met at 2401 Houston Highway, Victoria, September 24, 1997 at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576–5872. TRD-9712551.

Grayson Appraisal District, Board of Directors, Revised agenda, met at 205 North Travis, Sherman, September 24, 1997, at Noon. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893–9673. TRD-9712564.

Heart of Texas Region MHMR Center, Board of Trustees, met at 110 South 12th Street, Waco, September 23, 1997 at 11:45 a.m. Information may be obtained from Helen Jasso, P.O. Box 890, Waco, Texas 76703, (817) 752–3451, ext. 290. TRD-9712477.

Heart of Texas Region MHMR Center, Board of Trustees, met at 110 South 12th Street, Waco, with Revised Agenda, September 23, 1997 at 11:45 a.m. Information may be obtained from Helen Jasso, P.O. Box 890, Waco, Texas 76703, (817) 752–3451, ext. 290. TRD-9712490.

Hunt County Appraisal District, Appraisal Review Board, will meet at 4801 King Street, Greenville, October 15, 1997 at 8:45 a.m. Information may be obtained from Shirley Gregory, P.O. Box 1339, Greenville, Texas 75403, (903) 454–3510. TRD-9712588.

Lamar County Appraisal District, Board of Directors, met at 521 Bonham Street, Paris, September 25, 1997 at 4:00 p.m. Information may be obtained from Cathy Jackson, 521 Bonham Street, Paris, Texas 75461, (903) 785–7822. TRD-9712476.

Northeast Texas Rural Rail Transportation District, Board, met at Greenville Municipal Building, 2821 Washington Street, Greenville, September 24, 1997 at Noon. Information may be obtained from

Sue Ann Harting, 2821 Washington Street, Greenville, Texas 75401, (903) 450–0140. TRD-9712474.

North Texas Tollway Authority, Budget Committee, met at 3015 Raleigh Street, Dallas, September 24, 1997, 9:00 a.m. Information may be obtained from Jimmie G. Newton, 3015 Raleigh Street, Dallas, Texas 75219, (214) 522–6200. TRD-9712475.

Red River Authority of Texas, Board of Directors, met at Holiday Inn, 401 Broad, Wichita Falls, September 24, 1997 at 10:00 a.m. Information may be obtained from Ronald J. Glenn, 520 Hamilton Building, Wichita Falls, Texas 76301–6894, (940) 723–0855. TRD-9712510.

Meetings filed September 22, 1997

Concho Valley Workforce Development Board, will meet at 124 West Beauregard, (Texas Room), San Angelo, October 2, 1997 at 10:00 a.m. Information may be obtained from Sidney Mabry, P.O. Box 770, Mertzon, Texas 76941, (915) 835–4361. TRD-9712562.

Hays County Appraisal District, Appraisal Review Board, met at 21001 North IH35, Kyle, September 24, 1997 at 9:00 a.m. Information may be obtained from Lynnell Sedlar, 21001 North IH35, Kyle, Texas 78640, (512) 268–2522. TRD-9712584.

Hays County Appraisal District, Appraisal Review Board, met at 21001 North IH35, Kyle, September 25, 1997 at 9:00 a.m. Information may be obtained from Lynnell Sedlar, 21001 North IH35, Kyle, Texas 78640, (512) 268–2522. TRD-9712585.

IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Commission on Alcohol and Drug Abuse

Notice of Public Hearings

The Texas Commission on Alcohol and Drug Abuse (commission), through its Regional Advisory Consortia, will hold public hearings in each Health and Human Services region to solicit input on the Strategic Plan and Statewide Service Delivery Plan. Comments will be directed to the long term goals of the agency and how to best coordinate and deliver substance abuse related services.

Public hearings have been scheduled for the following dates, times and places:

September 25, Region 7 - Austin, Commission on Alcohol and Drug Abuse, 9001 North IH 35, Austin, Texas

September 26, Region 11 - Edinburg, Pan American University, UT Annex, 2412 South Closner, Edinburgh, Texas

October 2, Region 4 - Longview, Gregg County Courthouse, 101 East Methvin, Longview, Texas

October 3, Region 2 - Abilene, Abilene Regional MHMR Center, 2616 South Clack, Suite 150, Abilene, Texas

October 6, Region 1 - Lubbock, South Plains Association of Governments, 1323 58th Street, Lubbock, Texas

October 6, Region 8 - San Antonio, Council on Alcohol and Drug Abuse - San Antonio, Cypress Towers, 1222 North Main, Suite 660, San Antonio, Texas

October 7, Region 10 - El Paso, Educational Service Center for Region 19, 6501 Boeing, Building J, Green Room, El Paso, Texas

October 8, Region 3 - Arlington, Arlington Human Service Center, 501 West Sanford, Conference Room A, Arlington, Texas

October 10, Region 9 - Midland, Permian Basin Regional Planning Commission, 2910 La Force Boulevard, Midland, Texas

October 16, Region 5 - Beaumont, Beaumont Community Foundation, 700 North Street, Room 145, Beaumont, Texas

October 17, Region 6 - Houston, The Council - Houston, 3333 Eastside, Suite 111, Houston, Texas

Representatives from the commission will be present to explain the planning process and members of the Regional Advisory Consortium along with commission staff will be present to consult with and receive comments from interested citizens and affected groups. All written and oral comments will be considered in preparation of the Strategic Plan and Statewide Services Delivery Plan.

Spanish-language interpreters and interpreters for the hearing impaired will be provided upon request. Please contact Rand Harris at (800) 832-9623, extension 6793, ten working days prior to the public hearing to request these services. If you are an individual with a disability and need reasonable accommodation, please notify the commission ten days in advance of the hearing date for accommodations to be made.

Additional information may be obtained by contacting the Texas Commission on Alcohol and Drug Abuse, Rand Harris, 9001 North IH 35, Suite 105, Austin, Texas 78753-5233, (800) 832-9623, extension 6793.

Issued in Austin, Texas, on September 17, 1997.

TRD-9712370
Mark S. Smock
Deputy for Finance and Administration
Texas Commission on Alcohol and Drug Abuse
Filed: September 17, 1997

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Summary of Public Comments

The Omnibus Reconciliation Act of 1981 (Public Law 97-35, as amended) and Texas Government Code, Title 10, §2105.052, require public input into state plans on the intended use of federal funds allocated under the Substance Abuse Prevention and Treatment (SAPT) Block Grant. Consistent with these mandates, the Texas Commission on Alcohol and Drug Abuse (commission), in conjunction with our Regional Advisory Consortia, held public hearings in May and June, 1997, at the following locations: Abilene, Dallas, Beaumont, Hous-

ton, San Antonio, Midland, El Paso, Temple, Lufkin, Lubbock and Falfurrias. Testimony was heard regarding the commission's intended use of SAPT block grant funds for fiscal year 1998. Comments following will address the substance abuse block grant; the magnitude of the substance abuse problem; and, the current availability of and need for substance abuse services.

At these hearings, a preliminary summary of the intended use of funds for federal fiscal year 1998 (beginning October 1, 1997) was provided. Public comments were solicited for use in preparation of the final plans. All written and oral comments have been considered in preparation of the final fiscal year 1998 intended use report. A summary of the public comments follows:

Most comments pertaining to alcohol and drug abuse services centered around specific types of substance abuse services that continue to be needed throughout the state. Many of these specific service needs will be addressed through the commission's Statewide Plan for Service Delivery. For example, several witnesses throughout the state expressed the need for the commission to continue prioritizing specialized female service (for pregnant women and women with children). This issue will be discussed in more detail as the commission develops its service delivery plan.

The issue of prevention services was also expressed by many witnesses. Specific prevention issues included: the need to target younger age groups; the need for after-school programs; a need for the commission to outline some model programs it wants to fund and to develop an outcome tool using the Prevention Plus III guide specifically for these programs; the need to support the replication of the model prevention programs recently implemented by the commission; the need for prevention services in all areas of the state, including rural areas; the need for prevention programs to include social resistance training, life skills education, and pro-social bonding features; and the fact that prevention providers should apply part of their services to children of parents in treatment. The commission has also prioritized the need for prevention services as illustrated in our Strategic Plan. Prevention will be the cornerstone of delivery system throughout the state. We have recently increased funding to develop 11 model prevention programs (which include prescribed outcome measurement tools), 11 Prevention Resource Centers, to fund a media prevention campaign in conjunction with the Partnership with a Drug Free America, and to support Red Ribbon Week to raise awareness about substance abuse through the state. We look forward to continuing our efforts in this area and to further defining our prevention services in our Statewide Plan for Service Delivery.

We also received comments concerning specific factors that need to be used in developing an allocation formula to distribute funds throughout the state. We heard from the rural areas that population is weighed too heavily, putting rural areas with greater transportation needs at a disadvantage. We also heard from providers in urban areas that programs needed to be targeted to the communities that had the most need, for example, housing the greatest number of welfare families, and that programs in those areas needed to be operated by community-based organizations that are familiar with the needs of those specific community needs. Another witness testified to the need for block grant formulas to address international borders. The commission is continuing to look at the formula we use to distribute funds to each of the 11 Health and Human Services Regions, and to develop a way to equitably distribute funds to all areas of the state. We recently notified the substance abuse field of upcoming regional meetings which will specifically focus on this issue. In that notification, a Community Service Survey was enclosed to help the commission better determine those areas with the greatest need for services, as defined by the community.

Several witnesses also commented on the need for better evaluations of programs. However, cost was also identified as a barrier to this need. Others testified that the Request for Proposal (RFP) process was too complicated and it was difficult for non-experienced grant writers to break into the system. The commission did conduct 11 grantwriting workshops across the state in fiscal years 1996 and 1997. These were done at no charge to the participants and gave priority to persons/programs who were not receiving commission funds. We will examine the possibility of conducting those again in the future. We will also continue to provide a summary sheet explaining deficiencies for persons who do not score high enough on the commission's Request for Proposals. This summary sheet will outline those areas that need improvement.

We also heard the need for local programs to have a centralized Management Information System (MIS) to be able to track clients through a continuum of care. In conjunction with this was also the need for a centralized intake and assessment unit. As the commission evolves to a managed care system in different areas of the state these issues become more and more critical. We also recognize this need exists in other areas of the state. Again, cost is the biggest barrier to the creation of these MIS systems.

Some of the comments focused on Block Grant issues that are out of the commission's jurisdiction. One such comment dealt with the funds for HIV Early Intervention Services being too restrictive. Federal regulations determine how these funds can be spent. In addition, one witness expressed a desire for the Specialized Female Service providers to be allowed to serve non-pregnant women who were at risk of becoming pregnant. Again, federal law and regulations specify that these funds are aimed specifically at this specialized population.

We also received many specific comments dealing with treatment matters. Two witnesses addressed the need for more flexibility in spending commission funds. Two others requested the revocation of treatment licenses for outpatient services. The commission has changed its rules to give providers more flexibility in spending their funds to address client needs. The commission also revised the rules to allow providers to offer "extension services" in borrowed space without obtaining a separate license for each location.

Finally we heard about the increased need for all types of services in all areas of the state. These range from specific mentions for detoxification services, inpatient facilities to treat men, outpatient services in rural areas, transportation in rural areas, and a need for the commission to expand prevention services to adults. All of these specific needs are better addressed through the commission's Statewide Plan for Service Delivery and through priorities set by our Regional Advisory Consortia.

This summary of comments pertaining to the substance abuse portion of the SAPT Block Grant for fiscal year 1998 is published in response to the Omnibus Budget Reconciliation Act of 1991 (Public Law 97-35, as amended) Texas Government Code, Title 10, §2105.052.

Issued in Austin, Texas, on September 18, 1997.

TRD-9712452
Mark S. Smock
Deputy for Finance and Administration

Texas Commission on Alcohol and Drug Abuse
Filed: September 18, 1997

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Office of the Attorney General

Texas Solid Waste Disposal Act Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Solid Waste Disposal Act. Before the State may settle a judicial enforcement action under the Solid Waste Disposal Act, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Case Title and Court: State of Texas v. Melza V. Kelley, and Cherokee Waste & Resource Recovery, Inc., Cause Number 93-02560 in the 250th District Court, Travis County, Texas.

Nature of Defendant's Operations: Defendants own and operate a solid waste facility at 2500 Southeast Cherokee Road, Longview, Gregg County, Texas. This facility is the subject of this litigation and proposed settlement.

Proposed Agreed Judgment: The Agreed Final Judgment contains provisions for injunctive relief and civil penalties. The injunction, among other things, prohibits the receipt of solid waste at the subject facility, requires the installation of a site security fence and drainage structures, requires the application of a final earthen cover over waste disposal areas, requires the filing of an affidavit to the public, and requires that pipeline easements be marked. The judgment also contains a requirement that defendants pay a $50,000 civil penalty, $25,000 in attorneys' fees, and all court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to David Preister, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

Issued in Austin, Texas, on September 11, 1997.

TRD-9712106
Suzanne Marshall
Special Assistant Attorney General
Office of the Attorney General
Filed: September 11, 1997

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Texas Water Code and Texas Health and Safety Code Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Texas Water Code and the Texas Health and Safety Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes within the Texas Natural Resource Conservation Commission's jurisdiction, or a rule adopted or an order or a permit issued under such a statute.

Case Title and Court: State of Texas v. Henry Garza doing business as Cielo Azul Ranch Water System, Cause Number 96-06248 in the 345th District Court, Travis County, Texas.

Nature of Defendant's Operations: Defendant owns and operates a public water system, known as the Cielo Azul Ranch Water System, near Wimberly, in Hays County, Texas. The system supplies water to approximately 27 service connections and serves an average of 84 people per day. This system is the subject of this litigation and proposed settlement.

Proposed Agreed Judgment: The Agreed Final Judgment contains provisions for injunctive relief and civil penalties. The injunction, among other things, requires the installation of a new water supply well, modifications to the system's pressure and storage tanks, and the plugging of an abandoned well. The judgment also contains a requirement that defendant pay a $30,000 civil penalty, $9,837 in attorneys' fees, and all court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Amanda Atkinson Cagle, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

Issued in Austin, Texas, on September 17, 1997.

TRD-9712390
Suzanne Marshall
Special Assistant Attorney General
Office of the Attorney General
Filed: September 17, 1997

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC 501. Requests for federal consistency review were received for the following projects(s) during the period of September 11, 1997, through September 18, 1997:

FEDERAL AGENCY ACTIONS:

Applicant: Laredo Construction Company; Location: 6501 Channelview, Galveston, Galveston County, Texas; Project Number: 97-

0301-F1; Description of Proposed Action: The applicant proposes to construct 420 linear feet of bulkhead and place fill in waters for the construction of a barge berthing, loading, and unloading facility. The proposed bulkhead would range from 5 to 75 feet from the existing shoreline; Type of Application: S.C.O.E. permit application #21092 under §10 of the Rivers and Harbors Act of 1899 (33 .S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: U.S. Army Corps of Engineers, Galveston District; Location: Existing man- made upland canals within the Galveston District Boundaries; Project Number: 97-0303-F1; Description of Proposed Action: The applicant proposes to amend special condition "c", which states "That the area of the proposed work will be inspected by Corps of Engineers personnel prior to authorization being given" with "That the permittee must obtain an individual water quality certification from the Texas Natural Resources Conservation Commission prior to the discharge of effluent into waters of the United States from a dredged material disposal area". The applicant further proposes to extend the time of the general permit until December 31, 2002; Type of Application: U.S.C.O.E. general permit #14533(03) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Clear Creek Drainage District; Location: Cowards Creek, from Greenbriar Drive to an existing oil separator (approximately 1,300 feet west of Greenbriar Drive), in Galveston County, Texas; Project Number: 97-0304-F1; Description of Proposed Action: The applicant proposes to construct uniform bank slopes along the project site by grading the existing banks to a 3:1 slope. Approximately 1,650 cubic yards (the original public notice incorrectly stated that 0.17-cubic yard would be excavated) of sediment would be excavated and placed in an upland area. In addition, a temporary 48-inch culvert and road crossing would be constructed in the vicinity of Greenbriar Drive to allow for the transportation of equipment and materials; Type of Application: U.S.C.O.E. permit application #20874 (Revised) under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Velasco Drainage District; Location: In both the Clute-Lake Jackson Drainage Channel, between Clute's Main Street, FM 523 and the Dow Barge Canal, between State Highway 288 and FM 523, Clute and Freeport, Brazoria County, Texas; Project Number: 97-0306- F1; Description of Proposed Action: The applicant proposes to dredge approximately 250,000 cubic yards of material from the existing streambed of the Clute-Lake Jackson Drainage Channel. The dredging would extend for approximately 25,000 linear feet at approximately 64 feet wide. All dredged material would be temporarily stockpiled within a proposed 35-acre upland contained storage area. The applicant would later reclaim the dredged material from the storage area as fill to repair and maintain the bank slopes and toe of the hurricane flood protection levee along the Dow Barge Canal; Type of Application: U.S.C.O.E. permit application #21073 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Port of Corpus Christi Authority; Location: North side of the Viola Turning Basin at the end of the Corpus Christi Ship Channel, Corpus Christi, Nueces County, Texas; Project Number: 97-0307-F1; Description of Proposed Action: The applicant proposes to use one of two options to control shoreline erosion. Option A - would use 40-foot-wide, concrete articulating, revetment mats backed with filter fabric on a 2.5H:1V slope extending from approximately -7.0 feet to +7.0 feet mean low tide (MLT). The minimum length of the mat structure would be 700 linear feet with optional extensions of up to 300 linear feet at each end of the installation (600 linear feet). The maximum length of the structure would be 1,300 linear feet. Dredging will be conducted below mean high water to remove approximately 3,600 cubic yards of material in order to grade the bank. Option B - would utilize a combination of anchored steel sheet piles to construct a bulkhead and revetment mats. The bulkhead will be approximately 820 feet long and 12 feet above MLT. An additional 350 linear feet of revetment mat will be used on each end of the bulkhead (700 linear feet). The total length of the structure would be 1,570 feet. Approximately 4,000 cubic yards of material will be placed below mean high water for use as backfill behind the bulkhead, and to create a suitable slope for the revetment mat installation. A total of 0.6 acre of tidal area will be impacted by this fill operation; Type of Application: U.S.C.O.E. permit application #21085 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 .S.C.A. §§125-1387).

Applicant: Ross Novelli, Sr.; Location: Adjacent to Offats Bayou at 8415-17 Teichman Road, Galveston, Galveston County Texas; Project Number: 97-0308-F1; Description of Proposed Action: The applicant proposes to elevate his property by placing fill material onto the lot. The property is approximately 1,289 acres, which includes approximately 0.5 acres of wetlands. The wetlands are man-made as a result of elevation changes made to adjacent lots. Both wetland areas are inundated with runoff from adjacent properties and occasionally by storm tides. The wetland vegetation consists mostly of Tamarix gallica and Phragmites australis; Type of Application: U.S.C.O.E. permit application #21071 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Walter J. and Olivia T. Meyer; Location: Offatts Bayou, at 1502 Driftwood Lane, in Galveston, Galveston County, Texas; Project Number: 97-0309-F1; Description of Proposed Action: The applicant proposes to place approximately 100 cubic yards of riprap into an area 100-feet wide by 28-feet long, parallel to the shoreline. The riprap would be composed of concrete and brick rubble from the demolition of the existing house, walkways, slab, driveway, and pier on the lot. An existing deteriorated bulkhead and the additional riprap are proposed to be covered with concrete terracing and steps for aesthetics; Type of Application: U.S.C.O.E. permit application #21084 under §10 of the Rivers and Harbors Act of 1899 (33 .S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 .S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action should be referred to the Coastal Coordination Council for review and whether the action is or is not consistent with the Texas Coastal Management Program goals and policies. All comments must be received within 30 days of publication of this notice and addressed to Ms. Janet Fatheree, Council Secretary, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712599
Garry Mauro
Chairman
Coastal Coordination Council
Filed: September 22, 1997

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Office of the Consumer Credit Commissioner

Notice of Rate Ceiling

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Title 79, Texas Civil Statutes, Articles 1D.003 and 1E.003, as amended (Texas Civil Statutes, Article 5069-1D.003 and 1E.003).

[graphic]

Issued in Austin, Texas, on September 15, 1997.

TRD-9712437
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 18, 1997

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Texas Credit Union Department

Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Texas Credit Union Department and is under consideration:

An application for a name change was received for Amarillo School Employees Credit Union, Amarillo, Texas. The proposed new name is The Education Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during considering the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712573
Harold E. Feeney
Commissioner
Texas Credit Union Department

Filed: September 22, 1997

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Application(s) to Expand Field of Membership

Notice is given that the following applications have been filed with the Texas Credit Union Department and are under consideration:

An application was received from VATAT Credit Union, Austin, Texas to expand its field of membership. The proposal would permit members and employees of the Vocational Home Economics Teachers Association of Texas, who are not already primary members of another teacher's credit union, to be eligible for membership in the credit union.

An application was received from Associated Credit Union, Deer Park, Texas to expand its field of membership. The proposal would permit employees of Flexitallic L.P. to be eligible for membership in the credit union.

An application was received from First Energy Credit Union, Houston, Texas to expand its field of membership. The proposal would permit employees, members, and member's employees of the Air Conditioning Council of Greater Houston to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during considering the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712572

Harold E. Feeney
Commissioner
Texas Credit Union Department
Filed: September 22, 1997

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Texas Education Agency

Notice of Consultant Contract Award

The Texas Education Agency (TEA) files this notice of consultant contract award under the Texas Government Code, Chapter 2254, Subchapter B.

The TEA published the Request for Proposals (RFP) #701-97-023 in the July 25, 1997, issue of the *Texas Register* (22 TexReg 6963).

The consultant will provide advisement to the TEA, regional education service center, and independent school district staff in regards to beginning reading instruction and research. The consultant will provide services outlined in the RFP concerning the Texas Reading Initiative.

The consultant selected to perform these tasks is Jean Osborn, University of Illinois at Urbana-Champaign, 3001 South First Street, Champaign, IL 61821. The maximum amount of this contract is $40,000. The contract was executed on September 9, 1997, and ends no later than August 31, 1998.

The consultant will provide advisement to TEA staff regarding beginning reading instruction through August 31, 1998.

Issued in Austin, Texas, on September 16, 1997.

TRD-9712324
Criss Cloudt
Associate Commissioner for Policy Planning and Research
Texas Education Agency
Filed: September 16, 1997

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Governor's Office of Budget and Planning

Request for Proposals for the FY 1999 State of Texas Federal and State Cost Allocation Plans

Pursuant to Texas Government Code, Subchapter A, §§2254.001 et. seq., the Governor's Office of Budget and Planning invites professionals with demonstrated competence and qualifications and documented expertise in the field of indirect cost recovery and cost allocation plans for governmental units to submit proposals to prepare and negotiate with the federal government, under the provisions of OMB Circular A-87, the State of Texas' consolidated statewide cost allocation plan for the fiscal year ending August 31, 1999. These consultant services have been provided previously by the consulting firm of David M. Griffith and Associates, Ltd. (DMG). Unless a clearly superior proposal is received from different proposer, the Governor's Office intends to award the contract for the FY99 plan to DMG, subject to negotiation of a fair and reasonable price.

Proposers will be expected to develop a cost allocation plan that enables eligible state agencies to recover the maximum indirect costs possible from federal programs. The contractor selected will be responsible for all aspects of the plan, including obtaining raw cost and statistical data, identifying allocable costs, preparing and submitting the plan, and negotiating the final plan with the federal government for state agency use during the state fiscal year beginning September 1, 1998. Proposals must include a description of the system to be used to extract allowable costs from central government agencies and for allocating such costs. Contractor may be required to prepare alternative allocation tables using different allocation bases to demonstrate maximum feasible recovery options.

As a component of the cost allocation plan, the contractor selected must also identify the costs of providing statewide support services to each state agency. This component must identify state agencies that use services from state central services agencies (for example, auditing, accounting, centralized purchasing, and legal services) in carrying out their programs and the type and dollar amount of services used. The contractor selected will be responsible for all aspects of this component, including obtaining raw cost and statistical data and identifying allocable costs. Proposals must include a description of the system to be used to extract allowable costs from central government agencies and for allocating such costs.

A complete set of the work papers used to prepare the plan must be kept and provided to the Governor's Office upon request. The contractor is required to provide 25 copies of the summary of fixed costs related to federal cost allocations from the completed plan and 25 copies of the summary of costs related to state cost allocations to other state agencies from the completed plan.

The Governor's Office of Budget and Planning will evaluate each proposal and reserves the right to reject any and all proposals. The state assumes no responsibility for expenses incurred in preparing responses to this solicitation. If selected, the contractor will be chosen on the basis of proposal content, the proposer's demonstrated experience, competence, knowledge and qualifications, and ability to meet the federal filing deadline of February 28, 1998.

A copy of the FY1997 plan may be obtained by contacting Tom Adams, Governor's Office of Budget and Planning, P. O. Box 12428, Austin, Texas 78711 (telephone 512-463-1771).

All proposals must be received at the previously listed address no later than 5:00 p.m., October 27, 1997.

Issued in Austin, Texas, on September 12, 1997.

TRD-9712306
Pete Wassdorf
Deputy General Counsel, Office of the Governor
Governor's Office of Budget and Planning
Filed: September 16, 1997

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Texas Department of Health

Corrections of Error

The Texas Department of Health adopted an amendment to 25 TAC §35.601 and §35.611 and repeal to 25 TAC §35.901. The rules appeared in the August 8, 1997, issue of the *Texas Register*, (22 TexReg 7347 and 7351).

The dcpartment inadvertently failed to indicate the correct effective date of the rules as September 1, 1997.

On page 7351, the effective dates for amendments to §35.601, new §35.611, and repeal of §35.901 should be "September 1, 1997" instead of "August 18, 1997".

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The Texas Department of Health proposes the repeal to 25 TAC §§137.1–137.11, and new 25 TAC §§137.1–137.4, 137.11–137.13, 137.21–137.23, and 137.31–137.55. The rules appeared in the July 22, 1997, issue of the *Texas Register*, (22 TexReg 6818).

On page 6818, the rules were published uner "Title 30. Environmental Quality" instead of "Title 25. Health Services".

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Health and Human Services Commission

Public Notice

The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 97-12, Amendment Number 536.

The amendment amends home health services coverage by adding occupational therapy services, limited electrical equipment and additional medical supplies as covered services. The homebound requirement for those clients under 21 years of age has been removed as a medical necessity criteria. The amendment is effective July 1, 1997.

If additional information is needed, please contact Kay Sterling, Texas Department of Health, at (512) 338-6511.

Issued in Austin, Texas, on September 17, 1997.

TRD-9712434
Marina S. Henderson
Executive Deputy Commissioner
Health and Human Services Commission
Filed: September 18, 1997

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Texas Department of Human Services

Public Notice-Announcement of Availability of Funds of Intent to Contract for Provision of Non-residential Services to Victims of Family Violence

This supersedes the previous September 19, 1997 announcement which appeared in the September 19, 1997, issue of the *Texas Register* (22 TexReg 9553).

The Texas Department of Human Services (TDHS) Family Violence Unit announces the availability of funds not to exceed $1,800,000 to provide non-residential services to victims of family violence in Texas, pursuant to the Family Violence Prevention and Services Program, U.S. Department of Health and Human Services Program.

Funds will be awarded on a competitive basis to private, non-profit 501(c)(3) organizations who best demonstrate the ability to effectively deliver services to the victims of family violence, as outlined in the announcement specifications. Each proposal will be reviewed and rated on a scale of 100 points. At a minimum one eligible proposal will be selected from each of the 11 TDHS regions; however, awards will be made only to those proposals receiving a score of 70 points or above. A maximum of $75,000 will be awarded per individual contract award. Administrative costs may not exceed 8% of contract award.

GROUP I

Seventy-five percent of contract awards will be to organizations whose primary service is to victims of family violence, or who have provided comprehensive services to family violence victims for a minimum of two years.

GROUP II

The remaining twenty-five percent will be to organizations whose primary service is not necessarily for victims of family violence but who have an established record of providing services to a specific population or community.

Minority and women's organizations who qualify are encouraged to apply. Additional eligibility qualifications are outlined in the announcement specifications.

To obtain detailed specifications and background information regarding this announcement, contact Dorothy W. Gipson, Family Violence Unit, Texas Department of Human Services, PO Box 149030, Mail Code W-230, Austin, Texas 78714-9030, (512) 438-4221. Requests may be made via fax at (512) 438-5538.

Application Deadline: Proposals must be received no later than 4:00 p.m. Central Standard Time, October 27, 1997.

Issued in Austin, Texas, on September 19, 1997.

TRD-9712560
Glen Scott
General Counsel, Legal Services
Texas Department of Human Services
Filed: September 19, 1997

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Texas Department of Insurance

Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Lumbermans Mutual Casualty Company proposing rates outside the flexibility band promulgated by the Commissioner of Insurance pursuant to TEXAS INSURANCE CODE ANNOTATED article 5.101, §3(g). They are proposing a rate of +40% above the benchmark for all coverages and territories for private passenger automobile insurance.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to Article 5.101, §3(h), is made with the Chief Actuary, P&C, Philip Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

Issued in Austin, Texas, on September 19, 1997.

TRD-9712502
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: September 19, 1997

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Notice of Public Hearing

The Commissioner of Insurance, at a public hearing under Docket No. 2306 scheduled for November 3, 1997 at 10:00 a.m., in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), to adopt a new Rule 17 to implement motor vehicle repair notice requirements of the Insurance Code, Article 5.07-1, as amended by House Bill 423 of the 75th Legislature. Staff's petition (Ref. No. A-0997-28-I) was filed on September 19, 1997.

Staff proposes for the Manual a new Rule 17 to set forth how an insurer (including a person acting on behalf of an insurer) must give notice to a beneficiary or third-party claimant regarding motor vehicle repair rights under the Insurance Code, Article 5.07-1. The proposed rule requires the insurer to provide the notice to a beneficiary or third-party claimant. One requirement is for an insurer to give a copy of the prescribed notice to any claimant at the time the vehicle is presented to the insurer in connection with a claim for damage repair. If such a presentation is made, the notice must be given at that time.

In order to further the goal that all claimants receive notice of their rights, the proposed rule alternatively provides that if the claim is made by means other than presentation of the vehicle to the insurer, then the insurer must mail the prescribed notice to any claimant who is not otherwise given the notice within three business days from the making of the claim. In such a case, the insurer must mail the notice within three business days of receiving notice of the claim by other means (such as in writing or by telephone), unless otherwise delivered within that time.

If an insurer chooses to address the liability issue at the time of the claim filing, it may send or deliver its own letter along with the notice, which may include the Optional Provision shown in the rule. The notice must be on a separate page from any letter or other material, except as otherwise provided in the proposed rule. The proposed rule provides that the notice may be printed on the reverse side of a copy of the Insurance Code, Article 5.07-1, or it may be attached to such copy. The proposed rule is shown in the exhibit attached to Staff's petition.

A copy of the petition containing the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 463-6326; refer to (Ref. No. A-0997-28-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the *Texas Register*, to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Property and Casualty Insurance Lines, Texas Department of Insurance, P. O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

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).

Issued in Austin, Texas, on September 19, 1997.

TRD-9712583
Lynda H. Nesenholtz
Assistant General Counsel
Texas Department of Insurance
Filed: September 22, 1997

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The Commissioner of Insurance, at a public hearing under Docket No. 2305 scheduled for November 3, 1997 at 10:00 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or adjusted 1996-97 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-0997-27-I) was filed on September 19, 1997.

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 listed 1996-97 model vehicles.

A copy of the petition, including a 74-page exhibit with the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 463-6326; refer to (Ref. No. A-0997-27-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the *Texas Register*, to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Property and Casualty Insurance Lines, Texas Department of Insurance, P.O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

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).

Issued in Austin, Texas, on September 19, 1997.

TRD-9712580
Lynda H. Nesenholtz
Assistant General Counsel
Texas Department of Insurance
Filed: September 22, 1997

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of Atlas Administrators, Inc., a domestic third party administrator. The home office is Austin, Texas.

Application for admission to Texas of Bollinger Fowler Co., a foreign third party administrator. The home office is Short Hills, New Jersey.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on September 19, 1997.

TRD-9712501
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: September 19, 1997

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Texas Department of Mental Health and Mental Retardation

Notice of Request for Information (RFI)

The Texas Department of Mental Health and Mental Retardation (TDMHMR) and the Texas Commission on Alcohol and Substance Abuse (TCADA) request information from all interested parties on the design of a managed care pilot for delivery of mental health and chemical dependency services which will use Medicaid and other state and federal funding. The pilot will be implemented in the Dallas Medicaid region, which includes Dallas, Collin, Hunt, Rockwall, Ellis, Navarro, and Kaufman counties, in 1999.

Copies of the RFI will be available on October 1, 1997. The deadline for responding to the RFI is 5:00 p.m., November 3, 1997.

Copies of the RFI may be obtained from Mark Johnston, TDMHMR, P.O. Box 12668, Capital Station, Austin, Texas 78711-2668, (512) 206-5205. The RFI is also available on the TDMHMR Internet web site at www.mhmr.state.tx.us/dallas.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712579
Ann K. Utley
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: September 22, 1997

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Texas Natural Resource Conservation Commission

Applications for Waste Disposal/Discharge Permits

Notices of Applications for waste disposal/discharge permits issued during the period of September 15 — September 19, 1997.

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 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, or renewal and permit number.

BORAL BRICKS, INC., P.O. Box 2110, Henderson, Texas 75653; the Henderson Brick Production Facility is located approximately 250 feet southeast of the intersection of U.S. Highway 259 and State Highway 322, approximately 2 1/4 miles northwest of the courthouse in the City of Henderson, Rusk County, Texas; renewal; Permit No. 01570.

BRYAN CITY OF, PO. Box 1000, Bryan, Texas 77805; the Still Creek Wastewater Treatment Facilities are located northwest of State Highway 21 and approximately 2300 feet west-southwest of the intersection of State Highway 21 and Farm-to-Market Road 2818 in Brazos County, Texas; renewal; Permit No. 10426-002.

COLLEGE STATION CITY OF, P.O. Box 9960, College Station, Texas 77842; the Carters Creek Wastewater Treatment Facilities are located adjacent to the west side of Carters Creek, approximately 0.75 mile east of State Highway 6, and approximately 4,000 feet north and 1,800 feet east of the intersection of State Highway 6 East and Texas Avenue in Brazos County, Texas; amendment; Permit No. 10024-006.

COMPONENT STRUCTURES, INC., P.O. Box 819089, Dallas, Texas 75381; the wastewater treatment plant is located approximately 2200 feet east of the intersection of Hardy Road and Richey Road, north of the City of Houston in Harris County, Texas; renewal; Permit No. 12320-001.

HOUSTON CITY OF, Department of Public Works and Engineering, P.O. Box 262549, Houston, Texas 77207-2549; the wastewater treatment facilities are at 7410 Galveston Road (State Highway No. 3) in the City of Houston in Harris County, Texas; amendment; Permit No. 10495-050.

HOUSTON INDUSTRIES INCORPORATED, P.O. Box 1700, Houston, Texas 77251; the Cedar Bayou Steam Electric Station; the plant site is located on the east bank of Cedar Bayou approximately one and one-half miles south of the intersection of State Highway 146 and Farm-to-Market Road 565 in the City of Baytown, Chambers County, Texas; renewal; Permit No. 01241.

HOUSTON INDUSTRIES INCORPORATED, CITY OF SAN ANTONIO, CENTRAL POWER AND LIGHT COMPANY, AND CITY OF AUSTIN, P.O. Box 1700, Houston, Texas 77251; the South Texas Project Electric Generating Station; the plant site is located approximately 10 miles north of Matagorda Bay and 12 miles south-southwest of the City of Bay City, Matagorda County, Texas; renewal; Permit No. 01908.

INDUSTRY CITY OF, P.O. Box 190, Industry, Texas 78944-0190; the City of Industry Wastewater Treatment Facilities; the facilities are located approximately 6,500 feet northwest of the intersection of State Highway 159 and Farm-to-Market Road 109 in Austin County, Texas; new; Permit No. 13897-01.

ORANGE COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1, P.O. Box 1267, Vidor, Texas 77662; the Tiger

Lake Wastewater Treatment Facilities; the plant site is located approximately 3,500 feet southwest of the intersection of Farm-to-Market Road 1132 and State Highway 105 in Orange County, Texas; amendment; Permit No. 10875-003.

PORT ISABEL-SAN BENITO NAVIGATION DISTRICT, 250 Industrial Drive, Port Isabel, Texas 78578; a bilge water reclamation facility; the plant site is located adjacent to Industrial Drive at the intersection of Industrial Drive and South Point Road at the port of Port Isabel, Cameron County, Texas; new; Permit No. 03942.

SCHLUMBERGER TECHNOLOGY CORPORATION, P.O. Box 1590, Rosharon, Texas 77583-1590; the Sandy Point Wastewater Treatment Plant is located approximately 1.9 miles northwest of the intersection of Farm-to-Market Road 1462 and State Highway 288 in Brazoria County, Texas; the amendment; Permit No. 12062-001.

SOUTHWESTERN PUBLIC SERVICE COMPANY, P.O. Box 1261, Amarillo, Texas 79170; the Clifford B. Jones Steam Electric Station; the facility is located two miles east of the intersection of U.S. Highway 84 and State Highway 331, southeast of the City of Lubbock, Lubbock County, Texas; renewal; Permit No. 01312.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE, P.O. Box 4011, Huntsville, Texas 77342; the Ferguson Unit Wastewater Treatment Facility is located on State Route 247, outside the northeast corner of the Security Compound of the Ferguson Unit; approximately 6 miles south of Midway, Madison County, Texas; amendment; Permit No. 11176-001.

THE BAYOU CLUB OF HOUSTON, 8550 Memorial Drive, Houston, Texas 77024; the Bayou Club of Houston Wastewater Treatment Facilities; the facilities are located at 8550 Memorial Drive in the City of Houston in Harris County, Texas; renewal; Permit No. 12233-01.

TYLER CITY OF, P.O. Box 2039, Tyler, Texas 75710; the Westside Wastewater Treatment Facilities are located at 14939 County Road 46, approximately 20,000 feet west-northwest of the intersection of State Highway Loop 323 and U.S. Highway 69 and approximately 7 miles northwest of the Smith County Courthouse in the City of Tyler in Smith County, Texas; amendment; Permit No. 10653-001.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712576
Eugenia K. Brumm, Ph., D.
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: September 22, 1997

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Notice of Availability

Texas Natural Resource Conservation Commission (TNRCC) furnishes this notice of availability of the draft Needs Assessment for Hazardous Waste Commercial Management Capacity in Texas (1998 Update) and a 30 day period for public comment.

Notice is hereby given that the document entitled Needs Assessment for Hazardous Waste Commercial Management Capacity in Texas (1998 Update) (Hazardous Waste Needs Assessment) is available for public review and comment. The 72nd Legislature directed the Texas Water Commission (now the TNRCC) to conduct an assessment of the need for commercial capacity to manage hazardous wastes generated in Texas. The Hazardous Waste Needs Assessment identifies the need for specific commercial hazardous waste management technologies. TNRCC uses information in the Hazardous Waste Needs Assessment in conjunction with rules to prioritize the TNRCC's processing of commercial hazardous waste facility permit applications. TNRCC is required by law to update the Hazardous Waste Needs Assessment every two years. The 1998 update is the third update to the first Needs Assessment that was published in 1992.

The public is invited to submit written comments on the draft Needs Assessment for Hazardous Waste Commercial Management Capacity in Texas (1998 Update) to TNRCC. Written comments must be received by no later than November 3, 1997. Please address written comments to: Amanda Corson, Capacity Assessment Planner, Waste Planning and Assessment Division, TNRCC, P.O. Box 13087, MC 132, Austin, TX 78711-3087.

Copies of the draft Needs Assessment for Hazardous Waste Commercial Management Capacity in Texas (1998 Update) can be obtained by contacting Amanda Corson at (512) 239-2331 or by submitting an e-mail request to capacity@.tnrcc.state.tx.us.

Issued in Austin, Texas, on September 19, 1997.

TRD-9712487
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: September 19, 1997

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Default Order. The TNRCC Staff proposes Default Orders when the Staff has sent an Executive Director's Preliminary Report (EDPR) 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 Clean Air Act (the Act), 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 **October 26, 1997**. The TNRCC will consider any written comments received and the TNRCC may withhold approval of a Default Order if a comment indicates the proposed Default Order is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Additional notice will not be made if changes to a Default Order 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 Staff Attorney designated for the Default Order at the TNRCC's Central Office at P.O. Box 13087 Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 26, 1997.** Written comments may also be sent by facsimile machine to the Staff Attorney

at (512) 239-3434. The TNRCC Staff Attorneys are available to discuss the Default Order and/or the comment procedure at the listed phone numbers; however, comments on the Default Order should be submitted to the TNRCC **in writing.**

(1)COMPANY: Donald Dragoo dba Union Hill Water System; DOCKET NUMBER: 96-1672-PWS-E; ACCOUNT NUMBER: PWS Number 1260107 and CCN Number 12047; LOCATION: Mansfield, Johnson County, Texas; TYPE OF FACILITY: public drinking water supply; RULE VIOLATED: 30 TAC §290.120 (c)(5) and the Code, §341.031 by failing to submit water samples from the facility for copper and lead analysis for 12 months; PENALTY: $630; STAFF ATTORNEY: Kathy Keils, Litigation Support Division, MC 175, (512) 239-0648; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas, 76010-6499, (817) 469-6750.

(2)COMPANY: First Class Paint and Body aka Top of the Line Paint and Body; DOCKET NUMBER: 96-1478-AIR-E; ACCOUNT NUMBER: DB-3746-N; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: paint and body shop; RULES VIOLATED: 30 TAC §§115.422(1)(A) and (2), 115.426(a)(1)(A), (B), and (D) and 116.115(a), by failing to install and operate a gun cleaner system, failing to use coating application equipment with a transfer efficiency of at least 65%, failing to maintain material safety data sheets, failing to maintain records of the quantity and type of each coating and solvent consumed, failing to maintain the records required by TNRCC rules for at least two years, and failing to maintain records sufficient to demonstrate compliance; PENALTY: $500; STAFF ATTORNEY: Booker Harrison, Litigation Support Division, MC 175, (512) 239-3400; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(3)COMPANY: George Derrick dba Cougar Country Water System; DOCKET NUMBER: 97-0581-PWS-E; ACCOUNT NUMBER: PWS Number 1210019 and CCN Number 12694; LOCATION: Jasper County, Texas; TYPE OF FACILITY: retail water utility service; RULES VIOLATED: 30 TAC §§290.41(c)(3)(N) and (O), 290.42(e)(4), 290.43(c) and (d)(3), 290.45(b)(1)(C)(ii), 290.46(f)(2), (n), and (w), 290.41(c)(1)(F), 290.42(i), 290.44(c) and (d)(4), 290.46(i), (j), and (m), 290.120(c)(5), and the Code, §341.031, by failing to provide flow measuring devices, failing to select and install proper disinfection equipment, failing to provide a ground storage tank, failing to provide a pressure tank, failing to provide a total storage capacity of 200 gallons per connection, failing to perform weekly chlorine residual tests, and by failing to maintain records for at least three years, failing to update map of distribution system, failing to post ownership signs at facilities, failing to secure sanitary control easements within 150 feet of the locations and by failing to record such deed records, failing to protect facilities with intruder resistant fence, failing to meet the minimum water line size requirements, failing to provide accurate metering devices, failing to have an adequate plumbing ordinance, regulations, or service agreement, failing to complete customer service inspections, by failing to maintain records on completed inspection certifications for at least ten years, failing to initiate a maintenance program, and failing to submit required tap samples; PENALTY: $23,430; STAFF ATTORNEY: Cecily Small, Litigation Support Division, MC 175, (512) 239-2940; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 892-2119.

(4)COMPANY: M & S Welding and Lease Service Corporation; DOCKET NUMBER: 96-0314-PST-E; ACCOUNT NUMBER: Enforcement ID Number 4084; LOCATION: Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: underground storage tanks; RULE VIOLATED: 30 TAC §334.401(a) and §334.414(d), Texas Water Code, Chapter 26, and the Act by permanently removing an underground storage tank from service without licensed on-site supervisor present for the permanent removal of a underground storage tank; PENALTY: $2,500; STAFF ATTORNEY: Lisa Newcombe, Litigation Support Division, MC 175, (512) 239-2269; REGIONAL OFFICE: 134 East Van Buren, Suite 301, Harlingen, Texas 78550-6010, (210) 425-6010.

(5)COMPANY: McKinney Grain; DOCKET NUMBER: 97-0021-AIR-E; ACCOUNT NUMBER: CP-0163; LOCATION: McKinney, Collin County, Texas; TYPE OF FACILITY: grain handling and storage plant; RULE(S) VIOLATED: 30 TAC §101.4 and the Code, §382.085(a) and (b) by causing as to adverse affect on human health or welfare, animal life, vegetation, or property; PENALTY: $9,000; STAFF ATTORNEY: Hodgson Eckel, Litigation Support Division, MC 175, (512) 239-2195; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(6)COMPANY: Matt Comrado dba Mattys Pattys, Incorporated; DOCKET NUMBER: 96-1952-PWS-E; ACCOUNT NUMBER: PWS Number 1012226; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public drinking water system; RULE VIOLATED: 30 TAC §290.106 and the Code, §341.033(d) by failing to submit water samples; PENALTY: $1,030; STAFF ATTORNEY: Kathy Keils, Litigation Support Division, MC 175, (512) 239-0678; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7)COMPANY: Mike Ford dba Town & Country Mobile Home Park; DOCKET NUMBER: 96-1652-PWS-E; ACCOUNT NUMBER: PWS Number 0720022; LOCATION: Dublin, Erath County, Texas; TYPE OF FACILITY: public drinking water system; RULES VIOLATED: 30 TAC §290.106 and §290.120 (c)(5) and the Code, §341.033(d) and §341.031 by failing to submit water samples for bacteriological analysis; PENALTY: $1,680; STAFF ATTORNEY: Kathy Keils, Litigation Support Division, MC 175, (512) 239-0678; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(8)COMPANY: Mohtay Nahas and City Radiator Service; DOCKET NUMBER: 97-0082-IHW-E and 97-0083-IHW-E; ACCOUNT NUMBER: SWR NUMBER: 81318; EPA IDENTIFICATION NUMBER: TX0000050377; ENFORCEMENT IDENTIFICATION NUMBER: 1978; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: radiator repair shop; RULE VIOLATED: 30 TAC §335.4 and Texas Water Code, §26.121 by allowing the collection, handling, storage, processing, or disposal of hazardous and industrial solid wastes in such a manner so as to cause the discharge or imminent threat of discharge of hazardous and industrial solid waste into the soils and potentially into or adjacent to the waters in the state; PENALTY: $8,400; STAFF ATTORNEY: Booker Harrison, Litigation Support Division, MC 175, (512) 239-3400; REGIONAL OFFICE: 1921 Ceder Bend, Suite 150, Austin, Texas 78758-5336, (512) 339-3795.

(9)COMPANY: Thomas Gartner dba Country Village Mobile Home Park; DOCKET NUMBER: 96-0537-PWS-E; ACCOUNT NUMBER: PWS NUMBER: 0200353; LOCATION: Brazoria County, Texas; TYPE OF FACILITY: public drinking water system; RULE VIOLATED: 30 TAC §290.120(c)(5) and the Code, §341.031 by failing to submit water samples; PENALTY: $930; STAFF ATTOR-

NEY: Kathy Keils, Litigation Support Division, MC 175, (512) 239-0678; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10)COMPANY: Topline Enterprises dba Govalle Food Store & Sultanali Momin; DOCKET NUMBER: 96-1465-PST-E; ACCOUNT NUMBER: ENFORCEMENT IDENTIFICATION NUMBER: 5621; FACILITY IDENTIFICATION NUMBER: 66096; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: underground storage tanks; RULE VIOLATED: 30 TAC §§334.11(a)(1), 334.22, 334.50(b)(1)(A), 334.72(3), and 334.74(3) by failing to submit adequate documentation to demonstrate compliance, failing to pay fees, failing to provide proper release detection, failing to report a suspected release within 24 hours, failing to submit a report summarizing procedures related to the release within 45 days; PENALTY: $12,200; STAFF ATTORNEY: Tracy Harrison, Litigation Support Division, MC 175, (512) 239-3400; REGIONAL OFFICE: 1921 Cedar Bend, Suite 150, Austin, Texas 78758-5335, (512) 339-2929.

(11)COMPANY: Wolfe Air Park Water System; DOCKET NUMBER: 96-1610-PWS-E; ACCOUNT NUMBER: PWS Number 0200409; LOCATION: Manvel, Brazoria County, Texas TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.120 (c)(5) and the Code, §341.031 by failing to submit water samples; PENALTY: $630; STAFF ATTORNEY: Kathy Keils, Litigation Support Division, MC 175, (512) 239-0678; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712574
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: September 22, 1997

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Health and Safety Code, the Texas Clean Air Act (the Act), Chapter 382, §382.096. The Act, §382.096 requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 382.096 requires that notice of the proposed orders and of the opportunity to comment must be 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 **October 26, 1997.** Section 382.096 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment indicates the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Additional notice is not required if changes to an AO 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 these AOs should be sent to the staff attorney designated for each AO at the TNRCC's Central Office at P.O. Box 13087 Austin, Texas 78711-3087 and **must be received by 5:00 p.m. on October 26, 1997.** Written comments may also be sent by facsimile machine to the staff attorney at (512) 239-3434. The TNRCC staff attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §382.096 provides that comments on the AOs should be submitted to the TNRCC **in writing.**

(1)COMPANY: Bernard Timbers Water Supply; DOCKET NUMBER: 96-1661-PWS-E; ACCOUNT NUMBER: PWS Number 2410014 and CCN Number 12486; LOCATION: East Bernard, Wharton County, Texas; TYPE OF FACILITY: public drinking water system; RULES VIOLATED: 30 TAC §§290.41(c)(3)(O) and (P), 290.41(c)(1)(F), 290.42(e)(4)(D) and (7), 290.46(i), (m), (n), (p), and (w), 290.106(a)(1), and the Code, §341.031(a) by failing to prepare a plan for the water system, by failing to obtain customer service agreements to prevent the use of lead in the water system, by failing to maintain the grounds surrounding the water plant facilities, by failing to post a legible sign at each of the water system's facilities, by failing to maintain an up-to-date map of the distribution system, by failing to protect the well site with an intruder-resistant fence, by failing to inspect the ground storage and pressure tanks on an annual basis, by failing to protect the system's facilities by a 150-foot radius sanitary control easement, by failing to provide facilities for determining the amount of disinfectant used, by failing to ventilate the housing for the chlorination, equipment, and by failing to provide an all weather road to the well site; PENALTY: $1,335; STAFF ATTORNEY: Guy Henry, Litigation Support Division, MC 175, (512) 239-6259; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2)COMPANY: FM Properties Operating Company; DOCKET NUMBER: 97-0621-IWD-E; ACCOUNT NUMBER: NO TNRCC PERMIT; LOCATION: Travis County, Texas; TYPE OF FACILITY: residential, commercial, and recreational construction site; RULE VIOLATED: Texas Water Code, §26.121(a)(3) by discharging waters containing sediments and suspended solids from the construction site; PENALTY: $1,080; STAFF ATTORNEY: Guy Henry, Litigation Support Division, MC 175, (512) 239-0678; REGIONAL OFFICE: 1921 Cedar Bend, Suite 150, Austin, Texas 78758-5336, (512) 339-3795.

(3)COMPANY: Joe Kim dba All Seasons Conoco; DOCKET NUMBER: 97-0263-PWS-E; ACCOUNT NUMBER: PWS Number 1012932; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public drinking water system; RULE VIOLATED: 30 TAC §290.106 and the Code, §341.033(d) by failing to submit a water sample from said public water system for bacteriological analysis; PENALTY: $880; STAFF ATTORNEY: Hodgson Eckel, Litigation Support Division, MC 175, (512) 239-2195; REGIONAL OFFICE: 5425 Polk St., Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4)COMPANY: John Bunyi dba Uniland Golf Center; DOCKET NUMBER: 97-0264-PWS-E; ACCOUNT NUMBER: PWS Number 1012934; LOCATION: Katy, Harris County, Texas; TYPE OF FACILITY: public drinking water system; RULE VIOLATED: 30 TAC §290.106 and the Code, §341.033(d) by failing to submit water samples from the facility for bacteriological analysis; PENALTY: $930; STAFF ATTORNEY: Cecily Small, Litigation Support Division, MC 175, (512) 239-2940; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5)COMPANY: Roger Lewis dba Roger Lewis Water System; DOCKET NUMBER: 96-1611-PWS-E; ACCOUNT NUMBER: PWS Number 0200468 and CCN Number 12255; LOCATION: Pearland, Brazoria County, Texas; TYPE OF FACILITY: public drinking water system; RULE VIOLATED: 30 TAC §290.120(c)(5) and the Code, §341.031 by failing to submit water samples; PENALTY: $630; STAFF ATTORNEY: Guy Henry, Litigation Support Division, MC 175, (512) 239-6259; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6)COMPANY: Thalia Water Supply Corporation; DOCKET NUMBER: 96-0885-PWS-E; ACCOUNT NUMBER: PWS Number 0780013 and CCN Number 12491; LOCATION: Crowell, Foard County, Texas; TYPE OF FACILITY: public drinking water system; RULE VIOLATED: 30 TAC §290.106 and the Code, §341.033(d) by failing to submit water samples for bacteriological analysis; PENALTY: $880; STAFF ATTORNEY: Kathy Keils, Litigation Support Division, MC 175, (512) 239-0678; REGIONAL OFFICE: 209 South Danville, Suite 200B, Abilene, Texas 79605-1451, (915) 698-9674.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712575
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: September 22, 1997

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Provisionally-Issued Temporary Permits to Appropriate State Water

Permits issued during the period of September 19, 1997.

Application Number TA-7870 by Balfour Beatty Construction, Inc. for diversion of 10 acre-feet in a one-year period for industrial (roadway construction) use. Water may be diverted from Duck Creek, Trinity River Basin, approximately 13 miles east of Dallas, Dallas County, Texas at the crossing of IH-30 and Duck Creek.

Application Number TA-7871 by Verdad Oil & Gas Corp. for diversion of one acre-foot in a one-year period for mining (oil well drilling) use. Water may be diverted from Dove Creek, Colorado River Basin, approximately 7 1/2 miles southeast of Mertzon, Irion County, Texas at the crossing of unnamed county road and Dove Creek, Colorado River Basin.

Application Number TA-7874 by John Mocek for diversion of 10 acre-feet in a one year period for irrigation use. Water may be diverted from the North Bosque River, Brazos River Basin, approximately 16 miles northwest of Waco, McLennan County, Texas at four diversion points on Mr. Mocek's property on the North Bosque River between State Hwy 6 and FM 1637.

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 Section 295.174. 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.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712577
Eugenia K. Brumm, Ph., D.
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: September 22, 1997

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Permian Basin Regional Planning Commission

Request for Proposal

I. GENERAL INFORMATION

PUBLIC NOTICE: PERMIAN BASIN WORKFORCE DEVELOPMENT BOARD

P.1 The Permian Basin Workforce Development Board is seeking a proposal writer familiar with House Bill 1863 to develop a Request for Proposal (RFP) for development, management, and procurement of the local area Workforce Centers.

P. 2 Please mail all resumes and information supporting experience with workforce development programs to the following: Mr. C. Richard Sivalls, 2910 LaForce Blvd., Midland, Texas 79711. Phone number (915) 563-1061.

P.3 Deadline for submission: October 1, 1997.

II. SCOPE OF THE REQUEST

P.1 The Permian Basin Workforce Development Board is soliciting for a proposal writer to develop a Request for Proposal (RFP) for development, management, and procurement of the local area Workforce Centers. The vendor chosen will have the following responsibilities:

- Must be familiar with House Bill 1863

- Prepare a RFP package for the Local Workforce Development Board's review and approval.

- Guide the Board through the complete procurement process.

- Be responsible for the mailing of the RFP package through the legal process.

- Facilitate at least one bidders conference for proposal seekers.

P. 2 Eligible proposers are responsible for being familiar with HB 1863, JTPA, JOBS/TANF, and Food Stamp Employment and training regulations.

Issued in Midland, Texas, on July 30, 1997.

TRD-9712600
Terri Moore
Director of Personnel and Administrative Services
Permian Basin Regional Planning Commission
Filed: September 22, 1997

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Texas Department of Protective and Regulatory Services

Notice of Intent to Contract

ANNOUNCEMENT: Under the provisions of the Texas Government Code, Chapter 2254, Subchapter B, the Texas Department of Protective and Regulatory Services (PRS) intends to contract during federal Fiscal Year 1998 (10/97-9/98) for services necessary to continue to develop and implement a federally funded project entitled "Innovations in Child Protective Services: Screening At Intake." These services have been performed during Fiscal Years 96-97 by the American Humane Association. These services will build on a child welfare statistical modeling process developed by the American Humane Association. Unless a better offer to provide these services is received, PRS will issue the continuation award of this purchase of services to the American Humane Association (AHA) for Fiscal Year 98.

DESCRIPTION OF SERVICES: Consultation to continue developing and implementing a methodology for using a statistical modeling process to help identify cases at intake which can safely be screened out and not investigated and cases which can be screened in for an abbreviated investigation and assessment process and for more efficient delivery of services to prevent serious injury or death cases. A retrospective study, a prospective study and comparison analyses will be conducted to determine implementation feasibility.

ELIGIBLE APPLICANTS: Eligible applicants are Historically Underutilized Businesses, public or private profit or nonprofit agencies, and individuals with demonstrated knowledge, competence, and qualifications in developing and implementing similar methodology that can be used in coordination with a PRS specified child welfare statistical modeling process.

CLOSING DATE FOR RECEIPT OF OFFERS, MODIFICATION OF OFFERS, OTHER REQUESTS. The last date that offers and modifications of offers and other requests will be received is Wednesday, September 30, 1997, at 4:00 p.m. PRS shall be the sole and final arbitrator of when offers are received based on post mark prior to the closing date or log of hand delivery of offers before or on the closing date.

NECESSARY CREDENTIALS: PRS program management staff will assess any new offers and determine if potential consultants have (1) provided ample service description, (2) demonstrated relevant prior experience, including proven ability to build upon and coordinate with a specified child welfare statistical modeling process, and (3) made an offer of reasonable consultant fees. These credentials are necessary for the project.

AMOUNT OF AWARD AND LIMITATIONS: The amount of the award for these services shall not exceed $23,000.00 during FY 98. Funding will be dependent upon available federal appropriations, under the block grant "Innovations in Child Protective Services." PRS reserves the absolute right to reject any and all offers received in response to this notice of intent to purchase services, and to amend, suspend, or cancel this notice in whole or in part if it is deemed in PRS's best interest.

CONTACT PERSON: Requests for further information pertaining to this purchase of services may be addressed in writing only to the attention of the Texas Department of Protective and Regulatory Services, Deborah Williams, PSFC Purchased Services, 701 West 51st Street, P.O. Box 149030, Austin, Texas 78714-9030 (78751). Official replies will be in writing from designated PRS personnel.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712578
C. Ed Davis
Deputy Commissioner for Legal Services
Texas Department of Protective and Regulatory Services
Filed: September 22, 1997

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Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On September 16, 1997, U.S. Online Communications, L.L.C. 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 60025. Applicant intends to change its name only from U.S. Online Communications, L.L.C. to U.S. Online Communications, Inc..

The Application: Application of U.S. Online Communications, L.L.C. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 18004.

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 P.O. Box 13326, Austin, Texas 78711-3326 no later than October 1, 1997. You may contact the PUC Office of Consumer Affairs 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 18004.

Issued in Austin, Texas, on September 18, 1997.

TRD-9712463
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 18, 1997

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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 an application on September 18, 1997, 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 CS Wireless Systems, Inc. D/b/a The Beam for a Service Provider Certificate of Operating Authority, Docket Number 18007 before the Public Utility Commission of Texas.

Applicant intends to provide resold switched services. This includes, but may not be limited to, monthly recurring flat-rate local exchange service, extended area service, extended metro service, foreign exchange service, foreign business office service, toll restriction, call control options, tone dialing, custom calling services, Caller ID, and any other services which are available for resale from the underlying incumbent local exchange carrier or other carriers.

Applicant's requested SPCOA geographic area follows the boundaries of the existing service areas of the following local exchange carriers: Southwestern Bell Telephone Company, GTE Southwest, Inc., Central Telephone Company, and United Telephone Company of Texas, 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 October 1, 1997. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on September 19, 1997.

TRD-9712512
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 19, 1997

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Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. SUBSTANTIVE RULE 23.27 for a new PLEXAR-Custom service for First National Bank - Edinburg in Edinburg, Texas.

Tariff Title and Number: Application of Southwestern Bell Telephone Company for a New PLEXAR-Custom Service for First National Bank - Edinburg, Texas, Pursuant to P.U.C. SUBSTANTIVE RULE 23.27. Tariff Control Number 17967.

The Application: Southwestern Bell Telephone Company is requesting approval for a new PLEXAR-Custom service for First National Bank - Edinburg in Edinburg, Texas. The geographic service market for this specific service is the Brownsville local access and transport area.

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.

Issued in Austin, Texas, on September 19, 1997.

TRD-9712514
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 19, 1997

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Public Notices of Interconnection Agreement

On September 5, 1997, Southwestern Bell Telephone Company (SWBT) and GTE Communications Corporation (GTE-CC), 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, 75th Legislature, R.S. chapter 166, §1, 1997 Texas Session Law Service 713 (Vernon) (to be codified at Texas Utility Code Annotated, §§11.001-63.063) (PURA). The joint application has been designated Docket Number 17943. 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 17943. 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 October 30, 1997, 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 17943.

Issued in Austin, Texas, on September 18, 1997.

TRD-9712459
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 18, 1997

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On September 8, 1997, Southwestern Bell Telephone Company (SWBT) and Fast Connections, 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, 75th Legislature, R.S. chapter 166, §1, 1997 Texas Session Law Service 713 (Vernon) (to be codified at Texas Utility Code Annotated, §§11.001-63.063) (PURA). The joint application has been designated Docket Number 17950. 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 17950. 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 October 30, 1997, 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 17950.

Issued in Austin, Texas, on September 18, 1997.

TRD-9712460
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 18, 1997

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On September 11, 1997, Southwestern Bell Telephone Company (SWBT) and United Telephone Company d/b/a UTEL (UTEL), 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, 75th Legislature, R.S. chapter 166, §1, 1997 Texas Session Law Service 713 (Vernon) (to be codified at Texas Utility Code Annotated, §§11.001-63.063) (PURA). The joint application has been designated Docket Number 17965. 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 telecommuni-

cations 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 17965. 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 October 30, 1997, 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 17965.

Issued in Austin, Texas, on September 18, 1997.

TRD-9712461
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 18, 1997

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On September 12, 1997, Southwestern Bell Telephone Company (SWBT) and First Telecommunications Network, 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, 75th Legislature, R.S. chapter 166, §1, 1997 Texas Session Law Service 713 (Vernon) (to be codified at Texas Utility Code Annotated, §§11.001-63.063) (PURA). The joint application has been designated Docket Number 17974. 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 17974. 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 October 31, 1997, 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. In-

terested 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 17974.

Issued in Austin, Texas, on September 18, 1997.

TRD-9712462
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 18, 1997

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On September 15, 1997, United Telephone Company of Texas, Inc. d/b/a Sprint and Central Telephone Company of Texas d/b/a Sprint (Sprint) and Tel-Link of Texas, LLC (Tel-Link), 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, 75th Legislature, R.S. chapter 166, §1, 1997 Texas Session Law Service 713 (Vernon) (to be codified at Texas Utility Code Annotated, §§11.001-63.063) (PURA). The joint application has been designated Docket Number 17994. 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 17994. 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 October 31, 1997, 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 17994.

Issued in Austin, Texas, on September 19, 1997.

TRD-9712513
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 19, 1997

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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 September 15, 1997, 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 Allegiance Telecom of Texas, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 17976 before the Public tility Commission of Texas.

Applicant intends to provide all forms of telecommunications products and services in a variety of bundled and unbundled packages, including local exchange services, PBX/shared tenant services, ISDN and high speed data services, interexchange/long distance services, interoffice trunking and tandem switching, and emerging technologies/IDSL/ADSL/cable modem.

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 tility 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 October 1, 1997. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on September 17, 1997.

TRD-9712414
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 17, 1997

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Notice is given to the public of the filing with the Public Utility Commission of Texas an application on September 12, 1997, 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 TransAmerican Telephone, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 17777 before the Public tility Commission of Texas.

Applicant intends to provide on a resale basis, monthly recurring, flat-rate local exchange service including extended area service, toll restriction, call control options, tone dialing, custom calling services, Caller ID and any other services that are available on a resale basis from the underlying incumbent local exchange carrier or other certificated carrier within the service area of Applicant.

Applicant's requested SPCOA geographic area includes the established boundaries of the following underlying carriers throughout the state of Texas: Southwestern Bell Telephone Company, GTE Southwest, Inc., Central Telephone Company, United Telephone Company of Texas, Inc., Sugar Land Telephone Company, Texas Alltel, Inc., and Lufkin-Conroe Telephone Exchange, Inc.

Persons who wish to comment upon the action sought should contact the Public tility 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 October 1, 1997. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on September 17, 1997.

TRD-9712415
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 17, 1997

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The Texas A&M University System - Board of Regents

Request for Information (RFI)

The Texas A&M University System (System) requests information from law firms interested in representing the System and its component institutions in tax-exempt bond matters. This RFI is issued for the purpose of establishing (for the biennium beginning September 1, 1997) a referral list from which the System, by and through its Office of General Counsel, will select appropriate counsel for representation on specific bond matters and securities law issues as the need arises. These needs include the usual and necessary services of a bond counsel in connection with issuance, sale and delivery of bonds and notes on which the interest is excludable from gross income under existing federal tax law.

Description. The System comprises ten universities and eight state agencies in Texas. Public, tax- exempt bond issuance is conducted under two major programs and is rated by three major rating agencies. Bonds are issued under authority granted the System in article VII, §18 of the Texas Constitution (Permanent University Fund). A variable rate demand note program with an authorized limit of $95 million is frequently used to raise new funds in support of the capital improvement program. Note sales are normally conducted once or twice each year. Currently, $65 million is issued and outstanding. Advance refunding of Permanent University Fund bonds are conducted periodically based on potential savings opportunities. Under authority granted in Chapter 55, Texas Education Code and Texas Civil Statutes Articles 717k and 7l7q, and other applicable laws, the System issues revenue bonds for capital improvements. A tax-exempt variable rate note program is used for interim financing with long term fixed rate bonds sold to provide more permanent financing. The variable rate note program, currently in a commercial paper mode, is presently authorized up to $125 million and has $22.5 million outstanding. The System employs a revenue bond program which offers a combined pledge of all legally available revenues with certain exceptions (the Revenue Financing System). Advance refunding of bonds and escrow restructures of previously defeased bonds, based on market timing, may be expected. Federal tax related matters regarding bonds issued by the System, including strategies and management practices in the conduct of an exempt debt program requires a close working relationship with bond counsel. Contact is frequent, particularly in regard to the Revenue Financing System program due to the significant level of capital improvements anticipated throughout the System over the next year. The System invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of the System's Office of General Counsel.

Responses. Responses to this RFI should include at least the following information: a description of the firm's or attorney's qualifications for performing the legal services, including the firm's prior experience in bond issuance matters and securities law issues, the names, experience, and technical expertise of the attorneys who may be assigned to work on such matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision both of the firm's legal services generally and bond matters in particular; the submission of fee information (either in the form of hourly rates for each attorney who may be assigned to perform services in relation to the System's bond matters, flat fees, or other fee arrangements directly related to the achievement of specific goals and costs controls) and billable expenses; disclosures of conflicts of interest (identifying each and every matter in which the firm has within the past calendar year, represented any entity or individual with an interest adverse to the System or to the State of Texas, or any of its boards, agencies, commissions, universities; or elected or appointed officials); and confirmation of willingness to comply with

policies, directives and guidelines of the System and the Attorney General of the State of Texas.

Format and Person to Contact. Three copies of the response are requested. The response should be typed, preferably double-spaced, on 8-1/2 by 11-inch paper with all pages sequentially numbered, either stapled or bound together. They should be sent by mail or delivered in person, marked "Response to Request for Information" and addressed to:

Delmar Cain, General Counsel;

Office of General Counsel;

The Texas A&M University System;

John B. Connally Building, 6th Floor;

Campus Mail Stop 1230;

College Station, Texas 77843-1230;

(Telephone (409) 845-4372 for questions).

Deadline for Submission of Response. All responses must be received by the Office of General Counsel of The Texas A&M University System at the address set forth above not later than 5:00 p.m., October 10, 1997.

Issued in Austin, Texas, on September 15, 1997.

TRD-9712589
Vickie Burt
Executive Secretary to the Board
Texas A&M University System - Board of Regents
Filed: September 22, 1997

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Texas Department of Transportation

Notice of Award

Pursuant to Government Code, Chapter 2254, Subchapter A, the Texas Department of Transportation publishes this notice of a consultant contract award for providing professional engineering services.

The request for qualifications for professional engineering services was published in the Texas Register on October 11, 1996, (21 TexReg 10131, 10132 and 10133).

The consultant will provide professional engineering services for the design and construction administration phases for the following:

TxDOT CSJ Number: 9715UVLDE. City of Uvalde. The engineering firm for these services is: GRW Willis, Inc. The total value of the contract is $49,082.00, and the contract period started on September 8, 1997, and continues until the completion of the project.

TxDOT CSJ Number: 9720WNNIE. County of Chambers. The engineering firm for these services is: PSA Engineers. The total value of the contract is $34,600.00, and the contract period started on September 8, 1997, and continues until the completion of the project.

TxDOT CSJ Number: 9725CHLDR. City of Childress. The engineering firm for these services is: Freese and Nichols, Inc. The total value of the contract is $119,766.00, and the contract period started on August 16, 1997, and continues until the completion of the project.

TxDOT CSJ Number: 9702MNWLS. City of Mineral Wells. The engineering firm for these services is: KSA Engineers. The total value of the contract is $71,990.00, and the contract period started on September 2, 1997, and continues until the completion of the project.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712566
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: September 22, 1997

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Request for Qualifications

The Airport Sponsors listed below, through their agent, the Texas Department of Transportation (TxDOT), intend to engage aviation engineering consultants pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT will solicit and receive qualifications for professional services as described in the project scope for the following projects:

Airport Sponsor: City of Denton; TxDOT Contract Number 8XXFA003; Project Scope: prepare an Airport Layout Plan; reconstruct terminal apron at the Denton Muncipal Airport; Estimated total project cost: $1,100,000; Project Manager: Bijan Jamalabad.

Airport Sponsor: City of Georgetown; TxDOT Contract Number 8XXFA001; Project Scope: rehabilitate Runway 18-36; stripe and mark Runway 18-36; construct hangar access taxiways to north T-hangar area; construct hangar access taxiways to south corporate hangar area; Rehabilitate and mark Taxiways A and C; Install taxiway centerline reflectors on Taxiways A and C; Repair and seal concrete apron joints; Construct south corporate hangar area apron; Provide holding aprons at the ends of Runway 18-36; Provide holding aprons at the ends of Runway 11-29; apply petroleum resistant surface to existing apron at the Georgetown Municipal Airport. Estimated total project cost: $1,450,000; Project Manager: Alan Schmidt.

Airport Sponsor: City of Gladewater; TxDOT Contract Number 8XXFA0004; Project Scope: prepare an Airport Layout Plan; rehabilitate Runway 13-31; stripe and mark Runway 13-31; rehabilitate taxiway to Runway 1; construct new hangar access taxiway; rehabilitate apron at the Gladewater Municipal Airport; Estimated total project cost: $360,000; Project Manager: John Wepryk.

Airport Sponsor: County of Grayson; TxDOT Contract Number 8XXFA005; Project Scope: Prepare an Airport Layout Plan; rehabilitate Runway 17L-35R; stripe and mark Runway 17L-35R; rehabilitate Taxiways A, B, C, D, E, F, G, and J; reconstruct south general aviation apron; rehabilitate north apron; replace medium intensity approach lighting system with sequenced flashers; replace medium intensity taxiway lights; rehabilitate and relocate rotating beacon; install segmented circle at the Grayson County Airport; Estimated total project cost: $3,515,000; Project Manager: John Wepryk.

Airport Sponsor: City of Mount Pleasant; TxDOT Contract Number 8XXFA007 Project Scope: Prepare an Airport Layout Plan; site preparation for new runway; construct new runway; stripe and mark new runway; construct taxiway; install medium intensity taxiway

lights; install erosion/sedimentation controls; construct apron; install segmented circle; install rotating beacon and tower; bury powerline at the Mount Pleasant Municipal Airport; Estimated total project cost: $4,100,000; Project Manager: John Wepryk.

Airport Sponsor: City of Temple, TxDOT Contract Number 8XXFA008 Project Scope: Prepare an Airport Layout Plan; rubberize chip seal Runway 15-33; overlay Runway 15-33; groove Runway 15-33; stripe and mark Runway 15-33; rehabilitate Runway 2-20; stripe and mark Runway 2-20; rehabilitate and mark Taxiways A, B, and D; rehabilitate and mark Taxiways C and E; rehabilitate Taxiway F; reconstruct hangar access Taxiways #5 and #6; replace medium intensity taxiway light wiring in conduit Taxiways A and D; rehabilitate terminal apron; install new precision approach path indicator (PAPI-4) and runway end indentifer lights (REIL) Runway 33 at the Draughon-Miller Central Texas Regional Airport. Estimated total project cost: $2,690,000; Project Manager: Bijan Jamalabad.

Airport Sponsor: City of Uvalde; TxDOT Contract Number 8XXFA009; Project Scope: (Phase One) reconstruct taxiway east apron to Taxiway 15-33; reconstruct east apron; rehabilitate east side hangar access taxiway; expand apron west side; (Phase Two) overlay Runway 15-33; stripe and mark Runway 15-33; rehabilitate and mark parallel taxiway to Runway 15-33; rehabilitate west side hangar access taxiway; overlay taxiway east apron to west apron; rehabilitate west side apron; at Garner Field; Estimated total project cost: $2,460,000; Project Manager: Alan Schmidt.

Airport Sponsor: City of Weslaco; TxDOT Contract Number 8XXFA010; Project Scope: rehabilitate Runway 13-31; stripe and mark Runway 13-31; replace medium intensity runway lights Runway 13-31; reconstruct and widen taxiway on west side; rehabilitate taxiway; construct hangar access taxiway; expand terminal apron; reconstruct apron with drainage improvements; install erosion/sedimentation controls at the Mid Valley Airport; Estimated total project cost: $2,190,000; Project Manager: John Wepryk.

Interested firms which do not already have a copy of the Form 439, titled "Aviation Consultant Services Questionnaire", (August, 1995 Version) may request one from the TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, Phone number, 1-800-68-PILOT. The form is also available on high density 3 1/2" diskette in Microsoft Excel 5.0, and may be ordered from the above address with remittance of $2.50 to cover costs. The form may not be altered in any way, and all printing must be in black. QUALIFICATIONS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

Three completed unfolded copies of Form 439 (August, 1995 version) must be received by 4:00 p.m. (CDT), October 10, 1997, for each project at: Mailing address: TxDOT, 125 East 11th Street, Austin, Texas 78701-2483, overnight delivery address: TxDOT, 200 East Riverside Drive, Austin, Texas 78704; hand delivery address: 150 East Riverside Drive, 2nd Floor, North Tower, Austin, Texas 78704. Please utilized the above listed TxDOT Contract Numbers for the project numbers as requested as on Form 439, item 3. The three pages of instructions should not be forwarded with the completed questionnaires. Electronic facsimiles will not be accepted.

The airport sponsor's duly appointed committee will review all professional qualifications and select three to five engineering firms to submit proposals. Those firms selected will be required to provide more detailed, project-specific proposals which address the project team, technical approach, Disadvantage Business Enterprises (DBE) participation, design schedule, and other matters, prior to the final selection process. The final consultant selection by the sponsor's committee will generally be made following the completion of review of proposals and/or interviews. The airport sponsor reserves the right to reject any or all statements of qualifications, and to conduct new consulting engineer selection procedures. Procedures for award will be in accordance with FAA Advisory Circular AC 150/5100-14B.

If there are any procedural questions, please contact Karon Wiedemann, Director, Grant Management, Aviation Division, Texas Department of Transportation at (512) 416-4520 or 1-800-68-PILOT.

Issued in Austin, Texas, on September 22, 1997.

TRD-9712565
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: September 22, 1997

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Texas Workers' Compensation Commission

Invitation to Applicants for Appointment to the Medical Advisory Committee

The Texas Workers' Compensation Commission (TWCC) invites all qualified individuals, and representative of public health care facilities and other entities and all current primary and alternate MAC members to apply to fill any of the following positions on the Medical Advisory Committee (MAC) in accordance with the eligibility requirements of the new Standards and Procedures for the Medical Advisory Committee. The purpose and tasks of the MAC are outlined in the Texas Labor Code, §413.005, which includes advising the Medical Review Division of TWCC on the development and administration of medical policies and guidelines. The MAC meets, on the average, once every six weeks. MAC members are not reimbursed for travel, per diem, or other expenses associated with the MAC activities and meetings.

The members of the MAC are appointed by the six commissioners of TWCC and include health care providers, representatives of employees and employers and members of the general public. Each member must be knowledgeable and qualified regarding work-related injuries and diseases. The complete membership of the MAC includes 16 primary members and 16 alternate members.

During the primary member's absence, the alternate member will attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed. The alternate may attend all meetings. Alternate members shall fulfill the same responsibilities as primary members, as set out in the Standards and Procedures for the Medical Advisory Committee as adopted by the Commission.

The Commission solicits applications for the following positions on the TWCC Medical Advisory Committee:

PRIMARY

1. Primary member - Public Health Care Facility
2. Primary member - Dentist
3. Primary member - Podiatrist
4. Primary member - Representative of Employees

ALTERNATE

5. Alternate member - Public Health Care Facility
6. Alternate member - Dentist
7. Alternate member - Pharmacist
8. Alternate member - Podiatrist
9. Alternate member - Occupational Therapist
10. Alternate member - Medical Equipment Supplier
11. Alternate member - Representative of Employees
12. Alternate member - General Public
13. Alternate member - General Public

Any person or entity interested in serving on the MAC may contact Juanita Salinas in the Commission's Medical Review Division at (512) 707-5888 to obtain an application packet.

Issued in Austin, Texas, on September 19, 1997.

TRD-9712488
Elaine Crease
Program Assistant, General Counsel's Office
Texas Worker's Compensation Commission
Filed: September 19, 1997

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