

# TEXAS REGISTER

Volume 23 Number 7 February 13, 1998

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***8th Grade***

***Williams Middle School***

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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.

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Opinions

**DM—467(RQ—1001).**The Honorable Bruce Isaacks, Criminal District Attorney, Carroll Courts Building, Fifth Floor, P.O. Box 2344, Denton, Texas 76202, concerning whether a hold and save harmless provision that requires a county to indemnify another party for damages creates a debt within the meaning of article XI, section 7 of the Texas Constitution.

**SUMMARY.** A hold and save harmless provision that obligates a county to indemnify a third party for damages arising from the acts of the third party creates a debt within the meaning of Article XI, section

7 and is therefore an obligation that the county may not undertake without taking certain steps. Whether Article XI, section 7 debt is created by a hold and save harmless provision that requires a county to indemnify a third party only for damages arising from county acts and does not expand the county's liability beyond its liability under existing law appears to be a question of first impression that has not been addressed by the courts.

TRD-9801598



# TEXAS ETHICS COMMISSION

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

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

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Opinions

**AOR-431.** The Texas Ethics Commission has been asked whether a district judge who is running for reelection in 1998 may raise funds in 1998 to pay debts incurred in 1992 in connection with a legislative race.

**AOR-432.** The Texas Ethics Commission has been asked to consider several questions about contributions to and expenditures by a club that invites candidates to speak at meetings and that sometimes endorses or contributes to candidates. The specific questions have to do with the application of Election Code §253.031(b) and §251.008.

**AOR-433.** Whether it is a violation of §39.02 of the Penal Code for a state employee to use state-owned telephones to make personal long-distance telephone calls if no charge is incurred by the state.

**AOR-434.** The Texas Ethics Commission has been asked to consider whether a county or district clerk may accept an in-kind contribution from a corporation to support the clerk's campaign for election to an office of a private association of county and district clerks. In addition, the Ethics Commission has been asked to consider whether a clerk may accept gifts from corporations in the form of recreational trips or in the form of door prizes.

TRD-9801279  
Tom Harrison  
Executive Director  
Texas Ethics Commission  
Filed: January 28, 1998



**EAO-388(AOR-427).** Whether members of the Statewide Health Coordinating Council are required to file personal financial disclosure statements under Chapter 572, Government Code.

**SUMMARY.** Members of the Statewide Health Coordinating Council are required to file personal financial disclosure statements.

**EAO-389(AOR-428).** Whether the limit on a judicial candidate's use of political contributions to reimburse himself or herself for political expenditures from personal funds applies to the candidate's use of political contributions to repay a bank loan for which the candidate is personally liable.

**SUMMARY.** A candidate's use of political contributions to repay a bank loan does not count toward the limit on reimbursement set out in Election Code section 253.162.

**EAO-390(AOR-429).** Whether balloons must contain the disclosure statement required by Election Code section 255.001, and whether a

candidate must report the use of campaign materials left over from a previous campaign.

**SUMMARY.** Campaign balloons are not required to contain the disclosure statement described in Election Code section 255.001. A candidate is not required to report his use in a current campaign of materials paid for and reported in connection with a previous campaign.

**EAO-391(AOR-430).** Whether a candidate may correct a report filed before the issuance of Ethics Advisory Opinion No. 375 to indicate that the candidate intends to reimburse himself with interest for the use of personal funds for campaign purposes, and also whether a candidate may accept a campaign contribution from a city.

**SUMMARY.** A candidate or officeholder may correct a report filed before September 12, 1997, to indicate an intent to reimburse himself or herself with interest for political expenditures from personal funds, as long as the political expenditures from personal funds and the intention to seek reimbursement for the expenditures were themselves timely reported. Although the Election Code does not prohibit the acceptance of a political contribution from a city, the Texas Constitution may prohibit the city from making such a contribution.

**EAO-392(SP-8)** Personal financial disclosure statement reporting requirements in regard to retirement income and property descriptions.

**SUMMARY.** Income received as a pension or from a retirement plan associated with past occupational activity is not required to be reported as a "source of occupational income" on a personal financial disclosure statement. Information about retirement funds or income may, however, be reportable under some other category on the personal financial disclosure statement.

In describing real property on a personal financial disclosure statement, providing a street address and the city, county, and state where the real property is located is an adequate alternative to providing the name of the county where the real property is located and the number of lots or acres.

TRD-9801280  
Tom Harrison  
Executive Director  
Texas Ethics Commission  
Filed: January 28, 1998



# 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 text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

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## TITLE 1. ADMINISTRATION

### Part XV. Health and Human Services Commission

#### Chapter 355. Medicaid Reimbursement Rates

##### Subchapter C. Reimbursement Methodology for Nursing Facilities

###### 1 TAC §§355.307, 355.401

The Health and Human Services Commission (HHSC) proposes amendments to §355.307, concerning reimbursement methodology for nursing facilities; and §355.401, concerning allowable and unallowable costs, in its Medicaid Reimbursement Rates chapter. The purpose of the amendments is to allow nursing facilities to receive supplemental Medicaid reimbursement for children who qualify for the Texas Index for Level of Effort (TILE) heavy-care case mix classification and require daily care of a tracheostomy. Qualifying residents will be eligible to receive 60% of the total ventilator-dependent supplemental reimbursement. Children with tracheostomies who also are ventilator-dependent will not be eligible to receive both a ventilator-dependent and a tracheostomy supplemental reimbursement.

Gary Bego, Associate Commissioner for Fiscal Policy, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the section will be in effect is an estimated additional cost of \$150,482 in fiscal year (FY) 1998; \$230,596 in FY 1999; \$240,481 in FY 2000; \$249,431 in FY 2001; and \$259,404 in FY 2002.

Mr. Bego, also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that providers of these specialized services for children will receive Medicaid payments more closely aligned with the costs of delivering these services. There will be no effect on small businesses. There

is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Pamela Lawrie at (512) 438-4051 in the Texas Department of Human Services' Rate Analysis Department. Written comments on the proposal may be submitted to Stephen Svadlenak, Health and Human Services Commission, P.O. Box 13247, Austin, Texas 78711, within 30 days of publication in the *Texas Register*.

The amendments are proposed under the Texas Government Code, Chapter 531, §531.033, which authorizes the Commissioner of Health and Human Services to adopt rules necessary to carry out the Health and Human Services Commission's duties under Chapter 531; and under Texas Government Code, §531.021, which provides the commission with the authority to administer federal medical assistance funds.

The amendments implement Government Code, §531.021 and Human Resources Code §§32.001-32.042.

###### §355.307. *Reimbursement Setting Methodology.*

(a) (No change.)

(b) Reimbursement determination. For reimbursements calculated using cost reports pertaining to providers' fiscal years ending in calendar year 1995 or 1996, the Texas Board of Human Services (board) determines general reimbursements for medical assistance programs for Medicaid recipients under provisions of the Human Resources Code, Chapter 24 (concerning Reimbursement Methodology). For reimbursements calculated using cost reports pertaining to providers' fiscal years ending in 1997 and subsequent years, the board determines general reimbursements for medical assistance programs for Medicaid recipients under provisions of Subchapter A of this chapter (relating to Cost Determination Process). The board determines reimbursements for nursing facilities based on consideration of Texas Department of Human Services (DHS) staff recommendations. To develop reimbursement rate recommendations for nursing facilities, DHS staff apply the following procedures.

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

(3) Per diem rate methodology. Staff determine per diem rate recommendations for each of the 11 TILE groups and for the default group according to the following procedures:

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

(G) Supplemental reimbursement for children with tracheostomies requiring daily care. As of January 1, 1998, qualifying residents may receive a supplement to the per diem rate specified in subparagraph (E) of this paragraph.

(i) To qualify for supplemental reimbursement, a resident must be less than 22 years of age; require daily cleansing, dressing, and suctioning of a tracheostomy; and be unable to do self care. The daily care of the tracheostomy must be prescribed by a licensed physician.

(ii) The supplemental reimbursement for children receiving daily tracheostomy care is 60% of the per diem ventilator rate supplement (specified in subparagraph (F)(ii) of this paragraph).

(H) Children with qualifying conditions as specified in subparagraphs (F) and (G) of this paragraph may receive only one of the supplemental reimbursements. Therefore, children with tracheostomies who also are ventilator-dependent are not eligible to receive both supplemental reimbursements.

*§355.401. Allowable and Unallowable Costs: 1997 and Subsequent Cost Reports.*

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

(c) In addition to the requirements of §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs), the following apply to costs for the NF program.

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

(3) Voucherable costs. Except as detailed in subparagraphs (A) and (B) of this paragraph, any expenses directly reimbursable to the provider through a voucher payment and any expenses in excess of the limit, or ceiling, for a voucher payment system are unallowable costs.

(A) The ventilator dependent supplemental voucher system and the children with tracheostomies supplemental voucher system are [is] not subject to the cost reporting restrictions described in this paragraph.

(B) (No change.)

(4)-(6) (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.

Filed with the Office of the Secretary of State, on February 2, 1998.

TRD-9801448

Marina Henderson

Executive Deputy Commissioner

Health and Human Services Commission

Earliest possible date of adoption: March 15, 1998

For further information, please call: (512) 424-6576



## TITLE 7. BANKING AND SECURITIES

### Part VI. Credit Union Department

#### Chapter 91. Chartering, Operations, Mergers, Liquidations

## General Rules

### 7 TAC §91.103

The Texas Credit Union Commission proposes new §91.103, concerning public notice of the department's activities. The proposed rule is necessary to comply with new statutory requirements enacted in the 75th Legislative Session. Senate Bill 358, effective September 1, 1997, 75th Legislature, Chapter 338, 1997 Texas Session Law (to be codified at Texas Finance Code Annotated, §15.4021), requires the commission to adopt rules relating to providing the public with notice of department activities. The proposed new rule requires the department to publish in the *Texas Register* and the department newsletter actions taken on certain applications and requests submitted for approval that have become final.

Lynette Pool-Harris, Deputy Commissioner, has determined that for the first five year period there will be no fiscal implication as a result of enforcing or administering the proposed rule.

Ms. Pool-Harris, Deputy Commissioner, has determined that for each year of the first five-year period the rule is in effect:

(a) The public benefits anticipated, as a result of the notice being given, will be to ensure the public is informed of actions taken by the Department.

(b) There is no economic cost anticipated to the parties who are required to comply with the rule.

(c) No impact on local employment is anticipated as a result of enforcing the rule as proposed.

Written comments on the proposed rule must be submitted within 30 days after publication of the proposed section in the *Texas Register* to Carol P. Shaner, Staff Services Officer, Credit Union Department, 914 East Anderson Lane, Austin, Texas, 78752-1699.

The new section is proposed under the provisions of the Texas Finance Code, §15.402, which authorizes the commission to adopt reasonable rules, and Section 10 of Senate Bill 358, 75th Legislature, Chapter 338, 1997 Texas Session Law (to be codified at Texas Finance Code Annotated Section 15.4021), which requires the Commission to provide public notice of Department activities.

The specific section affected by this proposed rule is §11.061 of the Texas Credit Union Act (to be codified at Texas Finance Code Annotated, §15.4021).

*§91.103. Public Notice of Department Activities.*

The commissioner shall cause notice of final actions taken by the department on certain activities to be published in the *Texas Register* and the department newsletter. Notice shall be published in both publications within 30 days of the action becoming final. The activities covered by this requirement are:

(1) an application for incorporation under the Texas Finance Code, §122.001;

(2) a request for an amendment to a credit union's articles of incorporation under the Texas Finance Code, §122.011;

(3) a request for an amendment to a credit union's bylaws for the expansion of its field of membership under the Texas Finance Code, §122.011;

(4) an application for merger or consolidation under the Texas Finance Code, §122.152;

(5) a request by a foreign credit union to do business in Texas under the Texas Finance Code, §122.013; and

(6) an application for conversion of a credit union's Charter under the Texas Finance Code, §§122.201, 122.202 or 122.203.

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.

Filed with the Office of the Secretary of State, on January 28, 1998.

TRD-9801286

Harold E. Feeney  
Commissioner

Credit Union Department

Earliest possible date of adoption: March 15, 1998

For further information, please call: (512) 837-9236



### 7 TAC §91.104

The Texas Credit Union Commission proposes new §91.104, concerning public notice of certain requests for approval by the commissioner. The proposed rule is necessary to comply with new statutory requirements enacted in the 75th Legislative Session. Section 17 of Senate Bill 358, effective September 1, 1997, 75th Legislature, Chapter 338, 1997 Texas Session Law (to be codified at Texas Finance Code Annotated, §122.005), requires the commissioner to submit to the secretary of state for publication in the *Texas Register* notice of requests for approval by the commissioner of applications for incorporation, amendments to credit union's articles of incorporation, including amendments to expand field of membership, and mergers/consolidations. The proposed new section requires the department to publish in the *Texas Register* and the department newsletter notice of such requests received by the Department at least thirty days prior to any action being taken on them.

Lynette Pool-Harris, Deputy Commissioner, has determined that for the first five year period there will be no fiscal implication as a result of enforcing or administering the proposed rule.

Ms. Pool-Harris, Deputy Commissioner, has determined that for each year of the first five-year period the rule is in effect:

(a) The public benefits anticipated, as a result of the notice being given, will be to ensure the public is informed of applications and requests for approval received by the Department.

(b) There is no economic cost anticipated to the parties who are required to comply with the rule.

(c) No impact on local employment is anticipated as a result of enforcing the rule as proposed.

Written comments on the proposed rule must be submitted within 30 days after publication of the proposed section in the *Texas Register* to Carol P. Shaner, Staff Services Officer, Credit Union Department, 914 East Anderson Lane, Austin, Texas, 78752-1699.

The new section is proposed under the provisions of Texas Finance Code, §15.402, which authorizes the commission to adopt reasonable rules, and Section 17 of Senate Bill 358, 75th Legislature, Chapter 338, 1997 Texas Session Law (to be codified at Texas Finance Code Annotated, §122.005), which

requires the Commission to provide public notice of Department activities.

The specific section affected by this proposed rule is Texas Finance Code, §122.005.

#### §91.104. Notice of Applications.

(a) Upon receipt of a complete application for authorization to be granted by the department, the commissioner shall cause notice of such application to be published in the *Texas Register* and the department newsletter. Notice shall be published in both publications at least 30 days prior to taking action on the request. The activities covered by this requirement are:

(1) an application for incorporation under the Texas Finance Code, §122.001;

(2) a request for an amendment to a credit union's articles of incorporation under the Texas Finance Code, §122.011;

(3) a request for an amendment to a credit union's bylaws for an expansion of its field of membership under the Texas Finance Code, §122.011; and

(4) an application for merger or consolidation under the Texas Finance Code, §122.152.

(b) The commissioner may waive or delay notice of applications under subsection (a) of this section when a waiver or delay is in the public interest. The commissioner shall consider the welfare and stability of the affected credit union(s) in determining the public interest. If the commissioner determines that delaying public notice is in the public interest, the notice of application shall be published in each publication at the earliest feasible time.

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.

Filed with the Office of the Secretary of State, on January 28, 1998.

TRD-9801287

Harold E. Feeney  
Commissioner

Credit Union Department

Earliest possible date of adoption: March 15, 1998

For further information, please call: (512) 837-9236



### Loans

#### 7 TAC §91.701

The Texas Credit Union Commission proposes an amendment to §91.701, concerning loans and extensions of credit that a credit union may make. The amendments are being proposed to provide specific authorization for a credit union to engage in home equity lending and reverse mortgage lending, as allowed by Section 50, Article XVI, Texas Constitution. The amendments are necessary to further clarify the Commission's determination that state chartered credit unions have the authority to offer home equity loans and reverse mortgages to their members. An amendment is also proposed to ensure compliance with provisions of Section 50, Article XVI, Texas Constitution, pertaining to home improvement loans. Next, an amendment is proposed to establish a minimum dollar threshold under which title insurance is not required on a real estate loan secured by a first lien. The proposed \$25,000 threshold would be the same



as the threshold now required for a real estate loan secured by other than a first lien. Currently, a title policy is required on all real estate loans secured by a first lien. Lastly, an amendment is proposed to raise the appraisal requirement threshold from \$50,000 to \$100,000, the level established for federal credit unions, so that state-chartered credit unions are not disadvantaged.

Lynette Pool-Harris, Deputy Commissioner, has determined that for the first five year period there will be no fiscal implications as a result of enforcing or administering the proposed amended rule.

Ms. Pool-Harris, Deputy Commissioner, has determined that for each year of the first five years the amended rule proposed is in effect:

(a) The public benefits anticipated as a result of enforcing the rule as proposed will be that state-chartered credit unions will be better able to meet the credit needs of all of its members.

(b) There is no economic cost anticipated to the parties who are required to comply with the rule.

(c) No impact on local employment is anticipated as a result of enforcing the rule as proposed.

Written comments on the proposed amendments must be submitted within 30 days after their publication in the *Texas Register* to Carol P. Shaner, Staff Services Officer, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendment is proposed under the provision of the Texas Finance Code, §124.001, which provides the Credit Union Commission with the authority to adopt rules governing loans made to credit union members; and under the Texas Finance Code, §15.402, which authorizes the commission to adopt reasonable rules.

The specific section affected by the proposed amendments is Texas Finance Code, §124.001.

§91.701. *Loans.*

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

(c) Loans secured by real estate. For loans secured, in whole or in part, by a lien on real estate, the requirements described in this subsection shall apply unless waived in writing by the commissioner:

(1) Loans secured by a first lien on real estate. A loan, or any refinancing thereof, secured by a first lien on real estate shall be subject to the requirements described in this paragraph as applicable.

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

(C) Title opinion; Title insurance. A loan may not be made by the credit union unless it is furnished with either a written title opinion of an attorney or a satisfactory policy of title insurance in the principal amount of the loan, which policy shall be issued by a title company authorized to insure titles in this state, insuring that the lien is a first and prior lien. The validity of title for loans of less than \$25,000 may be determined as prescribed by board policy.

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

(G) Valuation. Every loan must have included in its documentation evidence of the market value of the real estate determined in accordance with written board policy or, if the amount of the loan exceeds \$100,000[ \$50,000], a report of an appraisal prepared by a state certified appraiser.

(2) Other real estate loans; Maximum maturity; Loan to value ratio. A loan, or any refinancing thereof, secured by a lien on real estate other than a first lien:

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

(F) Valuation. Every loan must have included in its documentation evidence of the market value of the real estate determined in accordance with written board policy or, if the amount of the loan exceeds \$100,000[ \$50,000], a report of an appraisal prepared by a state certified appraiser.

(3) Home improvement loans. Loans in which the proceeds are used to construct new improvements or renovate existing improvements on a homestead property must also comply with the requirements of Section 50(a)(5), Article XVI, Texas Constitution.

(4) Loans originated under Section 50(a)(6), Article XVI, Texas Constitution. For a loan secured by an encumbrance against the equity in a homestead property, the terms and conditions set forth in Section 50, Article XVI, Texas Constitution, will take precedence over any specific requirement contained in this section if there is an irreconcilable conflict between a constitutional provision and the provision of this section.

(5) Reverse mortgages. A credit union may offer reverse mortgages to its members under the terms and conditions set forth in Section 50, Article XVI, Texas Constitution. In the event of an irreconcilable conflict between any specific requirement contained in this section and a constitutional provision, the constitutional requirement shall prevail.

(d)-(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.

Filed with the Office of the Secretary of State, on January 28, 1998.

TRD-9801288

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: March 15, 1998

For further information, please call: (512) 837-9236



## Changes in Corporate Status

### 7 TAC §91.1003

The Texas Credit Union Commission proposes new §91.1003, concerning mergers/consolidations of credit unions. The new rule is being proposed in order to comply with Section 3 of Senate Bill 358 (75th Legislature) which requires the commissioner, by rule, to establish appropriate criteria that the commissioner must consider in determining whether to approve or disapprove a merger/consolidation request. The proposed rule would formalize documentation requirements and merger procedures currently utilized by the Credit Union Department, as well as identify grounds for the commissioner's disapproval of a merger/consolidation request.

Lynette Pool-Harris, Deputy Commissioner, has determined that for the first five year period there will be no fiscal implications as a result of enforcing or administering the proposed rule.

Ms. Pool-Harris, Deputy Commissioner, has determined that for each year of the first five years the rule proposed is in effect:

(a) The public benefits anticipated as a result of enforcing the rule as proposed will be that state-chartered credit unions will have a clearly defined set of procedures to follow when contemplating a merger/consolidation, which will ultimately benefit their members.

(b) There is no additional economic cost anticipated to the parties who are required to comply with the rule.

(c) No impact on local employment is anticipated as a result of enforcing the rule as proposed.

Comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Carol P. Shaner, Staff Services Officer, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The new section is proposed under the provisions of the Texas Finance Code, §15.402, which authorizes the commission to adopt reasonable rules, and Section 3 of Senate Bill 358, 75th Legislature, Chapter 338, 1997 Texas Session Law (codified at Texas Finance Code Annotated, §122.153).

The specific sections affected by this proposed rule are §§122.151, 122.152, 122.153 122.154, and 122.155 of the Texas Finance Code pertaining to merger or consolidation.

§91.1003. Mergers/Consolidations.

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

(1) Surviving credit union - The credit union that will continue in operation after the merger/consolidation.

(2) Merging credit union - The credit union that will cease to exist as an operating credit union at the time of the merger/consolidation.

(b) Two or more credit unions authorized to conduct business in this state may merge/consolidate, in whole or in part, with each other subject to commission rules.

(c) A credit union authorized to conduct business under the laws of this state may merge/consolidate with a credit union authorized to conduct business under the laws of another state or U. S. territory, to the extent permitted by the laws of the state or territory in question and subject to commission rules. A credit union authorized to conduct business under the laws of this state may also merge/consolidate with a credit union authorized to conduct business under the laws of the United States to the extent permitted by the laws of the United States and subject to commission rules. Each such application/plan shall comply with the applicable requirements of this section, and shall include a certified copy of an order from the appropriate supervisory authority approving the merger/consolidation, or other evidence satisfactory to the commissioner that all regulatory requirements of the out of state or federal supervisory authority have been satisfied.

(d) Approval to Merge/Consolidate. The following are required for the completion of a merger/consolidation of credit unions:

(1) approval of the merger/consolidation plan by resolution of the board of directors of each credit union;

(2) approval of the merger/consolidation plan by vote of the members of each credit union as set forth in Section 122.151 of the Act, unless waived by the commissioner; and

(3) approval by the commissioner of the merger/consolidation plan, the certificate of merger/consolidation, and the requisite amendment to the surviving credit union's articles of incorporation or bylaws.

(e) Notice of Intent to Merge/Consolidate. The credit unions shall notify the commissioner of their intent to merge/consolidate by filing a copy of the resolution adopted by each credit union's board of directors that evidences their intent to merge/consolidate.

(f) Plan for Merger/Consolidation. Upon the commissioner's acknowledgment of receipt of the notice of intent to merge/consolidate, a plan for the proposed merger/consolidation shall be prepared. The plan shall include:

(1) the current financial reports of each credit union;

(2) the combined financial reports of the two credit unions;

(3) an explanation of any proposed adjustments to the members shares, deposits, reserves, or undivided profits;

(4) a summary of the products and services proposed to be available to the members of the surviving credit union, with an explanation of any changes from the current products and services provided to the members;

(5) a summary of the advantages and disadvantages of the merger/ consolidation;

(6) the projected location of the main office and any branch location(s) after the merger/consolidation; and

(7) any other items deemed critical to the merger/consolidation agreement by the boards of directors.

(g) Submission of an Application to Merge/Consolidate to Department.

(1) An application for approval of the merger/consolidation will be complete when the following information is submitted to the commissioner:

(A) the merger/consolidation plan, as described in this rule;

(B) a copy of the resolution of each board of directors approving the merger/consolidation plan;

(C) the proposed Notice of Special Meeting of the members and a copy of the ballot form to be used, unless approval by the members is waived by the commissioner;

(D) the current delinquent loan summaries for each credit union;

(E) evidence that relevant supervisory authorities and the share insurer are in agreement with the merger/consolidation proposal; and

(F) a request for a waiver of the requirement that the plan be approved by the members of any of the affected credit unions, in the event the board(s) seek such a waiver, together with a statement of the reason(s) for the waiver(s).

(2) If the surviving credit union is organized under the laws of another state or of the United States, the commissioner may accept an application to merge or consolidate that is prescribed by the

state or federal supervisory authority of the surviving credit union, provided that the commissioner may require additional information to determine whether to deny or approve the merger/consolidation. The application will be deemed complete upon receipt of all information requested by the commissioner.

(h) Upon receipt of a completed application, notice of the proposed merger/consolidation will be published in the Texas Register and Department Newsletter.

(i) Commissioner Action on the Application.

(1) The commissioner shall approve the application for merger/consolidation upon the finding from information submitted in the application that the proposed merger/consolidation will promote the welfare and stability of the merging and surviving credit unions.

(2) The commissioner shall deny an application for merger/consolidation if the commissioner finds any of the following:

(A) the financial condition of the surviving credit union before the merger/consolidation is such that it will likely jeopardize the financial stability of the merging credit union or prejudice the financial interests of the members, beneficiaries or creditors of either credit union;

(B) the plan includes a change in the products or services available to members of the merging credit union that substantially harms the financial interests of the members, beneficiaries or creditors of the merging credit union;

(C) the merger/consolidation would probably substantially lessen the ability of the surviving credit union to meet the reasonable needs and convenience of members to be served;

(D) the credit unions do not furnish to the commissioner all information requested by the commissioner which is material to the application;

(E) the credit unions fail to obtain any approval required from a federal or state supervisory authority; or

(F) the merger/consolidation would be contrary to law.

(3) For applications to merge/consolidate in which the products and services of the surviving credit union after merger/consolidation are proposed to be substantially the same as those of the merging and surviving credit unions, the commissioner will presume that the merger/consolidation will not significantly change or affect the availability and adequacy of financial services in the local community.

(j) Procedures for Approval of Merger/Consolidation Plan by the Members of Each Credit Union.

(1) The credit unions have the option of allowing their members to vote on the plan in person at a meeting of the members, by mail ballot, or by a combination of both.

(2) Members shall be given advance notice of the meeting in accordance with the credit union's bylaws. The notice of the meeting shall:

(A) specify the purpose of the meeting;

(B) state the reasons for the proposed merger/consolidation;

(C) state that the merger/consolidation plan will be presented to the members;

(D) provide the name and location of the surviving credit union;

(E) specify whether the vote will be taken in person at the meeting, by mail ballot to be received by the credit union no later than the date and time of the meeting, or by combination of both methods; and

(F) be accompanied by a mail ballot and a copy of the merger/consolidation plan if voting by mail is permitted.

(k) Completion of Merger/Consolidation.

(1) Upon approval of the merger/consolidation plan by the membership, if applicable, the Certificate of Merger/Consolidation shall be completed, signed and submitted to the commissioner for final authority to combine the records. Necessary amendments to the surviving credit union's articles of incorporation or bylaws shall also be submitted at this time.

(2) Upon receipt of the commissioner's written authorization, the records of the credit unions shall be combined as of the effective date of the merger/consolidation. The board of the directors of the surviving credit union shall certify the completion of the merger/consolidation to the commissioner within 30 days after the effective date of the merger/consolidation.

(3) Upon receipt by the commissioner of the certification of the merger/consolidation in which the surviving credit union will operate under a Texas charter, any article of incorporation or bylaw amendments will be approved at the same time the charter of the merging credit union is canceled.

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.

Filed with the Office of the Secretary of State, on January 28, 1998.

TRD-9801290

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: March 15, 1998

For further information, please call: (512) 837-9236

◆ ◆ ◆  
**Submission of Comments by Interested Parties**

**7 TAC §91.3001, §91.3002**

The Texas Credit Union Commission proposes new §91.3001 and §91.3002, concerning the opportunity for interested parties to be heard on certain applications. The new rules are being proposed in accordance with Section 17 of Senate Bill 358 (75th Legislature) which provides that the commission may establish reasonable rules governing the circumstances and conduct of informal meetings. The proposed rules would formalize requirements and procedures to be utilized by the Credit Union Department.

Lynette Pool-Harris, Deputy Commissioner, has determined that for the first five year period there will be no fiscal implications as a result of enforcing or administering the proposed rules.

Ms. Pool-Harris, Deputy Commissioner, has determined that for each year of the first five years the rules proposed are in effect:

(a) The public benefits anticipated as a result of enforcing the rules as proposed will be that interested parties unions will have a clearly defined set of procedures to follow when requesting an informal meeting with the commissioner.

(b) There is no economic cost anticipated to the parties who are required to comply with the rules.

(c) No impact on local employment is anticipated as a result of enforcing the rules as proposed.

Comments on the proposed rules must be submitted within 30 days after their publication in the *Texas Register* to Carol P. Shaner, Staff Services Officer, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The new sections are proposed under the provisions of the Texas Finance Code, §15.402, which authorizes the commission to adopt reasonable rules, and Section 17 of Senate Bill 358, 75th Legislature, Chapter 338, 1997 Texas Session Law (to be codified at Texas Finance Code Annotated, §122.005), which provides the Credit Union Commission with the authority to establish, by rule, appropriate criteria governing the circumstances and conduct of informal meetings.

The specific sections affected by these proposed rules are Texas Finance Code, §§122.006, 122.011, 122.151, and 122.152, pertaining to applications for incorporation, request for approval of article of incorporation amendments, and merger or consolidation.

§91.3001. Opportunity to Submit Comments on Certain Applications.

(a) An interested party may submit comments to the commissioner on the following matters:

(1) an application for incorporation under the Texas Finance Code, §122.001;

(2) an amendment to a credit union's articles of incorporation under the Texas Finance Code, §122.011, which includes an amendment to expand the credit union's field of membership; or

(3) an application to merge or consolidate under the Texas Finance Code, §122.152.

(b) An interested party is a person or entity that has an interest in particular to the application other than as a member of the general public.

(c) Acceptance of comments under this section does not constitute a determination of standing to protest or otherwise participate in a contested case hearing on the application.

(d) Comments may be made in writing or provided in a meeting with the commissioner or deputy commissioner, as follows:

(1) written comments shall be submitted within 30 days after notice of the application is published in the *Texas Register* or the department's newsletter, whichever is later;

(2) a meeting to receive comments shall be held upon written request by an interested party or upon the commissioner's direction.

§91.3002. Conduct of Meetings to Receive Comments.

(a) Meetings to receive comments under §91.3001 of this title (relating to opportunities to submit comments on certain applications) will be conducted in the following manner:

(1) a written request for a meeting to receive comments must be received by the department within 30 days after publication of the notice of the application and shall contain the following:

(A) the identity of the requestor, including the name of a natural person who represents a business entity or other association,

mailing address, daytime telephone number, and a facsimile number if any;

(B) the name of the application and type of application;

(C) a description of the requestor's interest in the application; and

(D) a list of at least three dates and times within 30 days after the date of publication of notice of application, which are available for the meeting.

(2) the meeting will be scheduled and may be rescheduled, if necessary, by the commissioner to occur after at least three business days' notice by telephone, facsimile, or mail;

(3) one meeting may be scheduled to receive comments from more than one interested party, at the discretion of the commissioner;

(4) a limit on the length and other conditions for the conduct of the meeting may be imposed by the commissioner, and the conditions will be stated in the notice of the meeting;

(5) the meeting may be conducted by telephone with the consent of the interested party; and

(6) the department is not required to make a record of the meeting.

(b) An interested party who fails to attend a meeting scheduled for the party's benefit may submit written comments within three days after the date scheduled for the meeting, but the commissioner is not required to schedule another meeting.

(c) The purpose of the meeting is only to receive comments, and no decision, preliminary or otherwise, will be made at the meeting.

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.

Filed with the Office of the Secretary of State, on January 28, 1998.

TRD-9801291

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: March 15, 1998

For further information, please call: (512) 837-9236

◆ ◆ ◆  
Chapter 97. Commission Policies and Administrative Rules

Fees

7 TAC §97.113

The Texas Credit Union Commission proposes an amendment to existing rule §97.113, concerning operating fees. One proposed amendment will modify the amount of operating fees a state-chartered credit union must pay to the Department annually. This amendment to update the operating fee schedule is the result of the Department's analysis of its current operating costs, the operating assessment schedule imposed on federally chartered credit unions and credit unions chartered by other

states, and the structure of the state credit union industry as it exists today. The operating fee schedule currently in effect was adopted in September of 1991.

The commission is also proposing an amendment to allow for the collection of \$200 per foreign branch office operated in the state of Texas by an out of state credit union. As the rule now reads, an out of state credit union with branches operating in Texas is only required to remit \$200 per year to the Department, regardless of the number of actual foreign branch operations in existence. Therefore, an out of state credit union with four branches would pay the same annual fee as another out of state credit union with only one branch. Amending the rule to allow for a fee to be collected for each branch office will result in a more equitable system.

Lastly, the commission proposes the addition of a new subsection addressing the collection of operating fees from a state chartered credit union that assumes the assets and liabilities of another state chartered credit union through a merger or consolidation between June 30 and September 1. This will allow the department to collect operating fees normally lost as a result of the timing difference between the date upon which the fees are assessed and the remittance date.

Lynette Pool-Harris, Deputy Commissioner, has determined that for each year of the first five year period there will not be fiscal implications as a result of enforcing or administering the proposed rule.

Ms. Pool-Harris, Deputy Commissioner, has determined that for each year of the first five years the rule proposed is in effect:

(a) The public benefits anticipated as a result of enforcing the rule as proposed will be that the Department is sufficiently funded by the credit unions to cover expenses in regulating and supervising those credit unions.

(b) The anticipated economic cost to the individuals who are required to comply with the rule as proposed will be dependent on their asset base as of the quarter ending June 30. Credit unions with total assets below approximately \$39 million will pay lower operating fees, while those above \$39 million will pay higher fees, than they would under the current operating fee schedule. Those credit unions experiencing asset growth between June 30 and September 1 due to mergers/consolidations will now be financially responsible for the associated operating fees. For out of state credit unions operating branches in Texas, the anticipated economic cost will be dependent on the number of such branches in operation as of September 1 of each year.

(c) No impact on local employment is anticipated as a result of enforcing the rule as proposed.

Written comments on the proposed amendment must be submitted within 30 days after its publication in the *Texas Register* to Carol P. Shaner, Staff Services Officer, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendment is proposed under the provisions of the Texas Finance Code, §15.402, which provide the Credit Union Commission with the authority to set, by rule, reasonable supervision fees, charges, and revenues required to be paid by credit unions authorized to do business under the Texas Finance Code.

The specific section affected by this proposed amendment is Texas Finance Code, §15.402.

§97.113. *Operating Fees.*

(a) (No change.)

(b) Calculation of operating fees. The schedule provided in this section shall serve as the basis for calculating operating fees. The base date shall be June 30 of the year in which operating fees are calculated. The asset base may be reduced by the amount of reverse-repurchase balances extant on the June 30 base date. The commissioner is authorized to increase or decrease the fee schedule annually by amounts not to exceed 10% per year with prior approval of the commission, as needed to match revenue with appropriations. Figure: 7 TAC §97.113(b)

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

(e) Out of state branches. Credit unions operating branch offices in Texas as authorized by §91.211 of this title (relating to Application for a Certificate of Authority To Do Business in the State of Texas) shall pay an annual operating fee of \$200 per branch office.

(f) (No change.)

(g) In the event a credit union in existence as of June 30 merges or consolidates with another credit union and the merger/consolidation is completed on or before September 1, the surviving credit union shall remit to the department the amount that the merging/consolidating credit union would have paid if it had still been in existence on September 1.

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.

Filed with the Office of the Secretary of State, on January 28, 1998.

TRD-9801294

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: March 15, 1998

For further information, please call: (512) 837-9236

◆ ◆ ◆  
**TITLE 16. ECONOMIC REGULATION**

**Part I. Railroad Commission of Texas**

**Chapter 5. Transportation Division**

**Subchapter J. Rail Safety**

**16 TAC §5.802**

The Railroad Commission of Texas proposes an amendment §5.802, concerning reports of railroad accidents/incidents. Currently, railroads are required to notify the commission immediately of any collision, derailment, fire, explosion, act of God, or other event occurring in the state of Texas that: results in the death of any railroad passenger or railroad employee; results in the death or injury of two or more persons; involves a passenger train; or involves a commodity classified as a hazardous material under 49 Code of Federal Regulations Part 172. The proposed amendment would require the railroads to notify the commission immediately upon the occurrence of any of the described events that results in the death of one or more persons.

Jerry Martin, director, Rail Division, has determined that for each year of the first five years the section as proposed will

be in effect there will be no fiscal implications for state or local governments.

Mr. Martin has also determined that for each year of the first five years the section as proposed will be in effect the public benefit anticipated as a result of enforcing the section as proposed will be the accumulation by the commission of more comprehensive and timely information about deaths and injuries resulting from accidents and incidents involving railroad on-track equipment, moving or standing, which in turn should help the commission in evaluating the safety of railroad operations.

There is anticipated economic cost to small businesses and individuals required to comply with the section as proposed due to the requirement to report all accidents and incidents involving railroad on-track equipment which result in the death of any person, not just those involving the death of two or more persons. However, the cost of complying with the section as proposed cannot be determined, since the frequency of reports is related to deaths of persons, which cannot be predicted. In addition, each railroad's individual administrative costs are likely to differ, making the determination of the cost of compliance impossible.

Comments on the proposed amendment should be filed with Jerry Martin, Director, Rail Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 60 days after publication in the *Texas Register*. For more information, contact Mr. Martin at (512) 463-7001.

The commission proposes the amendment pursuant to Texas Civil Statutes, Article 6448a, which authorizes the commission to issue rules as permitted by the Federal Railroad Safety Act of 1970.

Texas Civil Statutes, Article 6448a, is the statute affected by the proposed amendment.

§5.802. *Reports of Railroad Accidents/Incidents.*

(a) (No change.)

(b) A railroad must report immediately by telephone to the Commission at (512) 463-6788, whenever it learns of the occurrence of any collision, derailment, fire, explosion, act of God, or other event occurring in the State of Texas and involving operation of railroad on-track equipment (standing or moving) which:

(1) results in the death of one or more persons [~~any railroad passenger or railroad employee~~];

(2) results in the [~~death or~~] injury of two or more persons;

(3)-(4) (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.

Filed with the Office of the Secretary of State on January 29, 1998.

TRD-9801363

Mary Ross McDonald

Deputy General Counsel, Office of General Counsel  
Railroad Commission of Texas

Earliest possible date of adoption: March 15, 1998

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

◆ ◆ ◆  
**TITLE 22. EXAMINING BOARDS**

**Part V. State Board of Dental Examiners**

**Chapter 101. Dental Licensure**

**22 TAC §101.2**

The State Board of Dental Examiners proposes new §101.2, concerning staggered dental registrations.

Douglas A. Beran, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the rule is in effect there will be no fiscal implications for local government as a result of enforcing or administering the rule. There will be no fiscal impact on state government because the proposed rule describes procedures already in place as authorized by the Dental Practice Act at Article 4550b.

Mr. Beran 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 that Board rules will clarify for dental licensees the procedure by which dental registrations are staggered and the fees due for the initial staggered registration period and subsequent annual renewals.

There will be no effect on small and large businesses. The economic costs to persons who are required to comply with the rule as proposed will be contingent upon their placement in the staggered registration system.

Comments on the proposal may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all comments and written requests for public hearing must be received by the State Board of Dental Examiners on or before March 16, 1998.

The new rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, Article 4543 §2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act; and Article 4550b, which provides that the Board by rule may adopt a staggered registration system.

The proposed new rule does not affect other statutes, articles, or codes.

§101.2. Staggered Dental Registrations.

The State Board of Dental Examiners, pursuant to Article 4550b, V.T.C.S., has established a staggered license registration system comprised of initial dental license registration periods followed by annual registrations (i.e., renewals).

(1) The initial, staggered dental license registration periods will range from 6 months to 17 months. Each dentist for whom an initial dental license registration is issued will be assigned a computer-generated check digit. The length of the initial license registration period will be according to the assigned check digit as follows:

(A) a dentist assigned to check digit 1 will be registered for 6 months;

(B) a dentist assigned to check digit 2 will be registered for 7 months;

(C) a dentist assigned to check digit 3 will be registered for 8 months;

(D) a dentist assigned to check digit 4 will be registered for 9 months;

(E) a dentist assigned to check digit 5 will be registered for 11 months;

(F) a dentist assigned to check digit 6 will be registered for 12 months;

(G) a dentist assigned to check digit 7 will be registered for 13 months;

(H) a dentist assigned to check digit 8 will be registered for 14 months;

(I) a dentist assigned to check digit 9 will be registered for 15 months; and

(J) a dentist assigned to check digit 10 will be registered for 17 months.

(2) For individuals who qualify for dental licensure by examination, the initial dental license registration fees will be as follows:

(A) an annual license registration fee of \$70 prorated according to the number of months in the initial registration period;

(B) \$9.00 for peer assistance.

(3) For individuals who qualify for dental licensure by credentials, the initial dental license registration fees will be as follows:

(A) an annual license registration fee of \$70 prorated according to the number of months in the initial registration period;

(B) \$9.00 for peer assistance;

(C) a \$200 annual assessment by the Texas Legislature for deposit to the General Revenue Fund.

(4) Subsequent to the initial registration period, a licensee's annual registration (renewal) will occur on the first day of the month that follows the last month of his/her initial dental license registration period. Pursuant to §102.1(a) of this title (relating to Fee Schedule), the licensee will pay the following fee for each annual registration (i.e., renewal):

(A) a license registration fee of \$70;

(B) \$200 annual assessment by the Texas Legislature for deposit to the General Revenue Fund;

(C) \$9.00 for peer assistance.

(5) Approximately 60 days prior to the expiration date of the initial dental license registration period, a license renewal notice will be mailed to all dental licensees who have that expiration date.

(6) A license registration expired for more than one year may not be renewed.

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.

Filed with the Office of the Secretary of State on January 28, 1998.

TRD-9801315

Douglas A. Beran, Ph.D.

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: March 15, 1998

For further information, please call: (512) 463-6400

◆ ◆ ◆  
Chapter 102. Fees

22 TAC §102.1

The State Board of Dental Examiners proposes an amendment to §102.1, concerning fees.

Douglas A. Beran, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the rule is in effect there will be no fiscal implications on state or local government as a result of enforcing or administering the rule. The fiscal impact on state government will be contingent upon the number of exception tracking numbers issued to registrants in each state-supported dental school.

Mr. Beran 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 that licenses, registrants, and dental schools will know the appropriate fees due to State Board of Dental Examiners.

There will be no effect on small and large businesses. The anticipated economic costs to persons and/or dental schools required to comply with the rule as proposed will be contingent upon the costs associated with each application, registration, tracking number, et cetera.

Comments on the proposal may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all comments and written requests for public hearing must be received by the State Board of Dental Examiners on or before March 16, 1998.

The amended rule is proposed under Texas Government Code §2001.021 et seq; Texas Civil Statutes, Article 4543 §2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act, and Article 4550a §1 and §2, Article 4550c, Article 4551e §5, Article 4551f §6, Article 4547, Article 4545a, and Article 4544 §1 and §2 and §467.0041, Title 6, Chapter 467 of the Health and Safety Code, Peer Assistance Programs.

The proposed amended rule does not affect other statutes, articles, or codes.

§102.1. *Fee Schedule [Licensing and Examination Fees].*

(a) Dentists. [Any person desiring to obtain a license to practice dentistry, dental hygiene and operate a dental laboratory in the State of Texas shall pay the following fees:]

(1) Application for licensure by examination [ dental examination fee: \$150]:

(A) initial application/examination: \$150; and

(B) initial assessment by the Texas Legislature for deposit to the General Revenue Fund: \$200;

(2) Annual registration [dental hygiene examination fee:] \$70.

(3) Annual peer assistance: \$9.00. [ dental laboratory application fee: \$100]

(4) Annual assessment by Texas Legislature for deposit to the General Revenue Fund: \$200. [dental licensure by credentials application fee \$2,000]

(5) Application for licensure by credentials: \$2,000.  
[~~dental hygiene licensure by credentials application fee: \$475~~ ]

(6) Duplicate license: \$15.

(7) Duplicate renewal certificate: \$15.

(8) Reactivate a retired license: \$250.

(b) Dental Hygienists: [~~Any person licensed to practice dentistry, dental hygiene and operate a dental laboratory in the State of Texas shall pay the following annual renewal fees:~~]

(1) application for licensure by examination: [~~dentists:~~]  
\$70;

(2) annual registration: [~~dental hygienists:~~ ] \$41;

(3) annual peer assistance: \$2.00; [~~dental laboratory:~~  
\$100]

(4) application for licensure by credentials: \$475;

(5) duplicate license: \$15;

(6) duplicate renewal certificate: \$15; and

(7) reactivate a retired license: \$250.

(c) Dental laboratories: [~~The peer assistance fee for dentists shall be \$9.00]~~

(1) initial application: \$100; and

(2) annual registration: \$100.

(d) Application for faculty member exception tracking (identification) number: \$75. [~~The peer assistance fee for dental hygienists shall be \$2.00]~~

(e) Application for dental intern or resident exception tracking (identification) number: \$25. [~~A duplicate license fee shall be \$15]~~

~~{(f) A duplicate renewal certificate fee shall be \$15.}~~

~~{(g) The administrative fee to reactivate a retired license shall be \$250.}~~

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.

Filed with the Office of the Secretary of State on January 28, 1998.

TRD-9801316

Douglas A. Beran, Ph.D.

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: March 15, 1998

For further information, please call: (512) 463-6400



## Chapter 103. Dental Hygiene Licensure

### 22 TAC §103.4

The State Board of Dental Examiners proposes new §103.4, concerning staggered dental hygiene registrations.

Douglas A. Beran, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the rule is in effect there will be no fiscal implications for local government as a result of enforcing or administering the rule.

There will be no fiscal impact on state government because the proposed rule describes procedures already in place as authorized by the Dental Practice Act at Article 4550b.

Mr. Beran 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 that Board rules will clarify for dental hygiene licensees the procedure by which dental hygiene registrations are staggered and the fees due for the initial staggered registration period and subsequent annual renewals.

There will be no effect on small and large businesses. The economic costs to persons who are required to comply with the rule as proposed will be contingent upon their placement in the staggered registration system.

Comments on the proposal may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all comments and written requests for public hearing must be received by the State Board of Dental Examiners on or before March 16, 1998.

The new rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, Article 4543 §2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act; and Article 4550b, which provides that the Board by rule may adopt a staggered registration system.

The proposed new rule does not affect other statutes, articles, or codes.

#### §103.4. Staggered Dental Hygiene Registrations.

The State Board of Dental Examiners, pursuant to Article 4550b, V.T.C.S., has established a staggered license registration system comprised of initial dental hygiene license registration periods followed by annual registrations (i.e., renewals).

(1) The initial dental hygiene license registration periods will range from 6 months to 17 months. Each dental hygienist for whom an initial dental hygiene license registration is issued will be assigned a computer generated check digit. The length of the initial license registration period will be determined on the basis of the assigned check digit as follows:

(A) a dental hygienist assigned to check digit 1 will be registered for 6 months;

(B) a dental hygienist assigned to check digit 2 will be registered for 7 months;

(C) a dental hygienist assigned to check digit 3 will be registered for 8 months;

(D) a dental hygienist assigned to check digit 4 will be registered for 9 months;

(E) a dental hygienist assigned to check digit 5 will be registered for 11 months;

(F) a dental hygienist assigned to check digit 6 will be registered for 12 months;

(G) a dental hygienist assigned to check digit 7 will be registered for 13 months;

(H) a dental hygienist assigned to check digit 8 will be registered for 14 months;



(I) a dental hygienist assigned to check digit 9 will be registered for 15 months; and

(J) a dental hygienist assigned to check digit 10 will be registered for 17 months.

(2) For individuals who qualify for dental hygiene licensure by examination, the initial dental hygiene license registration fees will be as follows:

(A) an annual license registration fee of \$41 prorated according to the number of months in the initial registration period; and

(B) \$2.00 for peer assistance.

(3) For individuals who qualify for dental hygiene licensure by credentials, the initial dental hygiene license registration fees will be as follows:

(A) an annual license registration fee of \$41 prorated according to the number of months in the initial registration period; and

(B) \$2.00 for peer assistance.

(4) Subsequent to the initial registration period, a licensee's annual registration (renewal) will occur on the first day of the month that follows the last month of his/her initial dental hygiene license registration period. Pursuant to §102.1(b) of this title (relating to Fee Schedule) the licensee will pay the following fee for each annual registration (i.e., renewal):

(A) a license registration fee of \$41; and

(B) \$2.00 for peer assistance.

(5) Approximately 60 days prior to the expiration date of the initial dental hygiene license registration period, a license renewal notice will be mailed to all dental hygiene licensees who have that expiration date.

(6) A license registration expired for more than one year may not be renewed.

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.

Filed with the Office of the Secretary of State on January 28, 1998.

TRD-9801317

Douglas A. Beran, Ph.D.

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: March 15, 1998

For further information, please call: (512) 463-6400



## Chapter 104. Continuing Education

### 22 TAC §104.1

The State Board of Dental Examiners proposes an amendment to §104.1, concerning requirements for continuing education.

Douglas A. Beran, Executive Director, State Board of Dental Examiners, has determined 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 the rule.

Mr. Beran 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 that individuals who cannot meet the continuing education requirements may have alternative methods available to them, credit for interactive computer courses can be given, and the term "scientific or technical" is better defined.

There will be no effect on small and large 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 Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all comments and written requests for public hearing must be received by the State Board of Dental Examiners on or before March 16, 1998.

The amended rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, Article 4543 §2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act; and Article 4544 §5 and Article 4551e. The amended §3 is proposed to allow individuals who are not able to obtain continuing education to request the Board to approve alternatives to meet continuing education requirements. Proposed §5 is amended to provide a definition of the term "scientific or technical." Proposed §9 is added to allow credit for up to twelve hours per three year period for interactive computer courses.

The proposed amended rule does not affect other statutes, articles, or codes.

#### *§104.1. Requirement.*

As a prerequisite to the annual renewal of a dentist's license or a dental hygienist's license, 36 hours of acceptable continuing education are required to be completed by the applicant within a three-year period as defined in paragraphs (1)-(9) of this section:

(1)-(2) (No Change.)

(3) Each licensee shall select and participate in the continuing education courses endorsed by the providers identified in §104.2 of this title (relating to Provider's Continuing Education). Alternatively, a licensee who is unable to meet education course requirements as cited in paragraph (5) of this section may request that alternative courses or procedures be approved by the Continuing Education Committee.

(A) Such requests must be in writing and submitted to and approved by the Continuing Education Committee prior to the expiration of the three-year period for which the alternative is being requested.

(B) A licensee must provide supporting documentation detailing the reason why the continuing education requirements set forth in paragraph (5) of this section cannot be met and must submit a proposal for alternative education procedures.

(C) Acceptable causes may include residence outside the United States, unanticipated financial or medical hardships, or other extraordinary circumstances that are documented.

(D) Should the request be denied, the licensee must complete requirements as cited in paragraph (5) of this section.

(4) (No Change.)

(5) All 36 hours must be either technical or scientific as related to clinical care. The term "technical or scientific" as applied to continuing education shall mean that courses have significant intellectual or practical content and are designed to directly enhance the practitioner's knowledge and skill in providing clinical care to the individual patient.

(6)-(8) (No Change.)

(9) Individual courses and/or instructors will be approved by providers cited in §104.2 of this title. No more than 12 hours in a 36-hour accumulation may be interactive computerized courses. These hours must be provided by those entities cited in §104.2 of this title. Examples of interactive computer courses include those that involve interactive dialog through electronic linkage with an instructor in which manipulation of text or data by the licensee occurs.

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.

Filed with the Office of the Secretary of State on January 28, 1998.

TRD-9801318

Douglas A. Beran, Ph.D.

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: March 15, 1998

For further information, please call: (512) 463-6400



## Chapter 107. Dental Board Procedures

### Procedures Governing Grievances, Hearings, and Appeals

#### 22 TAC §107.63

The State Board of Dental Examiners proposes an amendment to §107.63, concerning informal disposition.

Douglas A. Beran, Executive Director, State Board of Dental Examiners, has determined 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 the rule.

Mr. Beran 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 that informal settlement conferences can be conducted as closed meetings thereby facilitating settlement of complaints.

There will be no effect on small and large 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 Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512-463-6400). To be considered, all comments and written requests for public hearing must be received by the State Board of Dental Examiners on or before March 16, 1998.

The amended rule is proposed under Texas Government Code §2001.021 et.seq; Texas Civil Statutes, Article 4543 §2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act. The proposed amendments will make it

clear that panels of board members who participate in informal settlement conferences act only in an advisory capacity to the board. The rule as currently written allows the panel to dismiss cases; the amendment will allow the panel to only recommend dismissal to the board. Further, the panel no longer will be empowered to order further investigations but rather to refer a case to the Board Secretary for further action.

The proposed amended rule does not affect other statutes, articles, or codes.

#### §107.63. Informal Disposition.

Pursuant to the Administrative Procedure and Texas Register Act, §13(e), ultimate disposition of any complaint or matter pending before the Board may be made by stipulation, agreed settlement, or consent order. Such informal dispositions will facilitate the expeditious change or correction of dental practice patterns which constitute violations of the Dental Practice Act or the rules of the Board.

(1) (No change.)

(2) Procedure. Upon referral by the secretary or executive director of a complaint or other matter for possible resolution by stipulation, agreed settlement, or consent order, the following procedure shall be followed.

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

(G) At the conclusion of the settlement conference, the Board's representative(s) shall make recommendations to the licensee for resolution or correction of any alleged violations of the Dental Practice Act or of the Board rules. Such recommendations may include any disciplinary actions authorized by the Dental Practice Act, Texas Civil Statutes, Article 4549, §3. The Board's representative(s) may, on the basis [also exclude ] that a violation of the Dental Practice Act or the Board's rules has not been established recommend that [and may order] the case be closed, or the case may be referred to the Board Secretary for further investigation.

(H)-(J) (No change.)

(K) A recommendation to close a case requires no action by the Respondent prior to its presentation to the Board.

(3) Consideration by the Board.

(A) (No change.)

(B) Upon an affirmative majority vote, the Board shall either enter an order approving the proposed settlement agreements , or without entry of an order, approve the recommendation to close. Said order shall bear the signature of the president and secretary of the Board, or of the officer presiding at such meeting and shall be included in the minutes of the Board.

(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.

Filed with the Office of the Secretary of State on January 28, 1998.

TRD-9801319

Douglas A. Beran, Ph.D.

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: March 15, 1998

For further information, please call: (512) 463-6400

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## TITLE 25. HEALTH SERVICES

### Part II. Texas Department of Mental Health and Mental Retardation

#### Chapter 409. Medicaid Programs

##### Subchapter L. Mental Retardation Local Authority (MRLA) Pilot Program

**25 TAC §§409.517, 409.519, 409.521, 409.523, 409.525, 409.527, 409.529, 409.531, 409.533, 409.535, 409.537, 409.539, 409.541**

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§409.517, 409.519, 409.521, 409.523, 409.525, 409.527, 409.529, 409.531, 409.533, 409.535, 409.537, 409.539, and 409.541 of Chapter 409, Subchapter L, concerning Mental Retardation Local Authority (MRLA) Pilot Program.

The proposed new sections would govern the MRLA Pilot Program authorized by §533.0355 of the Texas Health and Safety Code, which allows the department to implement a pilot project to study an authority structure for service delivery at the local or regional level through a pilot mental health or mental retardation authority. This subchapter is also adopted in response to Senate Concurrent Resolution 55 of the 74th Texas Legislature which requires the State Medicaid Office to apply for a federal waiver to allow a consumer-directed pilot program for persons with mental retardation and other developmental disabilities. The State Medicaid Office, Texas Health and Human Services Commission, has delegated the authority to operate this pilot program to TDMHMR. The MRLA Pilot Program would be implemented on April 1, 1998, contingent on the approval of a waiver request submitted by TDMHMR to the Health Care Financing Administration.

The first part of the subchapter, proposed in the January 12, 1998, issue of the *Texas Register* (22 TexReg 12243-12248), provides the basic framework necessary to implement the MRLA Pilot Program: provisions related to the geographic boundaries of the pilot, service components, client eligibility criteria, payment categories and provider claims payment, criteria for payment, utilization review, other provider requirements, and the provider's right to an administrative hearing. The subchapter is being proposed in stages to enable implementation of the MRLA Pilot Program on April 1, 1998, which will provide for access to federal and state funds to serve an additional 225 individuals who are currently on waiting lists.

The proposed sections in this issue of the *Texas Register* represent the second part of the subchapter. These sections deal with maintenance of consumer waiting lists, processes for applicant enrollment, certification of providers, corrective actions and sanctions, payment of rejected claims, calculation of consumer copayment, and provider certification standards.

A related action, published in the December 19, 1997, issue of the *Texas Register* (22 TexReg 12369-12372), is the proposal of rules by the Health and Human Services Commission to describe cost reimbursement methodology requirements for the pilot program. Responsibility for adopting rules governing the determination of fees, charges, and rates for Medicaid payments

under Chapter 32, Texas Human Resource Code, transferred to the Health and Human Services Commission on September 1, 1997, pursuant to §531.021 of the Texas Government Code.

Don Green, chief financial officer, has determined that for each year of the first five-year period the rule, as proposed, is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed sections.

Ernest McKenney, director, Medicaid Administration, has determined that for each year of the first five years the new sections are in effect the public benefit anticipated will be that data from the pilot on the role of the local authority will be used to improve service delivery systems prior to state wide implementation. For each year of the first five years the new sections are in effect 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.

A public hearing will be held at 8:30 a.m., Monday, February 23, 1998, in Room 240 of the main TDMHMR Central Office building (Building 2) at TDMHMR Central Office, 909 West 45th Street, Austin, Texas, to accept oral and written testimony concerning the proposal. Persons requiring an interpreter for the deaf or hearing impaired should notify Sheila Wilkins, Office of Policy Development, at least 72 hours prior to the hearing by calling (512) 206-4516.

Questions about the content of the proposal may be directed to Mr. McKenney. Comments on the proposed sections 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 amended sections are proposed under the Texas Health and Safety Code, §532.015(a), which provides TDMHMR with broad rulemaking authority; Human Resource Code, Chapter 32, §32.021, and Government Code, Chapter 531, §531.021, which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer federal medical assistance funds and administer the state's medical assistance program. Senate Bill 509 of the 74th Texas Legislature clarifies THHSC's authority to delegate the operation of all or part of a Medicaid program to a health and human service agency.

The section affects Human Resources Code, Chapter 32, and Government Code, Chapter 531, §531.021.

##### §409.517. Rejected Claims.

If the Texas Department of Mental Health and Mental Retardation (TDMHMR) rejects a claim because of errors, the provider must research the errors, initiate appropriate corrective action, and resubmit a corrected claim to TDMHMR with supporting documentation within 180 calendar days from the end of the month of service or within 30 days of notification of a rejected claim by TDMHMR, whichever is later.

##### §409.519. Calculation of Consumer Co-payment.

(a) Consumers who are determined to be financially eligible based on the special institutional income limit are required to share in the cost of waiver services. The method for determining the consumer's co-payment is described in subsection (b) of this section and documented on the Texas Department of Human Services Medical Assistance Only Worksheet. When calculating the co-payment amount for consumers with incomes that exceed the supplemental security income (SSI) federal benefit rate (FBR), deduct the following:

(1) the cost of the consumer's maintenance needs which must be equivalent to the special institutional income limit for eligibility under the Texas Medicaid program.

(2) the cost of the maintenance needs of the consumer's dependent children. This amount is equivalent to the Temporary Assistance to Needy Families (TANF) basic monthly grant for children or a spouse with children, using the recognizable needs amounts in the TANF Budgetary Allowances Chart; and

(3) the costs incurred for medical or remedial care which are necessary but are not subject to payment by Medicare, Medicaid, or any other third party. These include the cost of health insurance premiums, deductibles, and co-insurance.

(b) The co-payment amount is the consumer's remaining income after all allowable expenses have been deducted. The co-payment amount is applied only to the cost of home and community-based services which are funded through the MRLA Pilot Program and specified on the consumer's IPC. The co-payment must not exceed the cost of services actually delivered.

(c) Consumers must pay the cost sharing amount to the provider contracted to deliver authorized waiver services.

*§409.521. Spousal Impoverishment Provisions.*

(a) For program consumers with spouses who live in the community, the income and resource eligibility requirements are determined according to the spousal impoverishment provisions in the Social Security Act, §1924, and as specified in the Medicaid State Plan and in §409.505(a)(1) of this title (relating to Client Eligibility Criteria.)

(b) After the consumer is determined to be eligible for Medicaid, the Texas Department of Human Services (TDHS) determines the amount of the consumer's income applicable to payment.

(c) To determine the amount of the consumer's income applicable to payment, TDHS uses the same methodology as if the consumer were residing in an institution, except that the personal needs allowance is equal to the institutional income cap. The spousal diversion is equal to the SSI income limit.

*§409.523. Maintenance of MRLA Pilot Program Referral List.*

(a) The local MRA will maintain an up-to-date list of individuals living in and waiting for MRLA Pilot Program services in the MRA's local service area.

(1) The MRA will assign the individual's placement on the referral list, chronologically by date of application.

(2) The MRA will notify MRLA Pilot Program providers in its local service area of the process providers should use to refer applicants who wish to be placed on the referral list.

(3) The MRA may disregard an applicant on the referral list only when the following documentation exists:

(A) written permission of the applicant or the applicant's legal representative to remove the applicant's name from the referral list;

(B) the applicant is deceased;

(C) the applicant moved out of the local service area;

or

(D) TDMHMR has denied the applicant's enrollment and the applicant or the applicant's legal representative has had an opportunity to exercise the applicant's right to appeal the decision

according to §409.505 of this title (relating to Client Eligibility Criteria).

(4) At the written request of an applicant or the legal representative of an applicant who moves to the local service area of a different MRA, the original MRA will assist in transferring the applicant's name and current application date to the MRA having jurisdiction in the local service area where the applicant has moved. The MRA receiving the referral transfer will add the individual's name to its referral list maintaining the current application date assigned by the transferring MRA.

*§409.525. Process for Applicant Referral and Enrollment.*

(a) The MRA designated by TDMHMR for the geographic area in which the applicant resides will receive all requests from applicants seeking enrollment into the MRLA Pilot Program.

(1) The MRA will register the applicant on the MRA's referral list as specified in §409.523 of this title (relating to Maintenance of MRLA Pilot Program Referral List).

(2) The MRA will notify the first applicant on the referral list when a placement vacancy occurs in the MRA's local service area and begin the referral/enrollment process by informing the applicant and/or the applicant's legal representative of his/her choice between participation in the ICF-MR Program or the MRLA Pilot Program and documenting the applicant's or the representative's choice of services.

(3) If the applicant or representative chooses participation in the MRLA Pilot Program, the MRA will assign a Service Coordinator who will develop a Person-Directed Plan (PDP). At minimum, the PDP will include the following:

(A) a description of the services and supports the individual requires to continue living in the community;

(B) a description of the individual's current services and supports, identifying those that would continue to be available if the individual enrolled in the MRLA Pilot Program (e.g., services not covered under the approved waiver);

(C) individual outcomes to be achieved through MRLA Pilot Program service components and justification for each service component to be included in the applicant's IPC;

(D) identification of all determinations needed to establish the applicant's eligibility for SSI or Medicaid benefits and for an ICF-MR Level of Care (LOC); and

(E) actions and methods to be used to reach identified service outcomes, projected completion dates, and person(s) responsible for completion.

(4) The service coordinator prepares an application for the individual's enrollment into the MRLA Pilot Program.

(A) If the applicant's financial eligibility for the MRLA Pilot Program must be established, the MRA will initiate, monitor, and support the individual's application processes necessary to obtain a financial eligibility determination.

(B) The MRA will complete an LOC assessment form. The MRA will determine or validate a determination that the applicant has mental retardation in accordance with Chapter 405, Subchapter D of this title (relating to Determination of Mental Retardation and Appropriateness for Admission to Mental Retardation Services) or verify that the individual has been diagnosed by a licensed physician as having a related condition as defined in §406.202 of this title (relating to Definitions for Level-of-Care and Level-of-Need Criteria). The MRA will administer the Inventory

for Client and Agency Planning (ICAP) and recommend a level-of-need assignment to TDMHMR in accordance with §409.507 of this title (related to Payment Category Assignment and Provider Claims Payment).

(C) Develop a proposed IPC with the applicant based on the PDP and §409.503(b) of this title (relating to Service Components of the MRLA Program).

(5) The Service Coordinator will inform the applicant or the applicant's legal representative of all available MRLA Pilot Program providers in the local service area. The Service Coordinator will:

(A) assist the applicant or the applicant's legal representative in selecting potential providers within the local service area;

(B) review the proposed IPC with potential provider agencies as selected by the applicant or the applicant's legal representative;

(C) arrange for meetings/visits with potential providers as desired by the applicant or the applicant's legal representative;

(D) assure that the applicant's or representative's choice of a specific provider is documented, is signed by the applicant or the applicant's representative and is retained by the MRA in the individual's record; and

(E) negotiate/finalize the proposed IPC to be delivered by the selected provider.

(b) When the selected provider has agreed to deliver the services delineated on the IPC, the MRA will submit the application for enrollment to TDMHMR. TDMHMR will send notification of the applicant's approval or denial of MRLA Pilot Program enrollment to the applicant, the selected provider, and the responsible MRA.

(c) The selected provider will initiate services in accordance with the approved IPC upon receipt of TDMHMR's enrollment approval.

§409.527. Revisions and Renewals of IPCs, LOCs and LONs for Enrolled Individuals.

(a) At least annually, but prior to the expiration of an individual's IPC, the service coordinator, the individual, the individual's legal representative, and the provider must review the PDP to assure individual outcomes previously identified are relevant. The IPC is reviewed by the service planning team, updated to reflect any changes to the PDP, and is submitted to TDMHMR for approval.

(b) The service coordinator, in collaboration with the service planning team, will initiate revisions to the IPC in response to changes in the individual's needs as documented in the current PDP.

§409.529. Coordination of Transfers and Permanent Discharges.

(a) Individuals who are currently receiving services from an HCS or HCS-O Program provider and who are moving to a geographic area covered by the MRLA Pilot Program may request to transfer their services to an MRLA Pilot Program provider. The service coordinator from the receiving MRA will:

(1) coordinate with the individual and their current HCS or HCS-O provider to facilitate selection of a provider and enrollment in the MRLA Pilot Program.

(2) determine in conjunction with the current HCS or HCS-O provider and the receiving MRLA provider, an effective date for enrollment.

(3) review the current IPC with the individual and the receiving MRLA provider and will negotiate and finalize the initial MRLA Pilot Program IPC. The effective date of the individual's IPC as established in the HCS or HCS-O Program will not be changed upon enrollment with an MRLA provider.

(b) Individuals currently receiving services within the MRLA Pilot Program may request to transfer their services to another MRLA provider in any of the local service areas specified in §409.501(a) of this title (relating to Geographic Area of the MRLA Pilot Program).

(1) If an individual is transferring to a provider within the same MRA, the service coordinator will coordinate with the individual, the current provider, and the receiving provider to facilitate the transfer.

(2) If the transfer will be to another MRA in the MRLA Pilot Program, the sending and receiving MRAs will coordinate the transfer. The receiving service coordinator will review the current IPC with the individual and the receiving MRLA provider and will initiate any changes if needed. The effective date of the individual's IPC will not be changed upon transfer to another provider.

(3) The MRAs will determine in conjunction with the current provider and the receiving MRLA provider, an effective date for transfer.

(c) Individuals who are moving outside the geographic area of the MRLA Pilot Program and who are currently receiving services from an MRLA provider may request to transfer their services to an HCS or HCS-O Program provider in the area to which they are moving.

(1) If the individual is seeking HCS-O Program services, the service coordinator will confirm the individual's eligibility with TDMHMR.

(2) The receiving MRA will assist the individual or the individual's representative to facilitate selection of an HCS or HCS-O provider.

(3) The current and the receiving MRAs will determine in conjunction with the current MRLA provider and the receiving HCS or HCS-O provider an effective date for enrollment.

(4) The effective date of the individual's IPC as established in the MRLA Pilot Program will not be changed upon enrollment into the HCS or HCS-O Program.

(d) TDMHMR must approve all discharges from program services.

(1) The service coordinator must submit the request to TDMHMR to discharge an individual from program services.

(2) TDMHMR will send a written discharge notification to the participant or the participant's representative, the provider, and the MRA indicating the effective date of the discharge and the participant's right to a fair hearing in accordance with §409.505 of this title (relating to Client Eligibility Criteria).

§409.531. Certification Status.

(a) Program providers contracted with TDMHMR for participation in the MRLA Pilot Program must be in continuous compliance with the MRLA Pilot Program Principles for Program Providers as described in Each program provider participating in the MRLA Pilot Program will receive a certification review conducted by TDMHMR or its designee at least annually in order to maintain certification status.

Figure 1: 25 TAC §409.531(a).

(1) TDMHMR personnel will conduct all certification reviews of program providers operated by the local Mental Retardation Authority.

(2) TDMHMR or its designee will conduct all certification reviews of non-MRA operated program providers.

(b) Certification review corrective action plans required from the program provider as determined by prior reviews under the HCS or HCS-O Consumer Principles for Evidentiary Certification and related timelines remain in effect until the first certification review as a program provider participating in the MRLA Pilot Program.

§409.533. Hazards to Health, Safety, and Welfare.

A hazard to health, safety, and welfare is any condition that the review team determines may result in imminent death, or serious or permanent harm to an individual. A hazard is designated as such in the MRLA Pilot Program certification review report. If the hazard is corrected during the review visit, the corrections will also be designated in the report.

(1) Immediate Corrective Action. Findings determined to be a hazard to health, safety and welfare must be corrected by the program provider before the exit conference of the respective review.

(2) Sanctions. If the program provider does not correct the hazard to health, safety, and welfare before the exit conference,

(A) the program provider will be denied certification, and

(B) the MRA with permission of the Texas Department of Mental Health and Mental Retardation (TDMHMR) will immediately coordinate development of alternative services for people enrolled in the provider's program, as appropriate.

§409.535. Compliance.

If any item of noncompliance with the MRLA Pilot Program Evidentiary Principles for Program Providers remains uncorrected at the time of the exit conference, the program provider must complete corrective action within 30 calendar days following the exit conference. TDMHMR or its designee must complete a follow-up review within 15 calendar days following the 30th day. The follow-up review may be either a desk review of documentation or an on-site review at the review team's discretion.

§409.537. Sanctions.

(a) If the program provider does not correct all remaining items of noncompliance by the completion of the first follow-up review, a vendor hold may be implemented and will continue until corrective action is confirmed by TDMHMR.

(1) TDMHMR or its designee will complete a second follow-up review between 30 and 60 calendar days from the date the vendor hold was implemented.

(2) If the program provider corrects all items of noncompliance by the completion of the second follow-up review, the vendor hold is removed effective the date the review is completed.

(b) TDMHMR denies certification and initiates contract cancellation if the program provider does not correct all items of noncompliance by the completion of the second follow-up review.

§409.539. Unannounced or Intermittent Review Visits.

(a) TDMHMR or its designee may conduct unannounced or intermittent review visits at any time, with or without prior notice to the program provider.

(b) Items of noncompliance noted in unannounced or intermittent review visits may result in certification action described in §409.533 and §409.537 of this title (relating to Hazards to Health, Safety, and Welfare; Compliance; and Sanctions).

§409.541. Compliance with MRLA Pilot Program Principles for Mental Retardation Authorities.

(a) Mental Retardation Authorities participating in the MRLA Pilot Program must be in continuous compliance with the MRLA Pilot Program Principles for Authorities as described in Figure 2:25 TAC §409.541(a).

(b) Each Mental Retardation Authority participating in the MRLA Pilot Program will receive a compliance review conducted by TDMHMR at least annually.

(c) If any item of noncompliance remains uncorrected by the Mental Retardation Authority at the time of the review exit conference, the Mental Retardation Authority will develop a plan of correction with timelines to be implemented after approval by TDMHMR. TDMHMR may take action as specified in the performance contract between the local Mental Retardation Authority and TDMHMR if the MRA fails to develop or implement an approved plan of correction.

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.

Filed with the Office of the Secretary of State, on February 2, 1998.

TRD-9801449

Ann Utley

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Earliest possible date of adoption: March 15, 1998

For further information, please call: (512) 206-4516

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**TITLE 28. INSURANCE**

**Part I. Texas Department of Insurance**

**Chapter 5. Property and Casualty Insurance**

**Subchapter A. Automobile Insurance**

**Notice Requirements to Claimants Regarding Motor Vehicle Repairs**

**28 TAC §5.501**

The Texas Department of Insurance proposes new §5.501 concerning the procedures that an insurer (including a person acting on behalf of an insurer) must follow in order to give the required notice to beneficiaries or third-party claimants regarding their motor vehicle repair rights under the Insurance Code, Article 5.07-1. Article 5.07-1 was amended by House Bill 423, 75th Texas Legislature, 1997, to mandate that the commissioner adopt a rule establishing the method or methods insurers shall use to comply with the notice provisions contained in section (e) of 5.07-1. The proposed rule requires the insurer to provide the notice to a beneficiary or third-party claimant. One requirement of the proposed rule 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 the vehicle is presented to the insurer, the notice must be given at that time. 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 the notice is delivered to the claimant by some other means within that time.

House Bill 423, enacted by the 75th Texas Legislature, 1997, amended Article 5.07-1 entitled Disclosure of Consumer Information. Newly added section (e) of Article 5.07-1 provides, "At the time the vehicle is presented to an insurer or an insurance adjuster or other person in connection with a claim for damage repair, the insurer or insurance adjuster or other person shall provide to the beneficiary or third-party claimant notice of the provisions of this article." Section (e) also provides that the commissioner shall adopt a rule establishing the method or methods insurers shall use to comply with the notice provisions in this section. The proposed rule is necessary to implement the provisions of section (e) of Article 5.07-1. The proposed rule establishes the methods to be used to provide notice to a beneficiary or third-party claimant and prescribes the actual notice that must be provided by an insurer. The proposed rule defines the term "insurer" to include any person acting on behalf of an insurer through actual or apparent authority, regardless of whether employed by the insurer. This definition is in accord with the statutory language which requires the notice to be given by the insurer, insurance adjuster or "other person" in connection with a claim for damage repair. The requirement of the proposed rule that an insurer provide the notice to a beneficiary or third-party claimant is necessary to comply with the terms of Article 5.07-1. Under the proposed rule, when the vehicle is presented to the insurer, the prescribed notice must be given to the claimant at that time. This method of notification complies with the specific requirement of section (e) of Article 5.07-1 which specifies that the notice must be given when the vehicle is presented to an insurer. The proposed rule also requires an insurer to mail the prescribed notice to a claimant within three business days of receiving notice of the claim when the claim is made by means other than the presentation of the vehicle to an insurer. The proposed rule allows an exception to the mailing of the notice if the insurer delivers the notice to the claimant by some other means within three business days of the claim. This additional method for providing notice to a beneficiary or third-party claimant is necessary to ensure that all beneficiaries and third-party claimants who submit a claim to an insurer receive notification of the provisions of Article 5.07-1. In many cases, an insurer's claims handling procedure will not require the claimant to present the vehicle to the insurer. Without the additional method for providing notice, many claimants may not obtain information about their rights in connection with a motor vehicle repair. The proposed rule ensures complete disclosure of the contents of Article 5.07-1 to each claimant. The proposed rule allows an insurer to send, along with the notice, a letter that addresses the issue of liability. The proposed rule also allows the insurer to include in the notice an optional provision which explains that providing the notice does not constitute an admission of liability by the insurance company. This optional provision, concerning the insurer's liability, is intended to alleviate the potential for misconceptions concerning the pur-

pose and meaning of the notice. The proposed rule requires that the notice be printed in at least 10 point type on a separate page from any other material, and must be attached to, or printed on the reverse side of a copy of Article 5.07-1. The type-size requirement is intended to make the notice conspicuous. Similarly, the proposed section requires that the notice and statute be provided together, but separate from any letter or other material, to help draw the claimant's attention to the information and to provide all of the pertinent information to the claimant in a compact manner.

David Durden, deputy commissioner for property and casualty lines has determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section and there will be no effect on local employment or the local economy.

Mr. Durden has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of administering the section will be that consumers who have automobile insurance claims that involve repair of damage to their vehicles will obtain information concerning their rights in connection with a motor vehicle repair. Mr. Durden estimates that for the first five years the section is in effect, the cost to persons required to comply with the notice requirements will be \$9,568,702. The cost of compliance with this rule is the cost to insurers who must provide the notice to claimants during the claims settlement process. The cost estimate is based on information provided by a sample of insurance companies in response to an informal survey sent out by the department and also data reported by a sample of insurance companies in their Fast Track statistical reports. The survey revealed that insurers estimated the additional time added to each claims handling transaction would range from .5 minutes to 5 minutes per transaction at \$.23 to \$.77 per minute. The labor cost estimate for the first year of \$1.00 per transaction is based on a time estimate of 2 minutes per transaction at \$.50 per minute. The labor cost per transaction is a blended cost that would include all transactions done, including both those transactions conducted in person and through the mail. The additional costs per transaction also include \$.23 for postage and \$.04 for system, printing, and paper. The postage cost is estimated to be \$.23 per transaction rather than \$.29 because this cost is reduced to reflect that 20% of the transactions are done in person and not by mail. The total cost per transaction for the first year is estimated to be \$1.27. The first year cost per transaction figure of \$1.27 is adjusted for inflation at a rate of 2% to arrive at \$1.30 for the second year. The first year cost per transaction figure is further adjusted for inflation at a rate of 2.5% for years 3-5 to arrive at \$1.33 for the third year, \$1.36 for the fourth year, and \$1.40 for the fifth year. The number of auto insurance claims per year was estimated from an average of the data reported by a sample of insurers in the survey and from estimated industry claims from Fast Track data to be 1,439,082 claims transactions per year. The total cost for each of the five years was calculated by multiplying the estimated cost per transaction for each year by the estimated number of claims transactions per year. The total cost to insurers is estimated to be \$1,827,635 in the first year, \$1,864,187 in the second year, \$1,910,792 in the third year, \$1,958,562 in the fourth year, and \$2,007,526 in the fifth year.

Mr. Durden has determined that the effect of this section on small businesses results mostly, if not entirely, from the

legislative enactment of HB 423 which mandates that the commissioner adopt a rule establishing the method insurers shall use to comply with the notice provisions contained in Article 5.07-1. The maximum additional cost for insurers that can be associated with this proposed section ranges from \$1.27 per transaction for the first year to \$1.40 for the fifth year. The total cost to an insurer depends upon the number of claims that the insurer handles in a given year. Both small and large insurers affected by this section would incur the same costs for each notice given to a consumer. The cost per hour of labor; postage; and for system, printing and paper would not vary between the large and small insurers. The requirement of notice in this section is mandated by the underlying statute and cannot be waived for small businesses.

Comments on the proposal to be considered by the Department must be submitted within 30 days after publication of the proposed section in the *Texas Register* to Caroline Scott, General Counsel and Chief Clerk, Texas Department of Insurance, P. O. Box 149104, Mail Code 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to David Durden, Deputy Commissioner for Property and Casualty Lines, Texas Department of Insurance, P. O. Box 149104, Mail Code 104-5A, Austin, Texas 78714-9104.

The amendment is proposed under the Insurance Code, Articles 5.07-1, 5.10, 5.98, and 1.03A; and the Government Code §§2001.004-2001.038. Article 5.07-1 requires the commissioner to adopt a rule establishing the method that insurers must use to provide claimants with notice of their repair rights as specified in Article 5.07-1. Article 5.10 authorizes the commissioner to adopt and enforce all reasonable rules and regulations that are consistent with subchapter A of Chapter 5. Article 5.98 authorizes the commissioner to adopt reasonable rules and rates that are appropriate to accomplish the purposes of Chapter 5. Article 1.03A authorizes the commissioner to adopt rules and regulations, which must be for general and uniform regulation, for the conduct and execution of the duties and functions of the department only as authorized by a statute. The Government Code, §§2001.004-2001.038 (Administrative Procedure Act) authorize and require each state agency to adopt rules of practice stating the nature and requirements of available formal and informal procedures and prescribe the procedures for adoption of rules by a state administrative agency.

The following articles of the Insurance Code are affected by this section: Insurance Code, Articles 5.07-1, 5.10, and 5.98

§5.501. Notice Requirements To Claimants Regarding Motor Vehicle Repairs.

(a) The word "insurer" as used in this rule, includes any person acting on behalf of an insurer through actual or apparent authority, regardless of whether employed by the insurer.

(b) An insurer must give the notice prescribed by this rule to any beneficiary or third-party claimant who makes a claim regarding damage to a vehicle. If a claimant presents the vehicle to the insurer in connection with a claim for damage repair, the notice must be given to the claimant at that time. If the claim is made instead by other means (such as in writing or by telephone) an insurer must mail the notice to the claimant within three business days of receiving notice of the claim, unless the insurer otherwise delivers the claimant the notice within those three business days. An insurer, if it chooses to address the liability issue initially, may send or deliver its own letter along with the notice. The notice may include the Optional

Provision. The notice must be on a separate page from any letter or other material, except as otherwise provided in this rule.

(c) The notice must be printed in at least ten point type, must be attached to, or printed on the reverse side of, a copy of the Insurance Code, Article 5.07-1, and must read as follows: FIGURE NO. 1: 28 TAC §5.501(c)

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.

Filed with the Office of the Secretary of State, on February 2, 1998.

TRD-9801451

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: March 15, 1998

For further information, please call: (512) 463-6327



## Chapter 19. Agent's Licensing

### Subchapter I. Licensing Fees

#### **28 TAC §19.802**

The Texas Department of Insurance proposes an amendment to §19.802, concerning the amounts of fees for original and renewal applications, appointments and examinations for various licensees. This amendment would reduce the fees required for an original application and for renewal of a utilization review agent certification. Section 3(f) of Insurance Code, Article 21.58A (regarding Health Care Utilization Review Agents) states that the department shall establish and administer certification and renewal fees in amounts no greater than is necessary to cover the cost of administration of the article. The current fee for original applications of utilization review agents is \$2,157, and for renewal applications of utilization review agents is \$2,076. The department proposes to reduce the original application fee to \$2,150 and the renewal fee to \$545 to better reflect the administrative cost to process renewal applications for utilization review certification.

Leah Rummel, Deputy Commissioner, HMO/URA Group, has determined that for each year of the first five years the proposed section will be in effect, there will be a slight fiscal implication for state government in that the reduction in fees remitted to the general revenue will be approximately \$230,000. This amount is calculated based on an estimate of 150 renewals per year. If a local government or small business is an utilization review agent, their costs associated with an original application or renewal application will be lower. Otherwise, there will be no effect on the local economy or local employment.

Ms. Rummel has also determined that for each year of the first five years the proposed section is in effect, the anticipated public benefit of enforcing the section is that utilization review agents will be charged lower original application and significantly lower renewal fees that more accurately reflect the administrative cost to process their original and renewal applications. Since the proposed section lowers the cost of fees for application and renewal application of utilization review agents and places no additional burden on the agents, there is no anticipated additional cost to comply with the section for utilization review



agents. Ms. Rummel has determined that there is no adverse impact on small businesses as a result of the proposed section. The cost to apply for each utilization review agent who is an employee of a large or small business, and the cost for each business operating as a utilization review agent will be identical and lower under the proposed section. The cost of labor per hour is not affected by the proposed section and there is thus no adverse economic effect upon small businesses.

Comments on the proposal, to be considered by the department, must be submitted in writing, within 30 days after publication of the proposed amendment in the Texas Register, to Caroline Scott, General Counsel & Chief Clerk, Texas Department of Insurance, P.O. Box 149104, Mail Code 113-1C, Austin, Texas 78714-9104. An additional copy of the comments must be submitted to Leah Rummel, Deputy Commissioner, HMO/URA Group, Texas Department of Insurance, P.O. Box 149104, MC 108-6A, Austin, Texas 78714-9104. Request for a public hearing should be submitted separately to the Chief Clerk's office.

The amended section is proposed under the Insurance Code, Articles 21.58A and 1.03A. Insurance Code, Article 21.58A provides for the certification of utilization review agents and sets out the standards and procedures to be used by such agents when conducting utilization reviews. Section 3(f) of Article 21.58A states that the department shall establish and administer certification and renewal fees in amounts no greater than is necessary to cover the cost of administration of the article. Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance only as authorized by a statute. The Government Code, §§2001.004 et seq. authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and to prescribe the procedures for adoption of rules by a state agency.

The following rules and statutes are affected by the proposed amendment: Insurance Code, Article 21.58A

§19.802. *Amounts of Fees.*

- (a) (No change.)
- (b) The amounts of fees are as follows:
  - (1)-(21) (No change.)
  - (22) utilization review agent:
    - (A) original application - \$2,150 [~~\$2,157~~ ]
    - (B) renewal - \$545. [~~\$2,076~~.]

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.

Filed with the Office of the Secretary of State, on January 26, 1998.

TRD-9801157

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: March 15, 1998

For further information, please call: (512) 463-6327



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part VI. Texas Department of Criminal Justice

#### Chapter 152. Institutional Division

##### Subchapter D. Other Rules

###### 37 TAC §152.51

The Texas Department of Criminal Justice proposes an amendment to §152.51 concerning authorized witnesses to the execution of an inmate sentenced to death.

The amendment specifies those persons authorized to witness the execution of an inmate sentenced to death based upon the recommendation of the Victim Services Division and the approval of the Director of the Texas Department of Criminal Justice Institutional Division.

David P. McNutt, Deputy Director for Administrative Services has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering this section as proposed.

Mr. McNutt also has determined that the public benefit anticipated as a result of enforcing the section as proposed will be potential closure for family members of murder victims. There will be no effect on small businesses. There is no anticipated economic cost to individuals, as no individuals have a duty to comply.

Comments should be directed to Carl Reynolds, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendment is proposed under the Government Code, §492.013, which grants general rulemaking authority and the Code of Criminal Procedure, Article 43.20.

Cross Reference to Statute: Code of Criminal Procedure, Article 43.20.

§152.51. *Authorized Witnesses to the Execution of an Inmate Sentenced to Death.*

- (a) (No change.)
- (b) Definition. "Close relative of the deceased victim" means the following persons in relation to the victim for whose death an inmate is sentenced to death:

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

(4) another individual with a close relationship to the deceased victim, or to a close relative of the victim, upon the recommendation of the Victim Services Division (VSD) and approval of [by] the Director of the [Institutional Division ] Texas Department of Criminal Justice Institutional Division (TDCJ-ID).

(c) Witnesses. The only persons authorized to witness an execution are as follows:

(1)-(8) (No change.)

(9) if there are fewer than five close relatives of the deceased victim: [ ]

(A) additional close relatives of a victim for whose death the inmate has been convicted but for whose death the inmate is not sentenced to death; and [-]

(B) if there are still fewer than five persons, additional close relatives of a victim for whose death the inmate is unequivocally responsible, upon the recommendation of the Victim Services Division and approval of the Director of TDCJ-ID[; up to a total of five close relatives under this paragraph and paragraph (8) of this subsection].

(d)-(e) (No change.)

(f) Victim Notification.

(1) (No change.)

(2) The VSL/Emergency Action Center (EAC) shall provide a list of scheduled executions to the TDCJ (VSD) [Victim Services Office (VSO)]. Subsequent updates regarding significant changes pertaining to the execution (e.g., dates, court rulings, etc.) shall also be provided to the TDCJ VSD [VSO] by the VSL/EAC in an expedient manner.

(3) The VSD [VSO] is responsible for notifying the relatives of the victim of the scheduled execution date, time, and location, upon request. It is the responsibility of the relative to notify the TDCJ VSD [VSO] of any subsequent address changes and their intent to attend.

(4) The relative of the victim must be identified and approved by the VSD [VSO].

(5) It is the responsibility of the VSD [VSO] to notify the VSL, no later than five days prior to the scheduled execution date, of the names and contact numbers for those persons planning to attend.

(6) The VSD [VSO] shall contact the relative of the victim and provide information regarding the written procedures affecting their participation.

(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.

Filed with the Office of the Secretary of State, on February 2, 1998.

TRD-9801436

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: March 15, 1998

For further information, please call: (512) 463-9693



## Chapter 159. Special Programs

### 37 TAC §159.9

The Texas Department of Criminal Justice proposes new §159.9 concerning a memorandum of understanding between the Department and the Texas Commission on Law Enforcement Officer Standards and Education regarding firearms proficiency training for supervision officers. House Bill 2909, passed by the 75th Legislature, requires the two agencies to enter into the agreement. The new section adopts by reference new 37 TAC §211.33 proposed by the Texas Commission on Law

Enforcement Officer Standards and Education in the December 26, 1997, issue of the Texas Register (22 TexReg 12708).

David P. McNutt, Deputy Director for Administrative Services has determined that there may be fiscal implications for state and local governments as a result of enforcing or administering the section as proposed. The Texas Department of Criminal Justice will require individual officers to bear the costs of training, certification, and equipment if the officer chooses to carry a weapon in the course of his or her duties. Local community supervision and corrections departments will decide independently as to whether the program will be allowed or required, see 37 TAC §163.34 adopted in this issue of the Texas Register. There are approximately 3,500 probation and community supervision officers in the state. It has been estimated by the Texas Commission on Law Enforcement Officer Standards and Education that an authorized firearms training program will cost between \$750 and \$1,200 and the Texas Commission on Law Enforcement Officer Standards and Education will charge \$20 for issuance of a Firearms Proficiency Certificate.

Mr. McNutt also has determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing the section as proposed will be adequate training and certification for supervision officers who choose to or are required to carry weapons in the course of their duties. There will be no effect on small businesses. The individual supervision officers who choose to or are required to carry weapons in the course of their duties may bear the cost of training, certification, and equipment.

Comments should be directed to Carl Reynolds, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this proposal.

The new section is proposed under §76.0051, Government Code, which authorizes supervision officers to carry weapons; §415.038, which requires TCLEOSE training for supervision officers; and §509.003, which provides general rulemaking authority for CJAD standards.

Cross Reference to Statute: Government Code, §76.0051 and §415.038.

#### §159.9. Firearms Proficiency Training for Supervision Officers / Memorandum of Understanding

(a) The Texas Department of Criminal Justice adopts by reference a memorandum of understanding (MOU) with the Texas Commission on Law Enforcement Officer Standards and Education, §211.33 of this title (relating to Memorandum of Understanding Regarding Firearms Proficiency Training for Supervision Officers), which establishes the responsibilities between the two agencies in developing a basic training program in the use of firearms by community supervision officers and parole officers. Section 163.34 of this title (relating to Carrying of Weapons) governs the use of firearms for Community Supervision Officers.

(b) The MOU is required by House Bill 2909 (Chapter 1261, Session Laws, 75th Legislature).

(c) Copies of the MOU are filed in the Office of the Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723.

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.

Filed with the Office of the Secretary of State, on February 2, 1998.

TRD-9801437

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: March 15, 1998

For further information, please call: (512) 463-9693

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 19. Nursing Facility Requirements for Licensure and Medicaid Certification

##### Subchapter J. Quality of Care

###### 40 TAC §19.901

The Texas Department of Human Services (DHS) proposes an amendment to §19.901, concerning quality of care, in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter. The purpose of the amendment is to ensure that nursing facilities that admit children with special needs provide adequate staffing for their care. The amendment targets children with respiratory care needs and those with daily tracheostomy care.

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

Mr. Bost also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that medically fragile children in nursing facilities will receive closer supervision and care. There will be no effect on small businesses, since the only two nursing facilities that would be affected by the rules are not small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Sharon Balcezak at (512) 438-3529 in DHS's Long Term Care Policy Section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-149, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, Chapter 242, and under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The amendment implements the Health and Safety Code, §242.037, and the Human Resources Code, §§22.001-22.030.

*§19.901. Quality of Care.*

Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, as defined by and in accordance with the comprehensive assessment and plan of care. If children are admitted to the facility, care and services must be provided to meet their unique medical and developmental needs.

(1)-(13) (No change.)

(14) Pediatric care.

(A) Licensed nursing care of children. A facility caring for children must have twenty-four hour a day on-site licensed nursing staff in numbers sufficient to provide safe care. For any facility with five or more children under 26 pounds, at least one nurse must be assigned solely to the care of those children.

(B) Fewer than five pediatric residents. Facilities with fewer than five pediatric residents must assure that the children's rooms are in close proximity to the nurses' station.

(C) Respiratory care of children.

(i) To facilitate the care of ventilator-dependent children or children with tracheostomies, a facility must group those children in rooms contiguous or in close proximity to each other. An exception to this rule is children who are able to be schooled off-site.

(ii) Facilities must assure that alarms on ventilators, apnea monitors, and any other such equipment uniquely identify the child or the child's room.

(iii) A facility caring for children with tracheostomies requiring daily care (including ventilator-dependent children with tracheostomies) must have twenty-four hour a day on-site respiratory therapy staff in numbers sufficient to provide a safe ratio of respiratory therapist per these residents. For the purposes of this rule, respiratory therapy staff is defined as a registered respiratory therapist (RRT), a certified respiratory therapy technician (CRT), or a licensed nurse whose primary function is respiratory care.

(I) If the facility cares for nine or more children with tracheostomies requiring daily care (including ventilator-dependent children with tracheostomies), the facility must maintain a ratio of no less than one respiratory therapy staff per nine tracheostomy residents twenty-four hours a day.

(II) If the facility cares for six or more ventilator dependent children, the facility must:

(-a-) designate a respiratory therapy supervisor, either on staff or contracted who must be credentialed by the National Board for Respiratory Care (either CRT or RRT).

(-b-) provide and document that all respiratory therapy staff is trained in the care of children who are ventilator dependent. This training must be reviewed annually.

(-c-) assure that appropriate care, maintenance, and disinfection of all ventilator equipment and accessories occurs.

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.

Filed with the Office of the Secretary of State on January 28, 1998.

TRD-9801314  
Glenn Scott  
General Counsel, Legal Services  
Texas Department of Human Services  
Proposed date of adoption: May 1, 1998  
For further information, please call: (512) 438-3765



## Part XII. Texas Board of Occupational Therapy Examiners

### Chapter 362. Definitions

#### 40 TAC §362.1

The Texas Board of Occupational Therapy Examiners proposes amended, §362.1, concerning Definitions. This amended section changes certain definitions to strengthen supervisory requirements.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no effect on state/local government.

Mr. Maline 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 stronger supervision of persons delivering occupational therapy, resulting in better, more effective and appropriate services. There will be no effect on small business and no anticipated economic cost to persons having to comply.

Comments on the proposed rule may be submitted to Alicia Dimmick Essary, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701-3942.

The amended section is proposed under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 8851 is affected by this new section.

#### §362.1. Definitions.

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

Continuing Supervision, OT- [~~Includes frequent, face-to-face meetings which occur at the worksite of the temporary licensee and regular interim communication between the supervising OTR or LOT and the temporary licensee by telephone, written report, or conference. The contact must occur at the worksite of the temporary licensee at minimum on a weekly basis.~~] Includes, at a minimum, the following: weekly, face-to-face meetings at the worksite of the temporary licensee (as defined later in this chapter); regular interim communication between the supervising OTR or LOT and the temporary licensee by telephone, written report, or conference; and monthly encounters where the OTR or LOT directly observes the temporary licensee treating one or more patients or clients.

Continuing Supervision, OTA - [~~Includes frequent, face-to-face meetings which occur at the worksite of the temporary licensee and regular interim communication between the supervising OTR~~

~~or LOT and the temporary licensee by telephone, written report, or conference. The contact must occur at the worksite of the temporary licensee at minimum on a weekly basis. Sixteen hours of supervision per month must be documented and can include the minimum weekly supervisory contacts made at the worksite of the temporary licensee.~~ ] Includes, at a minimum, the following: weekly face-to-face meetings at the worksite of the temporary licensee (as defined later in this chapter); regular interim communication between the supervising OTR or LOT and the temporary licensee by telephone, written report, or conference; and; monthly encounters where the OTR or LOT directly observes the temporary licensee treating one or more patients or clients. Sixteen hours of supervision per month must be documented.

General Supervision - [~~Includes frequent, weekly face-to-face meetings at the worksite and regular interim communication between the OTR or LOT and the COTA or LOTA by telephone, written report, or conference.~~] Includes, at a minimum, the following components: weekly face-to-face meetings at the worksite of the COTA or LOTA (as defined later in this chapter); regular interim communication between the OTR or LOT and the COTA or LOTA by telephone, written report, or conference; and monthly encounters where the OTR or LOT directly observes the COTA or LOTA treating one or more patients or clients. Eight hours of supervision per month must be documented for full-time COTAs or LOTAs. Part-time COTAs or LOTAs may prorate their supervision.

OT Aide or OT Orderly - A person who aids in the practice of occupational therapy and whose activities require on-the-job training and close personal [on-site] supervision by an OTR, LOT, COTA or LOTA.

Worksite - The place where services are delivered to a patient or client.

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.

Filed with the Office of the Secretary of State, on January 30, 1998.

TRD-9801418  
John P. Maline  
Executive Director  
Texas Board of Occupational Therapy Examiners  
Earliest possible date of adoption: March 15, 1998  
For further information, please call: (512) 305-6900



### Chapter 372. Provision of Services

#### 40 TAC §372.1

The Texas Board of Occupational Therapy Examiners proposes amended, §372.1, concerning Provision of Services. This amended section will strengthen supervision by placing more responsibility with the OTR and reducing delegation to the COTA.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no effect on state/local government.

Mr. Maline 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 stronger supervision

of persons delivering occupational therapy, resulting in better, more effective and appropriate services. There will be no effect on small business and no anticipated economic cost to persons having to comply.

Comments on the proposed rule may be submitted to Alicia Dimmick Essary, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701-3942.

The amended section is proposed under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 8851 is affected by this new section.

§372.1. *Provision of Services.*

(a)-(b) (No Change)

(c) Occupational Therapy Plan of Care Development.

(1) The occupational therapy plan of care must be developed by an OTR or LOT.

(2) [(4)] An occupational therapy plan of care must be based on an occupational therapy evaluation.

(3) [(2)] An occupational therapy plan of care may be integrated into an interdisciplinary plan of care, but occupational therapy goals or objectives must be easily identifiable in the plan of care.

(4) [(3)] Only an OTR or LOT may change an occupational therapy plan of care.

(d) (No Change)

(e) Discharge.

(1) An OTR or LOT has authority to discharge patients from occupational therapy services.

(2) The occupational therapy discharge summary must be completed by an OTR or LOT. ~~[A COTA or LOTA may assist in the discharge.]~~

(A) The OTR or LOT shall discharge a patient when the patient or client has achieved predetermined goals; has achieved maximum benefit from OT services; or when other circumstances warrant discontinuation of occupational therapy services.

(B) The OTR or LOT, with input from the COTA or LOTA where applicable, shall prepare and implement a discharge plan that is consistent with occupational therapy goals, individual goals, interdisciplinary team goals, family goals, and expected outcomes.

(C) The OTR or LOT shall document the changes between the initial and current states of functional ability and deficit in performance areas, performance components, and performance contexts. A COTA or LOTA may assist in the discharge.

(D) An OTR or LOT shall document recommendations for follow-up or reevaluation when applicable.

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.

Filed with the Office of the Secretary of State, on January 30, 1998.

TRD-9801416

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: March 15, 1998

For further information, please call: (512) 305-6900

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Chapter 373. Supervision

40 TAC §373.1

The Texas Board of Occupational Therapy Examiners proposes amended, §373.1, concerning Supervision. This amended section will strengthen supervisory requirements and reduce delegation to Occupational Therapy Assistants. Licensees must have more interaction with the patient if tasks are delegated to Occupational Therapy Assistants or aides or technicians.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no effect on state/local government.

Mr. Maline 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 stronger supervision of persons delivering occupational therapy, resulting in better, more effective and appropriate services. There will be no effect on small business and no anticipated economic cost to persons having to comply.

Comments on the proposed rule may be submitted to Alicia Dimmick Essary, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701-3942.

The amended section is proposed under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 8851 is affected by this new section.

§373.1. *Supervision*

(a) (No Change)

(b) Supervision of COTAs.

(1) The OTR or LOT shall delegate responsibilities to the COTA or LOTA that are within the scope of his or her training.

(2) A COTA or LOTA shall provide occupational therapy services only under the general supervision of a licensed OTR or LOT. (See Chapter 362 of this title (relating to Definitions))

(A) A minimum of eight hours of supervision per month for full time COTAs or LOTAs must be documented on an "Occupational Therapy Supervision Log" prescribed by the board. COTAs and LOTAs employed part time shall prorate the required supervision.

(i) The "Occupational Therapy Supervision Log" must be kept by the COTA or LOTA and a copy of this form must be maintained by the facility where the COTA or LOTA provides services. One "Occupational Therapy Supervision Log" must be completed for each separate employer.

(ii) The "Occupational Therapy Supervision Log" must be submitted to TBOTE with the COTA's or LOTA's renewal application.

(B) The manner of supervision shall depend on the treatment setting, patient/client caseload, and the competency of the COTA or LOTA as determined by the supervising OTR or LOT.

(C) The supervising OTR or LOT need not be physically present or on the premises at all times.

(3) [A COTA or LOTA may initiate and perform the screening process and collect information for the OTR's or LOT's review. The OTR or LOT is responsible for determining if intervention is needed and if a physician's referral is required for evaluation and/or occupational therapy intervention.] A COTA or LOTA may initiate and perform the screening process and collect information for the OTR's or LOT's review. Only the OTR or LOT may determine if evaluation is needed and if a physician referral is required.

[(4) An OTR or LOT is responsible for completing the patient's evaluation/assessment. The supervising OTR or LOT may delegate any evaluative task to a COTA or LOTA that the OTR or LOT and COTA or LOTA agree is within the competency level of that COTA or LOTA.]

(4) An OTR or LOT is responsible for the patient's evaluation/assessment. The supervising OTR or LOT may delegate to a COTA or LOTA the collection of data or information for the evaluation.

(A) The OTR or LOT and COTA or LOTA must agree that the information collection tasks delegated are within the competency level of that COTA or LOTA.

(B) The OTR or LOT is responsible for the accuracy of evaluative information collected by the COTA or LOTA.

(C) The OTR or LOT must have face-to-face interaction with the patient or client during the evaluation process.

(5) [An OTR or LOT is responsible for developing and modifying the patient's treatment plan. The treatment plan must include the following components: goals, interventions/modalities, frequency, and duration.] Only an OTR or LOT may develop or modify the patient's treatment plan. The treatment plan must include the following components: goals, interventions/modalities, frequency, and duration.

[(6) An OTR or LOT assumes responsibility for the patient's discharge summary. The supervising OTR or LOT may delegate any discharge-related task to a COTA or LOTA that the OTR or LOT and COTA or LOTA agree is within the competency level of that COTA or LOTA.]

(6) [(7)] It is the responsibility of the OTR or LOT and the COTA or LOTA to ensure that all documentation prepared by the COTA or LOTA which becomes part of the patient's/client's permanent record is co-signed by the supervising OTR or LOT. Occupational Therapy notes must be initialed by the OTR or LOT and signed at the bottom of each page.

(7) [(8)] These rules shall not preclude the COTA or LOTA from responding to emergency situations in the patient's condition which require immediate action.

(c) Supervision of an OT Aide or OT Orderly.

(1) When an OTR, LOT, COTA and/or LOTA delegates OT tasks to an aide or orderly, the OTR, LOT, COTA and/or LOTA is responsible for the aide's actions during patient contact on the

delegated tasks. The licensee is responsible for ensuring that the aide is adequately trained in the tasks delegated.

(2) The OTR, LOT, COTA or LOTA must interact with the patient regarding the patient's condition, progress and/or achievement of goals during each treatment session.

(3) [(2)] An OTR, LOT, COTA and/or LOTA using OT Aide or OT Orderly personnel to assist with the provision of occupational therapy services must provide close personal supervision in order to protect the health and welfare of the consumer. (See Chapter 362 of this title (relating to Definitions))

(4) [(3)] Delegation of tasks to OT Aides or OT Orderlies.

(A) The primary function of an OT Aide or OT Orderly functioning in an occupational therapy setting is to perform designated routine tasks related to the operation of an occupational therapy service. An OTR, LOT, COTA and/or LOTA may delegate to an OT Aide or OT Orderly only specific tasks which are not evaluative or recommending in nature, and only after insuring that the OT Aide or OT Orderly has been properly trained for the performance of the tasks. Such tasks include, but are not limited to:

- (i) routine department maintenance;
- (ii) transportation of patients/clients;
- (iii) preparation or setting up of treatment equipment and work area;
- (iv) assisting patients/clients with their personal needs during treatment;
- (v) assisting in the construction of adaptive equipment and splints;
- (vi) clerical, secretarial, administrative activities;
- (vii) carrying out a predetermined segment or task in the patient's care.

(B) The OTR, LOT, COTA and/or LOTA shall not delegate to an OT Aide or OT Orderly:

- (i) performance of occupational therapy evaluative procedures;
- (ii) initiation, planning, adjustment, modification, or performance of occupational therapy procedures requiring the skills or judgment of an OTR, LOT, COTA or LOTA;
- (iii) making occupational therapy entries directly in patients' or clients' official records;
- (iv) acting on behalf of the occupational therapist in any matter related to occupational therapy which requires decision making or professional judgment.

(d) (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.

Filed with the Office of the Secretary of State, on January 30, 1998.

TRD-9801417

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: March 15, 1998

For further information, please call: (512) 305-6900

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## TITLE 43. TRANSPORTATION

### Part I. Texas Department of Transportation

#### Chapter 17. Vehicle Titles and Registration

##### Subchapter B. Motor Vehicle Registration

###### 43 TAC §§17.21, 17.23

The Texas Department of Transportation proposes amendments to §17.21 and §17.23, concerning temporary registration permits. The amendments are necessary to include provisions for exemption from temporary permits for foreign commercial vehicles operating in the border commercial zone.

Senate Bill 370, 75th Legislature, 1997 added Texas Civil Statutes, Article 6675c-2 to provide that a law or agreement of less than statewide application that is adopted by an agency or political subdivision of this state that regulates motor carriers or commercial motor vehicles or the operation of those carriers or vehicles in the transportation of cargo across the border or within an area adjacent to the border by foreign commercial motor vehicles has no effect unless the law or agreement applies uniformly to an entire border commercial zone and only in a border commercial zone.

Texas Civil Statutes, Article 6675c-2 provides that it supersedes that portion of any paired city, paired state, or similar understanding governing foreign commercial motor vehicles or motor carriers entered into under §502.054, Transportation Code, or any other law, and provides the boundaries of a border commercial zone may be modified or established only as provided by federal law.

Article 6675c-2 also provides for the exemption of a foreign commercial motor vehicle from registration if it spends only a short period of time in the border commercial zone.

Section 17.21 is amended to provide a definition for border commercial zone and department.

Section 17.23(g) is amended to provide that Texas Civil Statutes, Article 6675-c applies to agreements with other jurisdictions. Section 17.23 is further amended by adding subsection (h) to provide criteria for an exemption from the display of a temporary registration permit for foreign commercial vehicles operating in the border commercial zone if time in the border commercial zone is not more than 24 hours, or not more than 48 hours if the vehicle is unable to leave this state within 24 hours because of circumstances beyond the control of the motor carrier operating the vehicle, and all financial requirements are satisfied. The vehicle must also be registered by the law of another state or country as evidenced by a valid metal license plate, and the country in which the person owns or controls the vehicle must provide a reciprocal exemption for commercial motor vehicles owned or controlled by residents of Texas.

Frank J. Smith, Director, Budget and Finance Division, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for the state or local government as a result of enforcing or administering the amendments. There will be no economic costs to individuals who are required to comply with the sections as proposed.

Jerry L. Dike, Director, Vehicle Titles and Registration Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

Mr. Dike also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of implementing the amendments will be to clarify the boundaries of the border commercial zones. There will be no effect on small businesses.

Written comments on the proposal may be submitted to Jerry L. Dike, Director, Vehicle Titles and Registration, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be 5:00 p.m. on March 16, 1998.

The amended sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Texas Civil Statutes, Article 6675c-2, which authorizes the department to carry out provisions of those laws governing the issuance of motor vehicle registration.

No statutes, articles, or codes are affected by the proposed amendments.

###### *§17.21. Definitions.*

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

Border commercial zone- A commercial zone established under Title 49, C.F.R., Part 372 which is contiguous to the border with Mexico.

Department- The Texas Department of Transportation.

###### *§17.23. Temporary Registration Permits.*

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

(g) Agreements with other jurisdictions. In accordance with Transportation Code, §502.054 and Texas Civil Statutes, Article 6675c-2, the executive director of the department may enter into a written agreement with an authorized officer of a state, province, territory, or possession of a foreign country to provide for the exemption from payment of registration fees by nonresidents if residents of this state are granted reciprocal exemptions. The executive director may enter into such agreement only upon:

(1) the approval of the governor; and

(2) making a determination that the economic benefits to the state outweigh all other factors considered.

(h) Exemptions. A foreign commercial vehicle operating in accordance with Texas Civil Statutes, Article 6675c-2 is exempt from the display of a temporary registration permit if:

(1) the vehicle is engaged solely in the transportation of cargo across the border into or from a border commercial zone;

(2) for each load of cargo transported the vehicle remains in this state for:

(A) not more than 24 hours; or

(B) not more than 48 hours, if:

(i) the vehicle is unable to leave this state within 24 hours because of circumstances beyond the control of the motor carrier operating the vehicle; and

(ii) all financial responsibility requirements applying to this vehicle are satisfied;

(C) the vehicle is registered and licensed as requested by the law of another state or country as evidenced by a valid metal license plate attached to the front or rear exterior of the vehicle; and

(D) the country in which the person who owns or controls the vehicle is domiciled or is a citizen, provides a reciprocal exemption for commercial motor vehicles owned or controlled by residents of Texas.

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.

Filed with the Office of the Secretary of State, on January 30, 1998.

TRD-9801427

Bob Jackson

Acting General Counsel

Texas Department of Transportation

Earliest possible date of adoption: March 15, 1998

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



### 43 TAC §17.24

The Texas Department of Transportation proposes amendments to §17.24, concerning disabled person license plates and placards.

House Bills 580 and 685, 75th Legislature, 1997, amended Transportation Code, §502.024 and §681.002. House Bill 580 amends the requirements to obtain disabled person identification placards and also requires a hologram to be on each disabled person identification placard. House Bill 685 allows for an applicant to obtain more than one set of disabled person license plates for a motorcycle, passenger car, or light truck that is equipped with special equipment that will allow a person who has lost the use of one or both legs to operate the vehicle.

The amendments to §17.24 revise citations to reflect recodification into the Transportation Code, and require that windshield identification placards must contain a hologram and applicant's driver's license number or the number of a personal identification card issued to the applicant under Chapter 521. The amendments allow an applicant who is a non-resident serving in the United States Military on a military institution in Texas to use a current out-of-state driver's license for the application. In order to receive a disabled plate or insignia, the application must be: signed in the presence of a notary by a physician either licensed to practice medicine in this state or licensed by the United States Military if the physician practices medicine on a military installation in this state; or in the form of a written prescription. Both statements must include a certification as to whether the disability is temporary or permanent and the disabled person's name.

The amendments delete the acceptance of documentation from the Texas Rehabilitation Commission, the Texas Commission for the Blind, and Texas Handicap Association, and by sworn written statement. Additional sets of license plates may be issued for each vehicle that is specially equipped to allow operation by an operator who has lost the use of one or both legs.

The amendments: revise the expiration period from five years to four years; require that in order to renew a placard, the applicant must show an expired placard, or a receipt showing that a disabled person placard was previously issued; and delete the requirement that disabled plates must be renewed in the county in which the owner resides. The section requires the owner to present the current year's license receipt instead of the previous year's in order to replace a disabled person license plate, and provides if the county cannot verify that the disabled person license plates were issued to the owner, the owner must refile an initial application.

It clarifies that a disabled person is not exempt from payment of penalties and fees if the vehicle is parked within a municipal airport. The section allows a person from whom a placard was seized by a law enforcement officer under Transportation Code, §681.011 to request a hearing in accordance with §§1.21-1.61 of this title (relating to Contested Case Procedure) to determine if the revocation should continue or if the placard should be returned and the revocation rescinded.

Frank J. Smith, Director, Budget and Finance Division, has determined that for the first five years the amended section is in effect, there will be fiscal implications to the state as a result of enforcing or administering this section. The estimated increase in cost to the state is \$23,294 per year for fiscal years 1998 - 2002. There will be no fiscal implication to local government as a result of enforcing or administering this section. There will be economic costs to individuals who are required to comply with the requirements of the amendments if they seek a hearing for revocation of a disabled plate or placard. The cost of a revocation hearing cannot be determined because it depends on the circumstances of the revocation, the location of the revocation, and the length of the hearing.

Jerry L. Dike, Director, Vehicle Titles and Registration Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

Mr. Dike has also determined that for each year of the first five years the amended section is in effect the public benefits anticipated as a result of administering the section will be better enforcement and issuance procedures of disabled person plates and placards. There will be no effect on small businesses.

Written comments on the proposed amendments may be submitted to Mr. Jerry Dike, Director of Vehicle Titles and Registration Division, Texas Department of Transportation, Dewitt C. Greer Building, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be 5 p.m. on March 16, 1998.

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Transportation Code, Sections §502.253 and §681.002 which provide the department with the authority to issue disabled persons identification placards and license plates.

The amendments do not affect other statutes, articles, or codes.

§17.24. *Disabled Person License Plates and Identification Placards.*

(a) Purpose. Transportation Code, Chapters 502 and 681, [~~Texas Civil Statutes, Article 6675a-5e-1~~], charges the department with the responsibility for issuing specially-designed license plates and identification placards for permanently and temporarily disabled



persons. In order for the department to efficiently and effectively perform these duties, this section prescribes the policies and procedures for the application, issuance, and renewal of disabled person license plates and placards.

(b) Issuance.

(1) Disabled person license plates.

(A) Vehicle. The department will issue specially designed license plates to permanently disabled persons or their transporters in lieu of regular passenger license plates, if the passenger vehicle, motorcycle, or light commercial vehicle:

(i) has a manufacturer's rated carrying capacity of one ton or less;

(ii) is used for non-commercial purposes; and

(iii) is regularly operated by, or for the transportation of permanently disabled persons.

(B) Identifying insignia. Disabled person license plates will include the international symbol of access. The department will issue disabled person insignia on those special category license plates that can accommodate the identifying insignia, and which are issued in accordance with §17.28 of this title (relating to Special Category License Plates, Symbols and Tabs).

(C) License plate number. Disabled person license plates will bear a license plate number assigned by the department, or a personalized license plate number issued in accordance with §17.28 of this title (relating to Special Category License Plates, Symbols and Tabs).

(2) Windshield identification placards. The department will issue removable windshield identification placards to temporarily or permanently disabled persons, and the transporters of permanently disabled persons.

(A) Location. A person who has been issued a windshield identification placard shall suspend the placard from a vehicle's rearview mirror when the vehicle is parked in a disabled person parking space, or display the placard on the center portion of the dashboard if such vehicle does not have a rearview mirror.

(B) Identifying insignia. Windshield identification placards will include the following information:

(i) the international symbol of access;

(ii) an identification number;

(iii) the seal or other identification of the department; ~~and~~

(iv) date of expiration;

(v) the applicant's driver's license number or the number of a personal identification card issued to the applicant under Transportation Code, Chapter 521; and

(vi) a hologram designed by the department.

(c) Initial application.

(1) Place of application. The following persons may file an application for disabled person license plates or identification placards with the county tax assessor-collector in the county in which the applicant resides:

(A) the owner of a registered vehicle that is regularly operated by or for the transportation of a disabled person; and

(B) a disabled person who is not a vehicle owner.

(2) Application form. Such application must be made on a form prescribed by the director and shall, at a minimum, require the name, address, and signature of the disabled person, and:

(A) the applicant's driver's license number or the number of a personal identification card issued to the applicant under Chapter 521; or

(B) an out-of-state current driver's license issued to a non-resident individual serving in the United States military at a military installation in this state [excepting those organizations described in paragraph (4) of this subsection].

(3) Accompanying documentation.

(A) Unless otherwise exempted by law or this section, an initial application for disabled person license plates and an identification placard must be accompanied by evidence that the operator or regularly transported person is disabled.

(B) Such evidence of disability must:

(i) contain a certification as to whether the disability is temporary or permanent and the disabled person's name; and

(ii) be signed by a physician who is licensed to practice medicine in Texas or by the United States Military and practicing medicine on a military installation in Texas.

(C) The evidence must be in the form of: [includes, but is not limited to:]

(i) [(A)] a disability statement, as it appears on the application for disabled person license plates or identification placards, which has been correctly completed and signed in the presence of a notary; or

(ii) a written prescription. [ or by a licensed optometrist if the applicant is legally blind;]

~~[(B) certification from the Texas Rehabilitation Commission or the Texas Commission for the Blind on the letterhead of the agency;]~~

~~[(C) certification from the Texas Handicap Association for its members; or]~~

~~[(D) a sworn affidavit executed by an amputee of a limb, hand, or foot, or a disabled person confined to a wheelchair, and the county tax assessor-collector, or his or her designee, attesting to the applicant's disability.]~~

(4) Additional requirements. Applications for disabled person license plates and identification placards shall be accompanied by any fees or additional documentation as required by law.

(5) Exemptions from accompanying documentation. The department will issue disabled person identification placards to an organization that regularly transports disabled persons in vehicles it owns or controls if such organization is prohibited by law from disclosing the identities of their clients. In such cases, the application may be made in the name of the organization. In addition, accompanying documentation described in paragraph (2) of this subsection will not be required. Such organizations shall present an "Exempt" Texas Vehicle Registration Receipt issued in accordance with §17.30 of this title (relating to Motor Vehicle Registration) for each disabled person identification placard requested.

(6) Limitations.

(A) The department may issue the following number of disabled license plates and placards to applicants who are permanently disabled:

(i) one set of disabled person license plates and one permanently disabled person identification placard; ~~or~~

(ii) no more than two permanently disabled person identification placards; or

(iii) additional sets of license plates for each vehicle that is specially equipped to allow operation by an operator who has lost the use of one or both legs.

(B) The department will issue no more than two temporarily disabled person identification placards to those with temporary disabilities. Disabled person license plates are not available to those with temporary disabilities.

(d) Renewal.

(1) License plates. Disabled person license plates are valid for a period of 12 months from the date of issuance, and are renewable as specified in §17.30(d) of this title (relating to Motor Vehicle Registration).

(2) Identification placards. Permanently disabled person identification placards are valid for a period of four ~~five~~ years from the month of issuance.

(A) Place of renewal application. The applicant shall apply to the tax assessor-collector of the county in which the owner resides for disabled person identification placard renewal, prior to the expiration of the identification placard.

(B) Accompanying documentation. In order to renew a permanently disabled person identification placard, an applicant shall present a copy of the previous identification placard application, expired placard, or a receipt showing that a disabled person placard was previously issued to the applicant. ~~If ~~or~~ ~~if~~ such previous application, placard, or receipt is not available,~~ the applicant shall reapply as described in subsection (c) of this section.

(3) Temporarily disabled person identification placards. Temporarily disabled person identification placards are valid for six months from the month of issuance or until the termination of the applicant's disability, whichever occurs first.

(A) Termination of disability. If a person's disability ends prior to the expiration of the identification placard, the placard shall be destroyed.

(B) Renewal. If a person's temporary disability extends for more than the six-month period for which the placard was issued, such person must reapply for a new identification placard as described in subsection (c) of this section.

(e) Replacement.

(1) License plates. If disabled person license plates are lost, stolen, or mutilated, the owner may obtain replacement license plates by applying with the county tax assessor-collector ~~of the county in which the owner resides~~.

(A) Accompanying documentation. In order to replace permanently disabled person license plates, the owner shall present the current ~~previous~~ year's registration receipt and personal identification acceptable to the tax assessor-collector.

(B) Absence of accompanying documentation. If the current ~~previous~~ year's registration receipt is not available and the county cannot verify that the disabled person license plates were

issued to the owner, then the owner shall reapply in accordance with subsection (c) of this section.

(2) Disabled person identification placards. If a disabled person identification placard becomes lost, stolen, or mutilated, the owner may obtain a new identification placard in accordance with subsection (c) of this section.

(f) Transfer of disabled person license plates and identification placards.

(1) License plates.

(A) Transfer between persons. Disabled person license plates are non-transferable between persons. An owner who sells or trades a vehicle to which disabled person license plates have been issued shall remove the disabled person license plates from the vehicle. The owner shall return the license plates to the department, and obtain appropriate replacement license plates to place upon the vehicle prior to any transfer of ownership.

(B) Transfer between vehicles. Disabled person license plates are non-transferable between vehicles.

(2) Identification placards.

(A) Transfer between vehicles. Disabled person identification placards may be displayed in any vehicle in which the disabled person drives or is a passenger ~~are transferable to any vehicle in which the qualifying disabled person is either a driver or a passenger~~.

(B) Transfer between persons. Disabled person identification placards are non-transferable between persons.

(g) Refueling and parking privileges.

(1) Refueling services. In accordance with Texas Civil Statutes, Article 8613 the department will provide a notice to an owner of a vehicle displaying disabled person license plates or an identification placard setting forth the provisions of the Refueling Services to Disabled Person Act which requires a facility that offers motor vehicle fuel for sale to the public to limit the charge to a disabled driver to the self-service price.

(2) Parking privileges. The operator of a vehicle displaying disabled person license plates or an identification placard is granted the following parking privileges under Transportation Code, §681.006 ~~[Texas Civil Statutes, Article 6675a-5e-1]~~.

(A) Any vehicle upon which disabled person license plates or a disabled person placard is displayed, when being operated by or for the transportation of a disabled person, shall be allowed to park for unlimited periods in any parking space or parking area designated specifically for the physically handicapped.

(B) The owner of a vehicle on which disabled person license plates or a disabled person identification placard is displayed is exempt from the payment of fees or penalties imposed by a governmental authority for parking at a meter or in a space with a limitation on the length of time for parking, unless the vehicle is parked at a place or time that parking is prohibited, or unless the vehicle was not parking at the time by or for the transportation of a disabled person. This ~~is~~ ~~this~~ exemption does not apply to fees or penalties imposed by a:

(i) branch of the United States government ; or

(ii) governmental unit for parking within the boundaries of a municipal airport.

(h) Seizure and revocation of placard. A person from whom a placard was seized by a law enforcement officer under Transportation Code, §681.011 may request a hearing in accordance with §§1.21-1.61 of this title (relating to Contested Case Procedure) to determine if the revocation should continue or if the placard should be returned to the person and the revocation rescinded.

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.

Filed with the Office of the Secretary of State, on January 30, 1998.

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Bob Jackson

Acting General Counsel

Texas Department of Transportation

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



### 43 TAC §17.50

The Texas Department of Transportation proposes amendments to §17.50, concerning exempt and alias vehicle registration.

Senate Bill 557, 75th Legislature, 1997, amended Transportation Code, §502.201 to require the department to provide by rule for the issuance of specially designated license plates for vehicles that are exempt from registration fees. Senate Bill 557, also amended Transportation Code, §502.2015 to provide that when an exempt agency applies for exempt license plates, the agency's name may appear in an emblem that is at least 100 square inches in size instead of 2 inches in height on the vehicle, and in a color different from the body of the vehicle so that it is clearly legible from a distance of 100 feet. Senate Bill 557 requires that an agency provide a copy of the commissioner court order or municipal ordinance exempting county or city vehicles from the inscription requirements under Transportation Code, §721.003 and §721.005 in order to receive exempt license plates without the word "exempt."

Section 17.50 is amended to allow an exempt agency's identification to appear by an emblem, providing the emblem is 100 inches square and easily seen from a distance of 100 feet, and require that agencies applying for exempt license plates for vehicles without the inscription must provide a copy of the order or ordinance as provided by Transportation Code, §721.003 and §721.005.

Frank J. Smith, Director, Budget and Finance, has determined that for the first five years the amended section is in effect, there will be no fiscal implications for the state or local government as a result of enforcing or administering the section. There will be no economic costs to individuals who are required to comply with the requirements of the section.

Jerry L. Dike, Director, Vehicle Titles and Registration Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

Mr. Dike has determined that for each year of the first five years the amended section is in effect the public benefits anticipated as a result of administering the section will be allowing an exempt agency's the option of using an agency emblem on the exempt vehicle instead of the name of the agency, and

ensuring exempt license plates are issued to qualified vehicles by requiring a copy of the order or ordinance for those vehicles issued in accordance with Transportation Code, §721.005. There will be no effect on small businesses.

Written comments on the proposed amendments may be submitted to Mr. Jerry L. Dike, Director, Vehicle Titles and Registration Division, Texas Department of Transportation, Dewitt C. Greer Building, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be 5:00 p.m. on March 16, 1998.

The amendments are proposed under Transportation Code, §201.101 which provides the Texas Department of Transportation the authority to establish rules for the issuance of exempt vehicle registration; and more specifically Transportation Code, §502.201 which requires insignia or lettering on an exempt agency vehicles which receive plates with the word "exempt," and Transportation Code, §502.2015 which allows the issuance of plates without the word "exempt" if the requirements of Transportation Code §721.003 and §721.005 are met.

The amendments do not affect other statutes, articles, or codes.

#### §17.50. *Exempt and Alias Vehicle Registration.*

##### (a) Exempt plate registration.

(1) Issuance. Pursuant to Transportation Code, §502.202, a vehicle owned by and used exclusively in the service of a governmental agency, used exclusively for public school transportation services, used for fire fighting or by a volunteer fire department, or used in volunteer county marine law enforcement is exempt from payment of a registration fee, and the department will issue exempt plates to those vehicles

##### (2) Application for exempt registration.

(A) Application. The application for exempt plates shall be made on a form prescribed by the department, and shall contain the following information:

(i) vehicle description;

(ii) name of the exempt agency;

(iii) an affidavit executed by an authorized person stating that the vehicle is owned or under the control of and will be operated by the exempt agency; and

(iv) a certification that each vehicle listed on the application has the name of the exempt agency printed on each side of the vehicle in letters that are at least two inches high or in an emblem that is at least 100 square inches in size, and of a color sufficiently different from the body of the vehicle as to be clearly legible from a distance of 100 feet.

##### (B) Emergency Medical Service Vehicle.

(i) Exempt registration may be issued for a vehicle which is owned or leased by a non-profit emergency medical service provider; a municipality, county, or combination of both; or a non-profit emergency medical service provider chief or supervisor in accordance with Transportation Code §502.204.

(ii) The application for exempt registration must contain the vehicle description, the name of the emergency medical service provider, and a statement signed by an officer of the emergency medical service provider stating that the vehicle is used exclusively as an emergency response vehicle and qualifies for registration under Transportation Code, §502.204.

(iii) A copy of an emergency medical service provider license issued by the Texas Board of Health must accompany the application.

(C) Fire fighting vehicle. The application for exempt registration of a fire fighting vehicle owned privately or by a volunteer fire department must contain the vehicle description. The affidavit must be executed by the person who has the proper authority, and shall state either that the vehicle is privately owned and is designed and used exclusively for fire fighting, or that the vehicle is owned by a volunteer fire department and is used exclusively in the conduct of business of such department.

(D) Disabled insignia. The application for disabled person registration insignia for a vehicle used by an exempt agency to regularly transport disabled persons may be used to obtain a specially designed disabled person placard in accordance with §17.24 of this title, (relating to Disabled Person License Plates and Identification Placards).

(3) Exception. If the applicant is a law enforcement agency or is exempt from the inscription requirements under Transportation Code, §721.003 and §721.005, and the vehicle is not registered under subsection (b) of this section, then the vehicle may display license plates which are not marked with the word "exempt," and the applicant must present a certification that each vehicle listed on the application will be dedicated to law enforcement activities or that the applicant is exempt from inscription requirements under Transportation Code, §721.003 and §721.005. If a vehicle is exempt from inscription requirements under Transportation Code, §721.005, then the applicant must provide a copy of the order or ordinance which exempts the vehicle.

(b) Affidavit for issuance of exempt registration under an alias.

(1) Upon receipt of an affidavit for alias exempt registration, properly executed by the executive administrator of an exempt agency that is a law enforcement agency, alias exempt registration will be issued annually by the department for a vehicle used in covert criminal investigations.

(2) The affidavit for exempt registration issued under an alias for use on law enforcement vehicles shall be in a form prescribed by the director and must include the vehicle description, a sworn statement that the vehicle will be used in covert criminal investigations, and the signature of either the executive administrator or his or her designee as provided in paragraph (3) of this subsection. The vehicle registration insignia of any vehicles no longer used in covert criminal investigations will be surrendered immediately to the department.

(3) The executive administrator, by annually filing an authorization with the director, may appoint a staff designee to execute the affidavit. Upon the appointment of a new executive administrator or his or her designee, a new authorization must be filed.

(4) The letter of authorization must contain a sworn statement delegating the authority to sign the affidavit to a designee, the name of the designee, and the name and the signature of the executive administrator. The jurat must be signed by a notary public.

(5) The affidavit for alias exempt registration must be accompanied by a certificate of title application as cited in §17.7 of this title (relating to Alias Certificate of Title) which identifies the information required by the department to create the alias record of vehicle registration and title.

(c) Replacement of exempt registration.

(1) If exempt registration becomes lost, stolen, or mutilated, a properly executed replacement affidavit for exempt license plates must be submitted to the department.

(2) The application for replacement license plates must contain the vehicle description, original license number, and the sworn statement that the license plates furnished for the vehicle described have been lost, stolen, or mutilated, and will not be used on any other vehicle.

(3) Any remaining plate or plates must be removed and surrendered to the department upon issuance of the replacements.

(d) Title requirements. Prior to or simultaneously with the issuance of exempt registration, the vehicle must be titled, unless otherwise exempted by law.

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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Bob Jackson

Acting General Counsel

Texas Department of Transportation

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



## Chapter 18. Motor Carriers

The Texas Department of Transportation proposes amendments to §§18.2, 18.80, 18.82, 18.84, 18.88, 18.89, 18.91-18.93, the repeal of §18.94 and new §§18.94-18.96, concerning vehicle storage facilities.

The amendments, repeal and new sections are necessary to implement the provisions of House Bill 1025, House Bill 2202, Senate Bill 370, §6.01, and Senate Bill 855, 75th Legislature, 1997, and to ensure the proper administration of laws concerning vehicle storage facility licensing.

House Bill 1025 amended Texas Civil Statutes, Article 6687-9a to provide a definition of "impoundment" which includes preservation, conducting an inventory, storing all unsecured personal property, and obtaining motor vehicle registration information. The term "preservation" is deleted.

House Bill 2202 amended Texas Civil Statutes, Article 6687-9a to: provide technical cleanup language to the Vehicle Storage Facility Act; amend definitions; and provide the department with the ability to deny, revoke, or suspend a vehicle storage facility license, and assess administrative penalties not to exceed \$10,000 per violation.

Senate Bill 370, §6.01, amended Texas Civil Statutes, Article 6687-9a to provide a procedure for sending renewal notices to vehicle storage facility licensees.

Senate Bill 855, 75th Legislature, 1997, amended Texas Civil Statutes, Article 6687-9a to provide for the disposal of abandoned vehicles in vehicle storage facilities.

The amendments replace references to Texas Civil Statutes with the recodified citations to the Transportation Code. The

amendments also replace references to "VSF" with "vehicle storage facility" and deletes references to "motor vehicle storage facilities."

Section 18.2 is amended to define terms relevant to the motor carrier chapter.

Section 18.80 is amended by moving references to other vehicle storage facility laws from §18.91(f) to this section.

Section 18.82 is amended by adding and clarifying terms relevant to the vehicle storage facility subchapter.

Section 18.84 is amended to provide that the department will mail a license renewal notice to the licensee's last known address according to the records of the department and eliminate charges for a duplicate vehicle storage facility license. It also provides that the department will not issue a license if an applicant knowingly supplies false or incomplete information on the application, if in the three years preceding the date of the application, one of the principals in the business has been convicted of a felony or misdemeanor for which the maximum punishment is confinement in jail or a fine exceeding \$500, or if the vehicle storage facility does not meet the standards for vehicle storage facilities. This section requires a corporation to include a copy of its amendment to its articles of incorporation when submitting a supplemental application for registration to change licensee name or address.

Sections 18.89 and 18.92 are amended by replacing the term "administrative and preservation impoundment" with "notification and impoundment."

Amended §18.89 clarifies that letters on a notification sign regarding complaints must be one inch in height, and a contrasting background.

Amended §18.91 authorizes a vehicle storage facility to combine the required signs, provided that any combination of signs meets the respective requirements of each individual sign.

Section 18.93 is amended to provide that a vehicle storage facility operator shall not charge for more than five days of storage fees until a notice is mailed or published. The operator shall charge a daily storage fee after notice. This section prohibits a vehicle storage facility operator from charging an administrative fee.

Existing §18.94 is repealed and replaced with new §18.94 to provide a definition for the term "director," specify the types of sanctions the department may assess, including probation of a licensee whose license has been suspended and/or monetary penalties, and establish a procedure for investigation of and notice to the person charged with a violation. This section provides criteria to be used to determine which sanctions to impose, a procedure for response to the charge, and an opportunity for an administrative hearing. The section requires that the administrative law judge's proposal for decision be submitted to the director, who will determine whether a violation has occurred, and if, so impose the recommended penalty or other sanction; increase or decrease the amount of the recommended penalty or impose other sanctions. It provides for payment of penalty and appeal to a court with jurisdiction; provides that the department and the person charged may enter into a compromise settlement agreement; and authorizes the department to seek injunctive relief and civil penalties if it appears that a person is in violation of, or is threatening to violate, the Act, this subchapter, or an order of the department.

New §18.95 provides circumstances under which the department may revoke, suspend, or deny a license, or place a person on probation whose license has been suspended, in cases of conviction for certain criminal activities or probation violations. This section establishes criteria the department will consider regarding sanctions, and provides a procedure for notification of licensees/applicants of any revocation, suspension, denial, or probation. It establishes policies and procedures regarding suspension and revocation of a vehicle storage facility license for failure to provide proof of insurance, and provides that the department will suspend the license of a vehicle storage facility operator upon receipt of a final order suspending license issued under Family Code §232.008. This section provides that the department may require a licensee to report regularly to the department on any matter that is the basis of probation.

New §18.96 provides that no vehicle may be disposed of under Texas Civil Statutes, Article 6687-9a, unless the vehicle storage facility operator has complied with all provisions of the Act, and a vehicle storage facility operator shall notify the vehicle owner and all recorded lienholders of the proposed disposal of the vehicle in accordance with Texas Civil Statutes, Article 6687-9a, §13(d). This section specifies the types of records a vehicle storage facility operator shall keep under its care and custody; explains how a vehicle storage facility operator may dispose of a vehicle through public sale; and clarifies how disputes over the sale, or dispersal of proceeds from the sale, of a vehicle are to be pursued.

Frank Smith, Director, Budget and Finance Division, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There will be no economic costs to individuals who are required to comply with the sections as proposed.

Lawrence R. Smith, Director, Motor Carrier Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed sections.

Mr. Lawrence Smith has determined that for each year of the first five years the proposed sections are in effect, the public benefits anticipated as a result of enforcing the sections will be increased protection for vehicle storage facility customers. There will be no effect on small businesses.

Written comments on the proposal may be submitted to Lawrence R. Smith, Director, Motor Carrier Division, Texas Department of Transportation, 125 E. 11th St., Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on March 16, 1998.

## Subchapter A. General Provisions

### 43 TAC §18.2

The amended sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, Chapter 643 which authorizes the department to carry out the provisions of those laws governing the registration of motor carriers, and Texas Civil Statutes, Article 6687-9a, which authorize the department to carry out the provisions of those laws governing the licensing of vehicle storage facilities.

No statutes, articles, or codes are affected by these proposed amendments.

*§18.2. Definitions.*

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

Tow truck - A motor vehicle equipped with, or used in combination with, a mechanical device [~~mini-trailer, or auto-trailer, and which is adapted or~~] used to tow, winch, or otherwise move another vehicle. For the purposes of this chapter, the following motor vehicles are not considered tow trucks:

- (A) a motor vehicle owned and used exclusively by a governmental entity, including a public school district;
- (B) a motor vehicle towing:
  - (i) a race car;
  - (ii) a motor vehicle for exhibition; or
  - (iii) an antique motor vehicle;
- (C) a recreational vehicle towing another vehicle;
- (D) a motor vehicle used in combination with a tow bar, tow dolly, or other mechanical device that is not operated in the furtherance of a commercial enterprise; or
- (E) a motor vehicle, controlled and/or operated by a farmer or rancher, towing a farm vehicle.

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.

Filed with the Office of the Secretary of State, on January 30, 1998.

TRD-9801430

Bob Jackson

Acting General Counsel

Texas Department of Transportation

Earliest possible date of adoption: March 15, 1998

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



## Subchapter G. Vehicle Storage Facilities

### 43 TAC 18.80, 18.82, 18.84, 18.88, 18.89, 18.91-18.93

The amended sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, Chapter 643 which authorizes the department to carry out the provisions of those laws governing the registration of motor carriers, and Texas Civil Statutes, Article 6687-9a, which authorize the department to carry out the provisions of those laws governing the licensing of vehicle storage facilities.

No statutes, articles, or codes are affected by these proposed amendments.

*§18.80. Purpose and Scope.*

Texas Civil Statutes, Article 6687-9a (Vehicle Storage Facility Act), provide that a person may not operate a vehicle storage facility unless the person holds a current license to operate a vehicle storage facility issued by the Texas Department of Transportation. In order to

protect all parties from unfair, unreasonable and deceptive practices, this subchapter sets forth the department's commitment to provide procedures and policies under which vehicle storage facility operators and their customers may transact business. The sections under this subchapter describe the procedures by which a person may obtain a license to operate a vehicle storage facility, conditions under which a licensee must operate the facility, and the procedures by which the department will enforce this subchapter. Other laws which may affect the operations of a vehicle storage facility are Transportation Code, Chapters 643 and 683, Property Code, §70.003, §70.004, and §70.006, and the regulations or ordinances of any political subdivision of this State.

*§18.82. Definitions.*

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

Person - An individual, corporation, organization, business trust, estate, trust, partnership, association, or other legal entity.

Impoundment [Preservation] - Actions performed on a stored vehicle which consist of the following minimum requirements:

- (A) using of materials such as plastic or canvas tarpaulins to ensure the preservation of a stored vehicle if doors, windows, convertible tops, hatchbacks, sun roofs, trunks or hoods are broken or inoperative;
- (B) conducting a written inventory of any unsecured personal property contained in a stored vehicle;
- (C) removing and storing all unsecured personal property contained in a stored vehicle for which safekeeping is necessary; and
- (D) obtaining motor vehicle registration information for a specific vehicle from the department's Vehicle Titles and Registration Division, statutory agents or service providers.

Vehicle - A motor vehicle subject to registration under Transportation Code, Chapter 501 [the Certificate of Title Act, Texas Civil Statutes, Article 6687-1], or any other device designed to be self-propelled or transported on a public highway [and which is towed or transported to a vehicle storage facility without the owner's consent].

*§18.84. Issuance and Renewal of License.*

(a) Issuance. The department will issue a vehicle storage facility [VSF] license to an applicant meeting the requirements of §18.83 of this title (relating to Application for Original Vehicle Storage Facility License), unless the department determines that:

- (1) the applicant knowingly supplied false or incomplete information on the application;
- (2) in the three years preceding the date of the application, the applicant, one of the applicant's partners, a principal or general manager of the applicant, or one of the applicant's officers has been convicted of a felony or misdemeanor for which the maximum punishment is confinement in jail or a fine exceeding \$500; or
- (3) the vehicle storage facility for which the license is sought does not meet the standards established by this subchapter for vehicle storage facilities.

(b) Transferability/assignability. Vehicle storage facility [VSF] licenses are non-transferable and non-assignable from a licensee to another person or entity.

(c) Licensee change of name or address. Prior to the effective date of any change in a licensee's name or address from the name or address appearing on the original vehicle storage facility

license application, the licensee shall file a supplemental application with the department. A licensee that is a corporation shall include a copy of the amendment to its articles of incorporation approved by the Texas Secretary of State along with its supplemental application for registration. A licensee incorporated outside the State of Texas shall include a copy of its amendments to its articles of incorporation approved by the corresponding chartering authority.

(d) Expiration. Vehicle storage facility [VSF] licenses are valid for 12 months and expire annually on the issuance anniversary date. A licensee may renew its vehicle storage facility license in accordance with subsection (e) of this section and retain its original license number.

~~[(e) Duplicate vehicle storage facility licenses. Application for a duplicate VSF license shall be made with the department. A \$25 fee will be charged for issuing a duplicate license. This fee is non-refundable, and may be paid in accordance with §18.85 of this title (relating to Payment of Fees). The expiration date of a duplicate VSF license shall be the same as the original license.]~~

(e) ~~[(f)]~~ Renewal of vehicle storage facility license. Licensees must apply annually, prior to license expiration, to renew the vehicle storage facility [VSF] operators license.

(1) Renewal notices. The department will mail a license renewal notice to the licensee's last known address, according to the records of the department, indicating the month and year the license expires to each licensee approximately 45 days prior to license expiration. Failure to receive the notice does not relieve the licensee of the responsibility to renew the vehicle storage facility [VSF] license.

(2) Renewal application and fee. An application for vehicle storage facility [VSF] license renewal must be returned by the licensee to the Motor Carrier Division and shall be accompanied by the annual renewal fee of \$75. The renewal fee is non-refundable and is payable as described in §18.85 of this title (relating to Payment of Fees). In order to avoid expiration, a renewal application and fee must be received by the Motor Carrier Division prior to the expiration date.

(3) Expired vehicle storage facility license. An individual, partnership, or corporation whose vehicle storage facility [VSF] is still in business and whose license is not renewed must apply for a new license in accordance with §18.84 of this title (relating to License Issuance and Renewal). To avoid the loss of the original license number, an application must be received by the Motor Carrier Division within 90 days after license expiration. The application shall be accompanied by a fee of \$100.

#### §18.88. Documentation and Records.

(a) Retention of written documentation. Vehicle storage facility licensees must maintain written documentation regarding their operations for a period of two years from the date such operations occurred. Written documentation shall be in the form of:

- (1) motor vehicle registration checks;
- (2) notification letters;
- (3) certified return receipts;
- (4) tow tickets or wrecker slips (if applicable);
- (5) bills for service;
- (6) auction receipts;
- (7) inventory (if applicable);

(8) certificates of authority to demolish; and

(9) any authorized document used to release a vehicle (title, affidavit of right of possession and control, court order, etc.).

(b) Combination documents. Provided that the document contains the minimum information described in subsection (c) of this section, a licensee may consolidate the information required into a single document in order to meet record retention requirements of subsection (a) of this section. Combination documents may consist of:

- (1) bills for service;
- (2) inventory records;
- (3) tow tickets; or
- (4) wrecker slips (if applicable).

(c) Minimum information. Each licensee shall keep written records on each vehicle kept or stored at the vehicle storage facility [VSF]. These records shall contain:

(1) the year, make, model, color, correct license plate number, state issuing the license, and correct vehicle identification number of the vehicle;

(2) the date, time and location from which the vehicle was towed, and name of person who authorized the tow;

(3) the name of the tow truck driver, the name of the company that towed the vehicle, and the license plate numbers of plates issued to the tow truck under Transportation Code, §502.180 and §502.281;

(4) the date the vehicle was released, the name of the individual to whom the vehicle was released, and the type of identification (Texas drivers license or other state or federally issued photo identification) and identification number provided by the individual to whom the vehicle was released;

(5) the date of any vehicle transfer, and the address of the location to which it was transferred along with the name of the towing company and tow truck driver who made the transfer;

(6) a copy of any certificate of title issued after the vehicle came into the possession of the vehicle storage facility [VSF], any certificate of authority to demolish, any police auction sales receipt, or any transfer document issued by the State of Texas for the vehicle if vehicle ownership has been transferred due to any action of the vehicle storage facility [VSF] or if the vehicle has been disposed of or demolished; and

(7) all amounts received at the time the vehicle was released, including the specific nature of each charge.

(d) Availability of documentation. All required documentation shall be made available by the licensee, the licensee's agent, or the licensee's employee for inspection and copying upon request by department personnel, or a certified law enforcement officer within the officer's jurisdiction, during the same hours the vehicle storage facility [VSF] must ensure that vehicles are available for release to the vehicle owner.

(e) Care and custody of records. Required records shall be kept under the care and custody of the licensee for at least two years from the date the vehicle was received.

#### §18.89. Notice of Complaint Procedure.

Each vehicle storage facility [VSF] shall notify consumers and service recipients of the name, mailing address, and telephone number of the

department for purposes of directing complaints regarding vehicle storage to the department. The licensee may use a legible sticker or rubber stamp to convey the required information. The notification shall be included on:

(1) a sign prominently displayed to the public at the place of payment, with letters at least one inch in height, and a contrasting background [~~specifications in accordance with §18.91 (d) of this title (relating to Facility Requirements)~~]; and

(2) any bill for service.

*§18.91. Facility Requirements.*

(a) Enclosure and security of stored vehicles.

(1) Fencing. If not enclosed by a five foot high fence on or before September 1, 1985, all vehicle storage facilities shall be completely enclosed by a fence at least six feet high with a gate which is locked at all times when the licensee or an agent or employee is not at the storage lot. No two vehicle storage facilities may operate within the same fenced area.

(2) Security of vehicles.

(A) No vehicle may be stored or kept at any licensed vehicle storage facility [VSF] unless it is kept inside the fenced or enclosed area at all times. For purposes of this subsection, the term "enclosed" shall mean inside a building.

(B) A vehicle accepted for storage in a vehicle storage facility must be secured to prevent theft of the vehicle or its contents, including but not limited to locking doors, closing windows and hatchbacks, and raising or covering convertible tops.

(b) Surface. All [~~motor~~] vehicle storage facilities shall have an all-weather surface such as concrete, asphalt, black-top, stone, macadam, limestone, iron ore, gravel, shell, or caliche, that enables the safe and effective movement of stored vehicles upon all portions of the lot, both under their own power and under tow, at all times, regardless of prevailing weather conditions.

(c) Illumination. All [~~motor~~] vehicle storage facilities shall maintain illumination levels adequate for nighttime release of vehicles. The term "adequate" shall mean sufficient to allow inspection of a vehicle for damage at the time of release. At a minimum, there must be one lighting fixture containing at least a 250 watt element for each 1/4 acre of storage area.

(d) Signs.

(1) Facility information. All [~~motor~~] vehicle storage facilities shall have a clearly visible and readable sign at its main entrance. Such sign shall have letters at least 2 inches in height, with contrasting background, shall be visible at 10 feet, and shall contain the following information:

(A) the registered name of the storage lot, as it appears on the vehicle storage facility [VSF] license;

(B) street address;

(C) the telephone number for the owner to contact in order to obtain release of the vehicle;

(D) the facility's hours, within one hour of which vehicles will be released to vehicle owners; and

(E) the storage lot's state license number preceded by the phrase "VSF License Number."

(2) Per diem charges. All [~~motor~~] vehicle storage facilities shall have a sign setting out the per diem charge for storage

and all other fees which may be charged by the storage lot, including notification and impoundment [~~administrative and preservation/pound~~] fees. This sign shall be located so it is clearly visible to a vehicle owner prior to paying the fees, shall have letters at least 1 inch in height, with a contrasting background.

(3) Instruments accepted for release of vehicle. All [~~motor~~] vehicle storage facilities shall have a sign describing the instruments which may be presented by the vehicle owner or his/her authorized representative to obtain possession of the vehicle. This sign shall list all instruments as described in §18.92(a)(2) of this title (relating to Technical Requirements), and shall also state: "Affidavit of Right of Possession and Control Furnished Upon Request." This sign shall be located so it is clearly visible to a vehicle owner at the place of payment, have letters at least 1 inch in height with a contrasting background.

(4) Combination signs. A vehicle storage facility may combine the signs described in §18.89(1) of this title (relating to Facility Requirements) and paragraphs (2) and (3) of this subsection, provided that the combination sign meets the requirements of each of the separate signs.

(e) Unregistered tow trucks. No vehicle storage facility [VSF] shall permit any tow truck which is not registered under Transportation Code, Chapter 643 [~~Texas Civil Statutes, Article 6675e~~], to enter onto the grounds of the facility.

[(f) ~~Other laws, statutes, rules and regulations affecting VSF operations. Some other laws which may affect the operation of a VSF include:~~

[(1) ~~Transportation Code, Chapter 683;~~

[(2) ~~Texas Civil Statutes, Article 6675e;~~

[(3) ~~Property Code, §70.003, §70.004, and §70.006; and~~

[(4) ~~any political subdivision's ordinances or regulations.]~~

*§18.92. Technical Requirements.*

(a) Release of vehicles. The licensee shall comply with the following requirements when releasing vehicles.

(1) The licensee shall comply with all provisions of Texas Transportation Code, Chapter 685, and Texas Civil Statutes, Article 6701g-3, relating to the rights of the owner of a stored vehicle, including providing the name, address, and telephone number of the justice of the peace or magistrate from whose jurisdiction the vehicle was removed.

(2) The licensee shall allow the vehicle owner or his/her authorized representative to obtain possession of the vehicle at any time between the hours listed on the facility information sign posted as described in §18.91(d)(1) of this title (relating to Facility Requirements), upon payment of all fees due, presentation of valid identification (Texas drivers license or other state or federally issued photo identification), and upon presentation of:

(A) a notarized power-of-attorney;

(B) a court order;

(C) a certificate of title;

(D) a tax collector's receipt and a vehicle registration renewal card accompanied by a conforming identification;

(E) notarized proof of loss claim of theft from an insurance company to show a right to possession;



(F) positive name and address information corresponding to that contained in the files of the department's Vehicle Titles and Registration Division; or

(G) a department approved Affidavit of Right of Possession and Control, as defined in §18.82 of this title (relating to Definitions), which is to be furnished by the licensee upon request (an Affidavit of Right of Possession and Control is not to be used as a repossession instrument).

(3) All ~~motor~~ vehicle storage facilities shall have vehicles available for release 24 hours a day within one hour's notice if it accepts vehicles 24 hours a day.

(4) If a vehicle storage facility [VSF] does not accept vehicles 24 hours a day, such facility must have vehicles available for release within one hour between the hours of 8:00 a.m. and midnight Monday-Saturday and from 8:00 a.m. to 5:00 p.m. on Sundays except for nationally recognized holidays. It is not the intent of this section to require release of vehicles after midnight, and refusal to release after that time, even with notice after 11:00 p.m., is not a violation of this section.

(b) Notification of insurance information. Upon request by the vehicle owner or the vehicle owner's authorized representative, the licensee shall provide the name, address, and telephone number of the insurance company that is providing required garage keeper's legal liability insurance coverage to the facility, in addition to the facility's insurance policy or certificate number for purposes of filing a claim for loss or damage of property. The insurance information shall be the same as that which is on file with the department.

(c) Publicly listed telephone number. All ~~motor~~ vehicle storage facilities shall have a publicly listed and operable telephone where the licensee can be contacted. If the telephone number is changed from the number set out in the vehicle storage license application, the licensee shall give the department written notice of the change prior to the date the new number is used. The notice shall include the storage lot's name, its location, its license number, the old telephone number, and the new telephone number.

(d) Inspection of stored vehicles. When the licensee, the licensee's agent, or the licensee's employee accepts a vehicle towed without the vehicle owner's consent, such person shall inspect the vehicle and note as an addition on the wrecker slip or wrecker ticket any differences from the information previously set out thereon, but shall not write over or deface any prior writing on the slip or ticket. If the license plate number or vehicle identification number on the wrecker ticket or wrecker slip are incorrect, the vehicle storage facility [VSF] shall note on its records the correct number and notify every previously advised person within 48 hours of noting the correct information.

(e) Removal of parts; dismantling or demolishing of stored vehicles. Except as stated to the contrary in this section, no parts shall be removed from any vehicle, and no vehicle shall be dismantled or demolished within the storage area of a licensed vehicle storage facility [VSF]. Vehicles may be dismantled or demolished only if the storage lot has a certificate of title, certificate of authority to demolish, police auction sales receipt, or transfer document issued by the State of Texas for the vehicle being dismantled or demolished.

(f) Use of stored vehicles. No stored vehicle may be utilized for personal or business use without the written consent of the vehicle's owner.

(g) Reasonable storage efforts. A vehicle storage facility [VSF] operator shall make reasonable efforts necessary for the storage

of a vehicle, such as locking doors, rolling up windows, and closing doors, hatchbacks, sun roofs, trunks, hoods, or convertible tops. Such actions are included in the storage fee as set forth in §18.93 of this title (relating to Storage Fees/Charges).

(h) Impoundment [~~Preservation~~] of stored vehicles. If doors, windows, convertible tops, hatchbacks, sun roofs, trunks, or hoods are broken or inoperative, materials such as plastic or canvas tarpaulins must be used to ensure the preservation of the stored vehicle. A vehicle storage facility [VSF] operator is entitled to charge a fee for impoundment [~~preservation~~] if, in addition to the requirements set out in this subsection, the vehicle storage facility [VSF] operator, at a minimum:

(1) conducts a written inventory of any unsecured personal property contained in the vehicle;

(2) removes and stores all such property for which safekeeping is necessary, and specifies such removal and storage on the written inventory; and

(3) obtains motor vehicle registration information for the vehicle from the department.

(i) Repair or alteration of stored vehicles. A vehicle accepted for storage may not be repaired, altered, or have parts removed or replaced without the vehicle owner's or his authorized representative's consent.

(j) Vehicle transfers. When a motor vehicle has been delivered to a vehicle storage facility [VSF], the vehicle may not be moved from that facility within the first 31 days of storage without the vehicle owner's authorization. If it becomes necessary to move the vehicle during the first 31 days of storage because of vehicle storage facility [VSF] capacity problems, neither the registered vehicle owner nor recorded lienholder(s) may be assessed an additional charge. The vehicle storage facility [VSF] must send notice in accordance with §18.87 of this title (relating to Notifications Regarding Towed Vehicles), except that the notice must be sent no less than 72 hours prior to moving the vehicle. If a vehicle is moved from a vehicle storage facility [VSF], the licensee shall:

(1) charge only those fees otherwise permitted by §18.93 of this title (relating to Storage Fees/Charges) after the vehicle is towed to another location without the vehicle owner's permission;

(2) retain records and inform the vehicle owner upon request of the location where the vehicle is at all times from the date on which the vehicle is transferred from the vehicle storage facility [VSF] until such time as the vehicle is recovered by the vehicle owner, or a new certificate of title, a certificate of authority to demolish, a police auction sales receipt, or a transfer document is issued by the State of Texas; and

(3) maintain a record of the ultimate disposition of the vehicle, including the date and name of the person to whom the vehicle is released or a description of the document under which the vehicle was sold or demolished.

#### §18.93. *Storage Fees/Charges.*

The fees outlined in this section have precedence over any conflicting municipal ordinance or charter provision.

(1) Notification fee.

(A) A vehicle storage facility [VSF] operator may not charge an owner more than \$25 for notification under §18.87 of this title (relating to Notification Regarding Towed Vehicles).

(B) If a vehicle is removed by the owner within 24 hours after the date the operator receives the vehicle, notification is not required under §18.87 of this title (relating to Notification Regarding Towed Vehicles).

(C) If a vehicle is removed by the owner before notification is sent, or within 24 hours from the time the operator receives the vehicle, a notification fee may not be charged to the owner by the vehicle storage facility [VSF] operator.

(2) Daily storage fee. A vehicle storage facility [VSF] operator may not charge less than \$5.00 or more than \$15 for each day or part of a day for storage of a vehicle.

(A) A daily storage fee may be charged for a day regardless of whether the vehicle is stored for 24 hours of the day, except that a daily storage fee may not be charged for more than one day if the vehicle remains at the vehicle storage facility [VSF] less than 12 hours. For the purposes of this paragraph, a day is considered to begin and end at midnight.

(B) A vehicle storage facility operator shall not charge for more than five days of storage fees until a notice, as prescribed in §18.87 of this title, is mailed or published.

(C) A vehicle storage facility operator shall charge a daily storage fee after notice, as prescribed in §18.87 of this title, is mailed or published for each day or portion of a day the vehicle is in storage until the vehicle is removed and all accrued charges are paid.

(3) Impoundment [~~Preservation~~] fee. A vehicle storage facility [VSF] operator may charge an owner no more than \$10 for impoundment [preservation] of a stored motor vehicle, if such impoundment [preservation] is performed in accordance with §18.92(h) [(g)] of this title (relating to Technical Requirements). If the vehicle storage facility [VSF] operator charges a fee for impoundment [preservation], the written bill for services must specify the exact services performed for that fee and the dates such services were performed.

(4) Additional fees. A vehicle storage facility [VSF] operator may not charge any additional fees that are similar to notification or impoundment [; preservation, or administrative] fees. A vehicle storage facility operator may not charge an administrative fee.

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.

Filed with the Office of the Secretary of State, on January 30, 1998.

TRD-9801431

Bob Jackson

Acting General Counsel

Texas Department of Transportation

Earliest possible date of adoption: March 15, 1998

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



### 43 TAC §18.94

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

The repealed section is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission

with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, Chapter 643 which authorizes the department to carry out the provisions of those laws governing the registration of motor carriers, and Texas Civil Statutes, Article 6687-9a, which authorize the department to carry out the provisions of those laws governing the licensing of vehicle storage facilities.

No statutes, articles, or codes are affected by this proposed repeal.

§18.94. *Sanctions.*

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.

Filed with the Office of the Secretary of State, on January 30, 1998.

TRD-9801432

Bob Jackson

Acting General Counsel

Texas Department of Transportation

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



### 43 TAC §§18.94-18.96

The new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, Chapter 643 which authorizes the department to carry out the provisions of those laws governing the registration of motor carriers, and Texas Civil Statutes, Article 6687-9a, which authorize the department to carry out the provisions of those laws governing the licensing of vehicle storage facilities.

No statutes, articles, or codes are affected by these proposed new sections.

§18.94. *Sanctions.*

(a) Definition. For purposes of this section, the term "director" shall mean the executive director of the department or the executive director's designee not below the rank of division or special office director.

(b) Types of sanctions.

(1) The department may issue sanctions to an applicant for a license, a licensee or a partner of a licensee, a principal in the licensee's business, or an employee of the licensee, with the knowledge of the licensee who violates the Act, this subchapter, (including failure to meet the standards established by this subchapter), or an order of the department. The department may:

(A) issue a written warning to the licensee specifying the violation;

(B) deny, revoke, or suspend a license;

(C) place a licensee on probation if his or her license has been suspended; or

(D) assess an administrative penalty not to exceed \$1,000 for each violation.

(2) If a person violates §5 of the Act concerning licensure, the department may assess administrative penalties in an amount not to exceed \$10,000 per violation, in addition to sanctions imposed under subsection (h) of this section or §17 of the Act concerning penalties and offenses. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(3) If a suspension is probated, the department may require the person to make regular reports to the department or its designee on matters that are the basis of the probation or limit practice to the areas licensed by the department under this Act.

(c) Initiation of proceedings.

(1) If an authorized investigator of the department determines that a violation has occurred, the investigator shall issue a summary to the manager, stating the facts on which the investigator based his or her conclusion.

(2) The manager will determine whether sanctions should be imposed based on:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard to the health, safety, or economic welfare of the public;

(B) the economic harm to property or the environment caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter future violations;

(E) efforts to correct the violations; and

(F) any other matter that justice may require.

(d) Notice. The manager shall give written notice of the violation and the proposed sanction to the person charged. The notice shall include:

(1) a brief summary of the alleged violations;

(2) a statement of the proposed sanction and any accompanying conditions; and

(3) a statement of the right of the person charged to a hearing concerning the violation, the sanction, and the terms of the sanction, or the amount of the penalty.

(e) Response.

(1) Not later than the 15th day after the date on which the notice is received, the person charged may accept the manager's proposal, including all accompanying conditions, or make a written request for a hearing.

(2) The person is considered to have accepted the proposal if he or she has not made a written request for a hearing and the person has received notice that the sanction is:

(A) a written warning;

(B) denial, revocation, or suspension of a license; or

(C) probation.

(f) Administrative hearing.

(1) If the person charged fails to respond in a timely manner to the notice and the sanction is a monetary penalty, or if the person requests a hearing, the department will initiate a contested case in accordance with §§1.21-1.61 of this title (relating to Contested

Case Procedure). The department will provide written notice of such action to the person.

(2) A contested case under this subsection will be governed by §§1.21-1.61 of this title (relating to Contested Case Procedure), except that an administrative law judge's proposal for decision shall be submitted to the director. The director may determine, by order, that:

(A) no violation has occurred; or

(B) a violation has occurred, and

(i) impose the penalty or other sanction recommended by the administrative judge;

(ii) increase or decrease the amount of the penalty recommended by the administrative judge within the limits prescribed by subsection (b) of this section; or

(iii) impose other sanctions.

(g) Settlement agreements.

(1) At any time prior to the date on which a final order is issued by the director under subsection (f)(2) of this section, the department and the person may agree to enter into a compromise settlement agreement. The agreement shall not constitute an admission by the person of any violation. The compromise settlement agreement shall be signed by the person and the director, and will reflect that the person consents to the assessment of a specific administrative penalty and/or other sanction.

(2) Simultaneously with the filing of a compromise settlement agreement, if the penalty is monetary, then the alleged violator shall remit a cashier's check or money order to the department, payable to the "State Comptroller - Treasury Operations." These funds shall be held in an escrow account until agreement is executed by the alleged violator and the director.

(h) Injunctive relief and civil penalty.

(1) If it appears that a person is in violation of, or is threatening to violate the Act, this subchapter, or an order of the department, the attorney general at the department's request may institute an action for injunctive relief to:

(A) restrain the person from continuing the violation or threatening the violation; and

(B) for civil penalties not to exceed \$1,000 for each violation.

(2) If the department or the attorney general prevails in an action under this section, the department or the attorney general is entitled to recover reasonable attorney's fees and court costs.

§18.95. Criminal Convictions, Insurance, and Child Support.

(a) Criminal convictions.

(1) The department may revoke, suspend, or deny a license issued under the Act, or place a person on probation whose license has been suspended if the department determines that a licensee, a partner of the licensee, a principal in the licensee's business, or an employee of the licensee has been finally convicted of a:

(A) felony; or

(B) misdemeanor that directly relates to a duty or responsibility of a vehicle storage facility operator and is punishable by:

(i) confinement; or

(ii) a fine exceeding \$500.

(2) The department may also, after hearing, suspend, revoke, or deny a license because of a person's felony probation revocation, parole revocation, or revocation of mandatory supervision.

(3) In determining whether a criminal conviction directly relates to the operation of a vehicle storage facility, the department shall consider the:

(A) nature and seriousness of the crime;

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

(C) relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of operating a vehicle storage facility.

(4) In determining the present fitness of a person who has been convicted of a crime, the department shall also consider:

(A) the extent and nature of the person's past criminal activity;

(B) whether or not the person was a minor at the time of the commission of the crime;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person prior to and following the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(F) other evidence of the person's present fitness, including letters of recommendation from:

(i) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(ii) the sheriff and chief of police in the community where the person resides; and

(iii) any other persons in contact with the convicted person.

(G) It shall be the responsibility of the applicant, to the extent possible, to secure and provide the department with the recommendations of prosecution, law enforcement, and correctional authorities.

(H) A person who has been convicted of criminal activity shall furnish proof, in such form as may be required by the department, that he or she has:

(i) otherwise maintained a record of good conduct; and

(ii) paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

(5) The department will provide written notice of denial, suspension, or revocation in accordance with §18.94(d) of this title (relating to Sanctions). The person will have the opportunity to respond and request an administrative hearing in accordance with §18.94(e) and (f) of this title.

(b) Failure to maintain insurance.

(1) Upon receipt of notice of termination of insurance coverage under §18.86(c) of this title (relating to Insurance Requirements), the department will provide written notice of the proposed suspension and revocation in accordance with §18.94(d) of this title.

(2) If the licensee does not file proof of insurance as required by §18.86 of this title prior to the termination of its existing insurance, the division will suspend the licensee's license for 90 days. The division will revoke the license on the 91st day unless the licensee provides proof of insurance in compliance with §18.86 of this title before the effective date of revocation. If proof of insurance is timely provided, the department will reinstate the license.

(3) If the suspended licensee does not provide proof of insurance under paragraph (2) of this subsection, the licensee must file an application as required by §18.83 of this title (relating to Application for Original Vehicle Storage Facility).

(4) A final order will be issued in accordance with §18.94(f)(2) of this title.

(c) Failure to pay court ordered child support.

(1) On receipt of a final order suspending license, issued under Family Code, §232.008, the department will issue a notice as described in §18.94(d) of this title and suspend the license of a vehicle storage facility operator.

(2) The department will charge an administrative fee of \$5.00 to a licensee who is the subject of an order suspending the license.

(d) Terms of probation. If a vehicle storage facility licensee is placed on probation, the department may require the licensee to report regularly to the department on any matter that is the basis of the probation.

§18.96. Disposal of Certain Vehicles.

(a) Applicability. No vehicle may be disposed of unless the vehicle storage operator has complied with all provisions of the Act, including but not limited to §13 and §14B concerning notification and disposal of abandoned vehicles.

(b) Notification of proposed disposal. A vehicle storage facility operator shall notify the vehicle owner and all recorded lienholders of the proposed disposal of the vehicle in accordance with §13(d) of the Act concerning notification.

(c) Documentation and records. A vehicle storage facility operator shall keep under its care and custody complete and accurate records of any vehicle disposed of under §14B of the Act concerning abandoned vehicles. These records shall include, but are not limited, to:

(1) a copy of the VTR-265VSF form completed by the vehicle storage facility operator and provided to the vehicle buyer; and

(2) copies of all notifications issued to the vehicle owner and all recorded lienholders.

(d) Public sale. A vehicle storage facility operator may dispose of a vehicle through a public sale in compliance with §14B of the Act concerning abandoned vehicles. Disputes over the sale or dispersal of proceeds from the sale of the vehicle may be pursued through a court of appropriate jurisdiction.

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.

Filed with the Office of the Secretary of State, on January 30, 1998.

TRD-9801433

Bob Jackson

Acting General Counsel

Texas Department of Transportation

Earliest possible date of adoption: March 15, 1998

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



# WITHDRAWN RULES

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An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

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## **TITLE 1. ADMINISTRATION**

### **Part IV. Office of the Secretary of State**

#### **Chapter 91. Texas Register**

##### **Subchapter C. Services**

###### **1 TAC §91.91**

The Office of the Secretary of State has withdrawn from consideration for permanent adoption the proposed new §91.91, which appeared in the July 29, 1997, issue of the *Texas Register* (22 TexReg 7000).

Filed with the Office of the Secretary of State on January 28, 1998.

TRD-9801231

Clark Ervin

Assistant Secretary of State

Office of the Secretary of State

Effective date: January 28, 1998

For further information, please call: (512) 463-5561



##### **Subscriptions, Individual Copies, and Reprints**

###### **1 TAC §91.121, §91.122**

The Office of the Secretary of State has withdrawn from consideration for permanent adoption the proposed repeal §91.121 and §91.122, which appeared in the July 29, 1997, issue of the *Texas Register* (22 TexReg 6993).

Filed with the Office of the Secretary of State on January 28, 1998.

TRD-9801383

Clark Ervin

Assistant Secretary of State

Office of the Secretary of State

Effective date: January 28, 1998

For further information, please call: (512) 463-5561



## **TITLE 7. BANKING AND SECURITIES**

### **Part VI. Credit Union Department**

#### **Chapter 91. Chartering, Operations, Mergers, Liquidations**

##### **General Rules**

###### **7 TAC §91.103**

The Credit Union Department has withdrawn from consideration for permanent adoption the proposed new §91.103, which appeared in the October 31, 1997, issue of the *Texas Register* (22 TexReg 10594).

Filed with the Office of the Secretary of State on January 28, 1998.

TRD-9801265

Harold E. Feeney

Commissioner

Credit Union Department

Effective date: January 28, 1998

For further information, please call: (512) 837-9236



# ADOPTED RULES

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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.

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## TITLE 1. ADMINISTRATION

### Part IV. Office of the Secretary of State

#### Chapter 91. Texas Register

The Office of the Secretary of the State, Texas Register, adopts the repeal of §§91.1, 91.12, 91.19, 91.21-91.26, 91.31, 91.41-91.43, 91.51, 91.71-91.75, 91.91, 91.97, 91.124, 91.131-91.135, and new §§91.1, 91.7, 91.9, 91.11, 91.13, 91.15, 91.17, 91.19, 91.21, 91.23, 91.25, 91.27, 91.29, 91.31, 91.61, 91.63, 91.65, 91.67, 91.69, 91.71, 91.73, 91.75, and 91.77, concerning Texas Register procedures. New §§91.1, 91.9, 91.13, 91.15, 91.17, 91.19, 91.21, 91.23, 91.29, 91.31, 91.63, 91.65, 91.67, 91.71, 91.73, and 91.77 are adopted with changes to the proposed text as published in the July 29, 1997, issue (22 TexReg 6991). Section 91.61 was withdrawn and repropounded in the October 17, 1997, issue (22 TexReg 10203). It is being adopted with changes. The repeals of §§91.1, 91.12, 91.19, 91.21-91.26, 91.31, 91.41-91.43, 91.51, 91.71-91.75, 91.91, 91.97, 91.124, 91.131-91.135 and new §§91.7, 91.11, 91.25, 91.27, and 91.69 are adopted without changes and will not be republished. We are withdrawing proposed new §91.91 in this issue and will repropound it at a future date. We also withdrew the proposed repeal of §91.121 and §91.122.

The Texas Register is revising its rules in response to Senate Bill 1177, Senate Bill 1715 and House Bill 1, as adopted by the 75th Legislature. The Texas Register is also taking this opportunity to reorganize Chapter 91 into new subchapters.

Senate Bill 1715 requires the Texas Register to strike through as well as bracket obsolete language and to underline new language in proposed rules. Agencies will not change the way they code proposed rule amendments, but will now be required to use the code <new> for proposed new rules.

Comments were filed by the Texas General Land Office (GLO), the Texas Department of Health (TDH), the Texas Department of Insurance (TDI), the Texas Natural Resource Conservation Commission (TNRCC), the Public Utility Commission of Texas (PUC), the Texas Railroad Commission (RRC), the State Securities Board (SSB), the Texas Water Development Board (TWDB), and the Texas Workers Compensation Commission (TWCC).

We received the following comments regarding the proposed new rules in general.

The TNRCC recommended that familiar terms, such as "you" and "we" not be included in rule language because such terms may be misinterpreted more readily than terms such as

"agency" and "Register." TNRCC also recommended that the preamble for the proposed new rules include a brief explanation of each proposed rule.

We agree with TNRCC that more explanation of the proposed rules would help clarify the purpose of each rule for readers. For the same reason we disagree with TNRCC regarding the strict use of third person. Terms such as "you" and "we" are plain to readers. TNRCC in fact uses "we" in its written comments.

The RRC commented that the preamble was misleading in its explanation of the coding we require to designate new language in electronic files.

We withdrew and repropounded new §91.61, concerning electronic procedures for filing rules and miscellaneous documents. The new §91.61 appeared in the October 17, 1997, *Texas Register* (22 TexReg 10203). The new rule addressed the RRC's concerns and simplifies the coding requirements for underlining the entire text of new rules as required by SB 1715 (75th Texas Legislature).

The RRC suggested that the Texas Register Form and Style Manual be eliminated and that all requirements be included in the Texas Register rules in Chapter 91. The RRC suggested alternatively that the Form and Style Manual be adopted by reference to give it the force and effect of the rules.

The SSB commented that the Form and Style Manual has been a valuable resource and teaching guide.

The Texas Register Form and Style Manual will not be eliminated. It will be updated to address these new rules. The updated Form and Style Manual will be made available on the internet. The Manual will not be adopted by reference because it does not contain requirements that have the force and effect of rules. The rules in Chapter 91 provide the minimum requirements for filing documents for publication. The manual is a supplement to the Texas Register rules, offering checklists, examples, and other information which may be helpful to someone preparing documents for filing. The distinction between the Texas Register rules in Chapter 91 and the Texas Register Form and Style Manual is that the rules are mandatory procedures; the Form and Style Manual is optional.

#### COMMENTS ON §91.1. DEFINITIONS.

The TWCC commented that the definition of "rule" in paragraph (12) changes the definition currently contained in the Administrative Procedure Act.

We agree. The definition is adopted with changes to conform to the APA definition.

The RRC commented that the term "adoption by reference" should be defined. The RRC commented that in definition (5) Certifying official and in definition (9) Liaison, the word "person" should be changed to "individual" in order to conform to definition (10) Person.

We agree. We will address "adoption by reference" in a future proposal. Definitions (5) and (9) will be adopted with changes to substitute the word "individual" for "person."

#### COMMENTS ON §91.9. DOCUMENTS ACCEPTED BY THE TEXAS REGISTER.

The TWCC commented that this rule should include miscellaneous documents that are not required by law for publication.

The GLO commented that this rule should include notices filed by the Coastal Coordination Council under the Natural Resources Code, Chapter 33.

We agree, and adopt the rule with changes.

#### COMMENTS ON §91.13. NONACCEPTANCE OF DOCUMENTS.

The SSB and the TWDB commented against this rule. The commenters described the rule as a harsh policy that would inconvenience agencies and possibly delay the adoption of agencies' rules. The SSB urged the Texas Register to be more cooperative and flexible with documents submitted for publication, noting that "...provisions which reject rule submissions without allowing for any 'play' between us and the Register staff can result in a compounding of the problem, requiring multiple filings and delayed publications." The TWDB recommended that the rule establish a specific time frame of two or three days from submission within which Texas Register staff makes notification of rejection.

We agree that cooperation is mutually beneficial for agencies and the Texas Register. But in practice, an agency's priority is to expedite publication of its documents. Often when we notify an agency that a document fails to conform to our requirements, an agency, faced with the delay of a rejection, may promise that if we make an exception and accept the document this time, that next time the mistake will not be repeated. Too often, however, the mistake is repeated along with the promise never to do it again if only we will make an exception again. In the spirit of cooperation and flexibility, we are adopting §91.13 with changes. In subsection (a) the wording "We will reject documents that do not conform..." will be adopted to read "We may reject documents that do not conform..." We will notify agencies in writing when documents fail to conform to our rules. In most instances we will not reject documents the first time we send this kind of notification. If the same agency repeats the same mistake in future filings, we will reject the documents.

We will notify agencies within two days of the filing deadline to acknowledge the receipt of documents. We will notify agencies within 10 days of the filing deadline if we reject documents.

#### COMMENTS ON §91.17. CLASSIFICATION SYSTEMS.

The RRC and TNRCC commented on our proposal to eliminate undesignated heads, and expressed concern about their chapters that include both subchapters and undesignated heads.

We are adopting §91.17, concerning classification systems with changes. Undesignated heads present a difficulty precisely because they are undesignated. Instead of eliminating this classification level, we are changing it. In chapters that have

subchapters and undesignated heads, we will change the undesignated heads to numbered divisions. In chapters that have undesignated heads, but no subchapters, we will change the existing undesignated heads to subchapters in the *Texas Administrative Code*. Divisions will be permitted only within a subchapter classification level. We will convert existing undesignated heads to subchapters or divisions in the Texas Administrative Code as time allows. If an agency converts one undesignated head to a subchapter in a rulemaking submission, we will convert all other undesignated heads in the chapter to subchapters without further notice to the agency.

The PUC, the GLO and the RRC commented on the gapping of rules. The PUC and GLO commented that gapping is appropriate and should be allowed. The commenters noted that the new rules fail to address gapping.

We agree. We encourage, but do not require, agencies to leave gaps between sections and often between chapters or even subchapters. Gapping leaves space for future additions. It is not necessary to mark a gap with the word "reserved" and we do not permit gapping within a section. We will adopt the following wording suggested by the RRC: "Do not indicate chapters, subchapters, divisions, rule numbers and/or parts of a section as being reserved for future use."

#### COMMENTS ON §91.19. NUMBERING SCHEMES.

The RRC commented that the new rules do not require that the first rule in a chapter or subchapter end in the number "1."

We agree. In most instances it would make sense for the first rule in a chapter or subchapter to end in the number "1," but the rules do not require it. If an agency repealed the first rule in a chapter or subchapter, it would not be necessary to repeal the entire chapter only to make the section numbers line up.

The TDI commented that the proposal to limit rule numbers to four digits before the decimal and four digits after the decimal would require some implementation time. The TDI commented that the repeal and re-adoption of groups of rules necessary to conform to the new four-digit limit would cause a significant expenditure of agency time.

We agree. If an agency has existing rules with more than four digits before or after the decimal we will permit the agency to administratively renumber the groups of rules affected by this rule.

#### COMMENTS ON §91.21. TITLES.

The RRC recommended that we add language to §91.21 to explain how to amend the title of a rule.

We agree, and will adopt the rule with additional wording suggested by the RRC: "Amendments to titles shall be made showing the new and deleted language in accordance with the requirements of §91.61 of this title (relating to Electronic Procedures for Filing Rules and Miscellaneous Documents)."

#### COMMENTS ON §91.23. STRUCTURE; TERMINOLOGY.

The TDH commented on a typographical error in §91.23(d)(1). "No change" should read "(No change)".

The RRC commented on §91.23(a)(1)(B), suggesting the addition of the following language. "This is referred to as an 'implied (a)'."

We agree, and will adopt this section with the added wording.

#### COMMENTS ON §91.25. FORM OF CITATION.

The TDH commented that the rule should explain how to cite statutes and suggested the following language: "To cite material published in the Texas Civil Statutes, give the article number followed by section number. For example: Texas Civil Statutes, Article 6252-13(a), §6(c)."

We have no disagreement with the citation style suggested by TDH, but the purpose of this rule is to establish the citation format for agency rules published in the *Texas Register* and in the *Texas Administrative Code*. We no longer presume to dictate a form of citation for statutes. A widely accepted citation format is offered by the University of Texas *Texas Law Review* in its publication *Texas Rules of Form*. If you use *Texas Rules of Form* please note that its citation format for administrative rules differs slightly from the format in our rule. Use the format in §91.25 when filing documents for publication in the *Texas Register*.

#### COMMENTS ON §91.28. PROCEDURE FOR FILING NOTICE OF OPEN MEETING.

The SSB commented on a typographical error in the heading which included §91.28 among sections proposed for repeal (22 TexReg 6992). The procedure for filing notice of open meetings was not proposed for repeal and will not be changed by the adoption of these rules. We intend to change the open meeting filing procedure in 1998, but that will require publication of the proposal for comments.

#### COMMENTS ON §91.29. SERIALIZATION OF DOCUMENTS TO BE PUBLISHED.

The TWCC commented on §91.29. The comment reads, "No explanation is given as to the meaning of the term 'serialization note' and whether it is included in the first issue in which a document is serialized or the last issue."

We agree, and will adopt the section with changes to clarify that when a submission is serialized, the first issue in the series determines the publication date for purposes of calculating the earliest possible date of adoption. A "serialization note" is an editor's note explaining that a submission is being published in series.

#### COMMENTS ON §91.31. CORRECTION OF ERROR.

The GLO commented in favor of extending the deadline from 10 to 20 days for requesting a correction. The TWCC commented that subsection (d) is unclear, and suggested clarification to the phrase "We will not make substantive corrections." The SSB commented that the rule's requirement to specify whether the error appeared in the print *Texas Register*, the web site, etc. places a hardship on agencies and would cause them to incur additional time and expense to review all formats. The SSB also asked for clarification of the consequences of a document that is inadvertently omitted from publication: "...would it affect the running of the 30-day comment period for proposed rules(?)...".

We will adopt the rule with changes to clarify the meaning. If we make an error, we will publish a correction after you notify us. There is no time limit for notification of an error made by the Texas Register because the official text of a rule is the text on file with the Secretary of State and not the text published in the *Texas Register* or on file with the issuing state agency. It is the agency's responsibility to notify us in a timely manner if the version published in the *Texas Register* conflicts with the version filed by the agency. If an agency

makes an error, the agency must notify the *Texas Register* that a correction is necessary before the rule becomes effective (usually 20 days after filing). We will not accept or publish a correction that conflicts with the version filed by the agency after the effective date. For corrections to proposed rules and other documents, we prefer to receive notification of an error within 20 days. Determination of adequate notice is an agency certifying official's responsibility. If a proposed rule inadvertently is omitted from an issue by the *Texas Register*, the 30-day notice period will not begin with the date on which the Texas Register should have published the rule, but with the date on which the rule actually is published.

#### COMMENTS ON §91.61. ELECTRONIC PROCEDURES FOR FILING RULES AND MISCELLANEOUS DOCUMENTS.

The SSB commented that the coding requirements are unclear. We are adopting the rule with changes to address the following questions.

Must each subdivision in a rule be coded separately? Amended sections: yes. New sections: no. Every "<etb>" for new language and every opening bracket "[" must have a closing "<et>" or closing bracket "]" in the same subdivision. For example: Use the "<etb>" code when you begin new language. Use the "<et>" code at the end of the new language in that subdivision. Repeat the codes within each subdivision as needed. All text between the codes will be underlined. However, for new sections, just use the "<new>" code before the section number at the beginning of the rule to underline the entire text of the rule. The purpose of the "<new>" code and the stricter closing codes for amended rules is to simplify agencies' compliance with SB 1715 which requires all new language to be underlined and deleted text to be indicated with a strike-through.

May the "<etb>" or "[" codes be used for parts of a word? No. Add or delete a complete word or acronym.

Does the requirement in subsection (b) "Use a hard return after each paragraph" signal that the Texas Register will reject an agency's rule submission if the agency uses two hard returns (a skipped line) between preamble paragraph and rule subdivisions? No. We will not reject an agency's document for using two hard returns or for using no hard returns. However, if you do not hit the return key at the end of each subdivision, the two subdivisions will be merged together when the rule is published. For example, if subsection (a) has two paragraphs and you do not hit the return key at the end of paragraph (1), then paragraph (2) will not begin on a separate line, but will be merged with paragraph (1). A second hard return does not present a problem.

Is there a separate code, not set out in the rules, for underlining rule text? Is the "<etb>" code to signal the beginning of boldface and underlined text when used in rule text? No. The "<etb>" code will result in underlined text in rules. It will result in boldface text in miscellaneous documents. The Texas Register does not make available a code to create boldface text in rules because doing so might cause confusion. Before SB 1715 boldface text indicated new language.

#### COMMENTS ON §91.63. SUBMISSION FORMS.

The TWCC commented that subsection (b)(3) is not a method of delivering a submission and should be moved into its own subsection. The RRC commented that this section should address acknowledgments of receipt. The RRC and the SSB

commented that the rule does not specify how many copies of the submission form are required.

We are adopting the rule with a format change in response to the TWCC concern, and to specify that only one copy of a submission form is required. Subsection (a) concerning the TR-1 agency rule review form will be re-introduced in future rulemaking.

#### COMMENTS ON §91.65. PROCEDURES FOR FILING RULES.

The GLO, the TNRCC, the PUC, and RRC commented on proposed §91.65(a)(3) which limits agencies to one pending amendment at a time for a rule number. The GLO and PUC were opposed to the proposal. The TNRCC commented in favor, but recommended changes.

The GLO commented that the limitation will impose great hardship on agencies, listing three examples of how the proposal would impair the GLO's ability to conduct its business and result in hampering the public's opportunity to comment on proposed rules. The PUC commented that the proposal to limit an agency to only one pending amendment per rule number places a significant and unnecessary burden on agencies with rapidly changing environments. The proposed change would impact PUC significantly because many of its existing rules were inadequately gapped, forcing PUC to segment its rules rather than adding new rules. PUC also commented that the Texas Register rules should permit agencies to propose new amendments upon adoption of a rule, rather than waiting until the effective date of a rule. The comments said the proposal will slow down agencies' rulemaking initiatives an additional 20 days.

We disagree. Agencies may avoid any delay imposed by the proposal by dividing lengthy rules into shorter sections. Shorter sections are usually more readable. Agencies control their own gapping of rules. If an agency fills all the chapters and sub-chapters within its specified Part of the *Texas Administrative Code*, the agency may ask the Texas Register to administratively move the agency's part to permit expansion. The proposal will reduce errors and confusion caused by overlapping and conflicting amendments that are pending simultaneously on a single rule, but filed and published separately.

The TNRCC commented in favor of the proposed limitation: "The regulated community can become confused with the language of a rule which is open for more than one set of revisions at a time. Also, the Texas Register and other agencies can encounter difficulty in tracking rule language development and effective dates if any errors occur in the processing of multiple rulemaking actions for a rule." The TNRCC and the GLO recommended that definition rules be excepted from the limitation. The RRC commented that the proposal should be clarified by adding the following wording: "This means that an agency may not propose amendments to different subsections of one section unless they are proposed simultaneously in the same filing. Agencies may not propose amendments to one subsection in one filing and then propose other amendments to a different subsection of that section in another filing until the first proposed amendments have been adopted and become effective."

We agree. The rule is being adopted with changes to make definition sections the exception to the rule, and to add the suggested wording.

The TDH and the TWCC commented on §91.65(c)(2)(C), concerning withdrawal of proposed rules. The commenters recommended clarification such as the following addition: "However, this does not preclude a new proposal of an identical or similar rule following rulemaking procedures for proposed rules as specified in §91.65(a) of the title."

We agree. The rule is being adopted with the clarifying wording.

The TDH and the TWCC commented on §91.65(d)(4), concerning emergency rules. The commenters recommended that the effectiveness of an emergency rule be changed from "immediately upon filing or on a stated date less than 30 days after filing" to read "immediately upon filing or on a stated date less than 20 days after filing." The commenters said 20 days would make the rule consistent with Texas Government Code, Chapter 2001 (APA), §2001.036(a)(2) concerning the adoption of rules.

We proposed the "30 days" because that is the minimum notice period for a rule that is not an emergency. However, we will make the recommended change to "20 days."

The TWCC commented on §91.65(b). The commenter said that subsection (b) misstates the APA provisions relating to the effective dates for adopted rules, and that paragraph (b)(2) incorrectly suggests that the Texas Register staff has the authority to make substantive corrections to rules. The term "substantive" should be replaced by the term "formatting."

We agree, and we are adopting the rule with the recommended changes.

The TWCC commented on §91.65(f), questioning the requirement that an agency formally repeal a rule rendered invalid by legislation, constitutional amendment, or court decision. The commenter noted that the public comment process is irrelevant and will not change the legislation, constitutional amendment, or court decision that rendered the rule invalid.

Subsection (f) does not require an agency to take any action. However, we will not remove rules from the *Texas Administrative Code* unless an agency repeals them. Subsection (f) gives the public notice that the invalid rules are being removed. This is not a change from current *Texas Register* rules, and we are adopting this provision as proposed. However, we will consider the TWCC's comments for possible future rulemaking. If we determine that the Secretary of State has the authority to streamline the removal of invalid rules from the *Texas Administrative Code*, we may propose a change to this policy.

The RRC commented on subsection (d), suggesting that the word "days" should be plural possessive: "...less than 30 days' notice...". In subsection (d)(5) the RRC suggested a change in wording to indicate that more than one emergency amendment may be made.

We agree, and the rule is being adopted with the recommended changes.

#### COMMENTS ON §91.67. RULE SUBMISSION PREAMBLES.

The TDH, the GLO, the TNRCC, and the RRC, commented on §91.67. The commenters said the proposed rule omitted mention of the Administrative Procedure Act requirement for local employment impact statements, and that the wording of the proposed rule is confusing and inconsistent with the language in the Administrative Procedure Act.

We agree with the comments, and adopt the rule with changed wording that is consistent with the Administrative Procedure Act.

COMMENTS ON §91.71. NOTICE OF TEXAS DEPARTMENT OF INSURANCE FILINGS UNDER THE INSURANCE CODE, ARTICLE 5.96 AND ARTICLE 5.97.

The TNRCC commented on a typographical error in subsection (a). The word "Article" should be plural, "Articles." We agree.

COMMENTS ON §91.73. ADOPTION BY REFERENCE (ABR).

The TDH, the GLO, the TNRCC, the RRC, the SSB, and the TWCC commented on §91.73. The commenters recommended that no revision date should be required for federal statutes and federal and state rules.

We discourage agencies from using wording such as "...as amended in the future," but the rule is adopted with changes to exclude the revision date requirement for federal and state statutes and rules.

The GLO commented that the rule does not make a distinction between "adoption" by reference and "incorporation" by reference. We disagree. The rule uses the term "adoption by reference." We will consider proposing a definition for this term in future rulemaking. At that time it may be appropriate to determine if "incorporation" means the same thing as adoption. The current Texas Register rules deliberately do not address the term "incorporation by reference." The Administrative Procedure Act does not use either term.

The RRC commented that the rule does not specifically require that agencies file the ABR material with the Secretary of State.

We agree with the comment and we may consider reintroducing this requirement in future rulemaking. The rule does not prohibit agencies from filing ABR material with the Texas Register, but in some instances the cost of filing a copy with the Texas Register may be expensive. The Texas Government Code (APA), §2002.014 does not specify that the information omitted from the *Texas Register* is to be filed with the Secretary of State. The TDH and other agencies have made suggestions regarding Adoption by Reference filings, and the somewhat related Memoranda of Understanding (MOU) filings. We anticipate reviewing these policies more extensively in future rulemaking.

COMMENTS ON §91.75. PROCEDURES FOR FILING A FEDERALLY MANDATED DOCUMENT.

The TNRCC commented that the wording of §91.75 is broad. We agree. The proposal is intended to establish filing procedures for Texas Government Code (APA), §2001.036(a)(3). The rule is adopted with changes to clarify the requirements.

COMMENTS ON §91.77. GRAPHIC MATERIAL.

The RRC and the TWCC commented on typographical errors in the section. "Tables and Graphic" should be spelled "Tables and Graphics."

The RRC suggested revised wording for subsections (a) and (e). We agree that the suggested wording clarifies the rule and have included it.

The RRC commented against the proposed requirement in subsection (b) to underline new language and strike through deleted language on proposed graphics, noting that this requirement would destroy the format of the graphics or might be impossible in the case of drawings.

We agree. The rule is adopted with changes. Agencies will explain amendments to graphics in the preamble.

The RRC questioned the necessity for agencies to file tables and graphics with an amended rule when the tables and graphics are not being amended. We agree it is unnecessary to file graphics which are not being amended. However, agencies should account for the graphics as they would any subdivision of a rule. We are adopting §91.77 with a change that allows agencies to designate a figure as "(No change)."

COMMENTS ON §91.91. CHARGES FOR PRODUCTS.

The RRC, the SSB, and the TWCC commented against §91.91 because the term "market value" is not explained in the rule or in the preamble.

We agree. Although "market price" is a statutory term, we failed to explain it adequately in the proposal. We are required to sell the print Register at a reasonable fee fixed by the Secretary of State, but Government Code, §2002.0151 allows us to charge "market price" for "specialized value-added services related to the Texas Register." We are withdrawing proposed §91.91 in this issue and will repropose it at a future date. We also withdrew the proposed repeal of §91.121 and §91.122.

## Definition of Terms

### 1 TAC §91.1

The repeal is adopted under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the Secretary of State with the authority to promulgate rules consistent with the code.

The repeal does not affect other statutes, articles, or codes.

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

Filed with the Office of the Secretary of State on January 28, 1998.

TRD-9801220

Clark Ervin

Assistant Secretary of State

Office of the Secretary of State

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## Agency Liaison

### 1 TAC §91.12

The repeal is adopted under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the Secretary of State with the authority to promulgate rules consistent with the code.

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## Filing of Documents

### 1 TAC §§91.19, 91.21-91.26, 91.31

The repeals are adopted under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the Secretary of State with the authority to promulgate rules consistent with the code.

The repeals do not affect other statutes, articles, or codes.

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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## Adoption by Reference: Adoption under Federal Mandate

### 1 TAC §§91.41-91.43

The repeals are adopted under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the Secretary of State with the authority to promulgate rules consistent with the code.

The repeals do not affect other statutes, articles, or codes.

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## Format

### 1 TAC §91.51

The repeal is adopted under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the Secretary of State with the authority to promulgate rules consistent with the code.

The repeal does not affect other statutes, articles, or codes.

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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## Classification Systems

### 1 TAC §§91.71-91.75

The repeals are adopted under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the Secretary of State with the authority to promulgate rules consistent with the code.

The repeals do not affect other statutes, articles, or codes.

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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## Submission Forms

### 1 TAC §§91.91, §91.97

The repeals are adopted under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the Secretary of State with the authority to promulgate rules consistent with the code.

The repeals do not affect other statutes, articles, or codes.

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## Subscriptions, Individual Copies, and Reprints

### 1 TAC §91.124

The repeal is adopted under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the Secretary of State with the authority to promulgate rules consistent with the code.

The repeal does not affect other statutes, articles, or codes.

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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## Miscellaneous Provisions

### 1 TAC §§91.131-91.135

The repeals are adopted under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the Secretary of State with the authority to promulgate rules consistent with the code.

The repeals do not affect other statutes, articles, or codes.

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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## Subchapter A. Administrative

### 1 TAC §§91.1, 91.7, 91.9, 91.11, 91.13, 91.15, 91.17, 91.19, 91.21, 91.23, 91.25, 91.27, 91.29, 91.31

The new sections are adopted under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the Secretary of State with the authority to promulgate rules consistent with the code.

The new sections do not affect other statutes, articles, or codes.

§91.1. *Definitions.*

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

(1) Administrative Code - The Texas Administrative Code, as established by the Government Code, Chapter 2002, Subchapter C, §2002.051, also referred to as TAC.

(2) APA - Administrative Procedure Act, Government Code, Chapter 2001.

(3) Agency - Any state board, commission, department, or officer having statewide jurisdiction, other than an agency wholly financed by federal funds, the legislature, the courts, and institutions of higher education, that makes rules or determines contested cases.

(4) Certify - To ensure that submitted documents have been reviewed by legal counsel, whose responsibility it is under the APA to determine whether the rule action is within the agency's legal authority.

(5) Certifying official - An individual authorized by an agency to certify documents submitted for filing with the Texas Register.

(6) Code - The Texas Administrative Code established by the APA, also referred to as TAC.

(7) Electronic transmission - The submission of electronic data to the Texas Register by telecommunications, file transfer protocol (FTP) via Internet, e-mail, or diskette.

(8) Graphic material - Documents formatted in two or more columns as tables or as maps, charts, spread sheets, pictures, equations or as any other type of document that requires special formatting.

(9) Liaison - An individual designated by an agency to act as its representative to the Texas Register.

(10) Person - Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(11) Register - The Texas Register established by the Government Code, Chapter 2002, Subchapter B.

(12) Rule - Any agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency. It also includes the amendment or repeal of a prior rule, but does not include a statement regarding only the internal management of a state agency not affecting private rights or procedures.

(13) Section - A reference to a specific rule in the Texas Administrative Code.

(14) Verify - To ensure that submitted documents have been reviewed by the agency liaison, are processed properly, and are correct in format, structure, and content.

§91.9. *Documents Accepted by the Texas Register.*

File the following documents with the Texas Register for publication: emergency, proposed, withdrawn, and adopted rules; notices of open meetings; appointments; executive orders of the Governor of Texas; summaries of requests for opinions, opinions, and open records decisions of the Attorney General of Texas; summaries of requests for opinions and opinions issued by the Texas Ethics Commission; election law opinions of the Texas Secretary of State; notices filed by agencies, regional councils of government, and the Texas State Library under the Government Code, Chapter 551;

notices of proposals and adoptions filed by the Texas Department of Insurance pursuant to the Insurance Code, Article 5.96 and Article 5.97; proposal requests for private consultant services under the Government Code, Chapter 2254; Court of Criminal Appeal rules of appellate procedure and rules of criminal evidence under Texas Civil Statutes, Article 1811f, §3; notices filed by the Coastal Coordination Council under the Natural Resources Code, Chapter 33; and, with approval from the Texas Register, miscellaneous documents not required to be published by law.

*§91.13. Nonacceptance of Documents.*

(a) We may reject documents that do not conform to the Government Code and to the Texas Register rule requirements. We will notify the agency liaison in writing when a document fails to conform to our rules. With the permission of the agency liaison, we will attempt to correct a format error on its first occurrence. If the agency repeats the format error in a future filing, we will reject the document. If we reject a document, we will notify the liaison in writing within 10 days of the filing date explaining why the document is rejected.

(b) Reasons for rejecting a document include the following:

(1) document structure which does not conform to §91.23 of this title (relating to Structure; Terminology);

(2) electronic format which does not conform to our procedures as outlined in §91.61 of this title (relating to Electronic Procedures for Filing Rules and Miscellaneous Documents); and

(3) filing procedures which do not conform to §91.65 of this title (relating to Procedures for Filing Rules).

*§91.15. Calculation of Effective Dates.*

(a) In computing a period of days, the first day is excluded and the last day is included.

(b) If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun. If there are not as many days in the concluding month as in the beginning month, the period ends on the last day of the concluding month.

*§91.17. Classification Systems.*

Use the following classification structure when promulgating rules.

(1) We assign each agency to a title identified by an Arabic number and subject category, e.g., Title 1. Administration.

(2) We assign each agency a Roman numeral part number to identify the agency within its title. The name of the part shall be the agency's name, e.g., Part IV. Office of the Secretary of State.

(3) We assign a chapter range designated with Arabic numbers to each agency. Within that range, organize and name the chapters according to subject matter, e.g., Chapter 91. Texas Register.

(4) You may subdivide a chapter into subchapters identified by capital letters. Name subchapters according to subject matter, e.g., Subchapter A. Administrative.

(5) You may subdivide a subchapter into divisions identified by Arabic numbers. Name subdivisions according to subject matter, e.g., Division 1. General.

(6) Do not indicate chapters, subchapters, divisions, rule numbers, and/or parts of a rule as reserved for future use.

*§91.19. Numbering Schemes.*

A rule number consists of the chapter number followed by a decimal point and the individual section number, e.g., §91.15. Neither the chapter number nor the section number may exceed four digits. Comply with paragraphs (1)-(4) of this section when you submit rules.

(1) The proposed and adopted version of a rule must have the same rule number.

(2) The number of a proposed rule which has been withdrawn may be used to identify another rule.

(3) The number of a repealed rule may be used to identify another rule.

(4) Do not amend rule numbers. To change a rule number, repeal and replace the rule.

*§91.21. Titles.*

Title all chapters, subchapters, divisions, and sections in accordance with the subject matter of the chapters, subchapters, divisions, and sections. In proposed rulemaking, show changes to titles with new and deleted language as required by §91.61 of this title (relating to Electronic Procedures for Filing Rules and Miscellaneous Documents).

*§91.23. Structure; Terminology.*

(a) Follow the structure and order outlined in paragraphs (1)-(7) of this subsection when subdividing a rule.

(1) The highest subdivision within a rule is a "subsection." You need not subdivide below this level.

(A) When there are two or more subsections, designate them with a lower-cased letter in parenthesis, e.g., (a), (b), etc.

(B) When there is only one subsection in a section, omit the "(a)." This is referred to as an "implied (a)."

(2) The rule subdivision below a subsection is called a "paragraph" and is designated by an Arabic number in parenthesis, e.g., (1), (2), etc.

(3) The rule subdivision below the paragraph is called a "subparagraph" and is designated by an upper-cased letter in parenthesis, e.g., (A), (B), etc.

(4) The rule subdivision below the subparagraph is called a "clause" and is designated by a lower-cased Roman numeral in parenthesis, e.g., (i), (ii), etc.

(5) The rule subdivision below the clause is called a "subclause" and is designated by an upper-cased Roman numeral in parenthesis, e.g., (I), (II), etc.

(6) The rule subdivision below the subclause level is called an "item" and is designated by a lower-cased letter with a dash on both sides in parenthesis, e.g., (-a-), (-b-), etc.

(7) The rule subdivision below the item is called a "subitem" and is designated by an Arabic numeral with a dash on both sides in parenthesis, e.g., (-1-), (-2-), etc.

(b) When subdividing a rule, follow a parallel outline format, i.e., no (a) without (b), no (1) without (2), etc., with the exception of the implied (a) described in subsection (a)(1)(B) of this section.

(c) When amending an existing rule, you must account for all existing language. Within the rule structure, put new language before obsolete language. Use the codes as described in §91.61(c)(5), (6), and (9) of this title (relating to Electronic Procedures for Filing Rules and Miscellaneous Documents).



Figure: 1 TAC 91.23(c)

(d) When you amend a subdivision within a rule, follow the "No change" policy outlined in paragraphs (1)-(3) of this subsection.

(1) When you amend only part of an existing rule, we print only the text of the affected subdivisions. Same-level subdivisions are labeled (No change.)

Figure: 1 TAC 91.23(d)(1)

(2) When you amend a subdivision of a rule below the subsection level, show the text of all the higher-level subdivisions which contain the amended subdivision.

Figure: 1 TAC 91.23(d)(2)

(3) When you renumber a subdivision that contains lower-level subdivisions, show the language contained in the lower-level subdivisions for clarification.

Figure: 1 TAC 91.23(d)(3)

(e) Do not reserve subdivisions within a rule for future expansion.

(f) Follow any reference to another section or chapter in the same title with the phrase "of this title (relating to...)" with the title of the section or chapter inserted in the parenthesis. Follow a reference to a different subchapter in the same chapter with the phrase "of this chapter (relating to...)" with the title of the subchapter inserted in the parenthesis. It is not necessary to reference the same section, subchapter, or chapter name twice within a rule.

(g) Cite any reference to a rule in another title with the title and section number(s) in accordance with §91.25(b) of this title (relating to Form of Citation). For example: 1 TAC §91.21.

§91.29. *Serialization of Documents To Be Published.*

If necessary, we will serialize documents submitted for publication. We publish serialized documents in consecutive regular issues. The earliest possible date of adoption for a proposal is determined by the issue date in which the serialization begins.

§91.31. *Correction of Error.*

(a) Notify us in writing if the Texas Register publishes your agency's submission with an error or omission.

(b) Include the following information in the notification:

(1) the name of the agency;

(2) the date of the issue and the specific section of the *Texas Register* in which the error occurred (i.e., In Addition, Proposed Rules, etc.); and

(3) the nature of the error, and whether it was made by the Texas Register or by the submitting agency.

(c) We publish the corrections of errors in the "In Addition" section of the *Texas Register*.

(d) We will not accept a correction that conflicts with the text on file with the Secretary of State after the effective date of a rule.

(e) Except as provided in subsection (d) of this section, we will publish a correction in the next available issue of the *Texas Register*. If the Texas Register inadvertently omits a proposed rule from an issue, the 30-day notice period will not begin until the rule is actually published. Otherwise, determination of adequate notice is an agency's responsibility.

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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Clark Ervin

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## Subchapter B. Electronic Filing Procedures

### 1 TAC §§91.61, 91.63, 91.65, 91.67, 91.69, 91.71, 91.73, 91.75, 91.77

The new sections are adopted under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the Secretary of State with the authority to promulgate rules consistent with the code.

The new sections do not affect other statutes, articles, or codes.

§91.61. *Electronic Procedures for Filing Rules and Miscellaneous Documents.*

(a) Submit documents in electronic format using one of the following methods: file transfer protocol (FTP), e-mail, or 3-1/2 inch diskettes. Submit files in the American Standard Code for Information Interchange (ASCII) format. ASCII means standard keyboard characters limited to those represented by a decimal 32 (a space) to a decimal 126 (a tilde). Characters above 127 (extended characters) are not acceptable without our permission. Name files using the date (month and date only) of the submission followed by a decimal point and the agency code assigned by the Texas Register. If you submit more than one file on the same day, insert a letter in sequence after the date and before the decimal point. For example: 0715.004 indicates that this file was sent on July 15 by the Office of the Secretary of State; 0715a.004 and 0715b.004 indicate a second and third file were sent on the same day. You may submit more than one document in an electronic file except that rules and miscellaneous documents must be submitted as separate files. If you include multiple submissions in an electronic file, insert the code \*n (as defined in subsection (c)(10) of this section) between each submission. Include all appropriate language as required by §91.67 of this title (relating to Rule Submission Preambles) with each rule submission in the file.

(b) All text in an electronic file must be flush left. Do not use tabs or indentations in the file. The preamble introduction statement is the first line of text in the file. Do not use extraneous header information in the file, i.e., title, part, chapter, etc. The submission form contains the necessary agency information. Use a hard return after each paragraph.

(c) Enclose codes in <> brackets to designate new language, new paragraphs, italics, section symbols, and other formatting commands. The codes are as follows.

(1) <new> – This code is placed before the rule number of each new rule. This code is not used in an amended rule.

(2) <\*> – This code is used in place of the section symbol.

(3) <p> – This code indicates a new paragraph. The new paragraph indicator is used in the text of miscellaneous documents and in rule preambles.

(4) <eti> – This code indicates italics in the preamble and text of a rule or in a miscellaneous submission.

(5) <etb> – This code indicates boldface type within miscellaneous documents and new language within proposed rule amendments. Within a rule subdivision, place the <etb> code before new language and the <et> code after new language. Every <etb> code in a subdivision must have a closing <et> code in the same subdivision.

(6) <et> – This code indicates a return to regular typeface or the end of new language.

(7) <sup> – This code indicates a superscript and is inserted before the superscripted letter, word, or number. Insert </sup> after the superscripted letter, word, or number.

(8) <sub> – This code indicates a subscript and is inserted before the subscripted letter, word, or number. Insert </sub> after the subscripted letter, word, or number.

(9) [ ] – Brackets indicate deleted language in proposed amendments. Use brackets only with complete words or acronyms. Do not bracket out part of a word. Every opening bracket in a subdivision must have a closing bracket in the same subdivision.

(10) \*n – This code indicates the end of a submission within a file comprised of multiple submissions. A submission consists of either the complete text of a miscellaneous document or a rulemaking document (preamble plus rule or rules).

(d) After you use FTP to submit a document, fax the appropriate submission form as specified in §91.63 of this title (relating to Submission Forms).

(e) After you transmit a file through e-mail, fax the appropriate submission form as specified in §91.63 of this title.

(f) When you submit documents on diskette, format the diskette using DOS 3.1 or a newer version of the operating system. We accept high-density formatted diskettes. Diskettes must contain only the files being submitted for one particular publication in the *Texas Register*. We will reject diskettes containing files not related to the submission. We do not return diskettes to the issuing agency. You may request a diskette in exchange for the submitted diskette or periodically retrieve your diskettes. Attach a label to the diskette identifying the submitting agency and the file name used on the submission. Deliver or mail the diskette with the appropriate submission form(s) attached.

(g) We may postpone publication of documents submitted on paper.

(h) Label graphic material as specified in §91.77 of this title (relating to Graphic Material) and deliver it to the Texas Register by the deadline. Do not fax graphic material.

(i) If we are unable to access a file, if the file does not match the submission form, if an error occurred in the creation of the ASCII file, or if the file is not coded correctly in accordance with subsection (c)(1)-(10) of this section, we will contact the liaison promptly. If time permits us to process the document without delaying production of the issue, we will ask the liaison to resubmit the file. If there is not sufficient time, we will hold the submission for the next issue.

§91.63. *Submission Forms.*

(a) One typed submission form certified and signed by the agency liaison and certifying official accompanies each document submitted to the Texas Register. The document types and corresponding forms are listed in paragraphs (1)-(5) of this subsection:

(1) TR-2–rule submissions;

(2) TR-3–open meeting submissions;

(3) TR-4–miscellaneous submissions;

(4) TR-5–Governor, Attorney General, Secretary of State, Texas Ethics Commission, and Department of Banking submissions; and

(5) TR-6–notification pursuant to the Insurance Code, Chapter 5, Subchapter L.

(b) Deliver submission forms to the Register by one of the following methods.

(1) If you transmit a rule or miscellaneous document electronically, fax the submission form(s) immediately after successful transmission of the document.

(2) If you submit a document on diskette, either deliver or mail the submission form(s) with the diskette attached.

(c) We will notify agencies within two days of the filing deadline to acknowledge the receipt of submission forms.

(d) List on the submission form the file name and means of transmission, i.e., diskette, internet, modem, or e-mail. See §91.61 of this title (relating to Electronic Procedures for Filing Rules and Miscellaneous Documents).

(e) You may reproduce all Texas Register submission forms from blank sample copies or electronic Word files provided by the Texas Register. You may duplicate the forms using your own software.

(f) Do not alter the format of Texas Register submission forms listed in subsection (a) of this section without permission from the director of the Register.

§91.65. *Procedures for Filing Rules.*

(a) Proposed rules. The APA requires an agency to propose rules at least 30 days prior to adoption. When proposing rules, comply with the following procedures.

(1) Notice of a proposed action follows rulemaking procedures as specified in §91.61 and §91.67 of this title (relating to Electronic Procedures for Filing Rules and Miscellaneous Documents and Rule Submission Preambles).

(2) Propose only one version of a new rule.

(3) A rule will have only one pending amendment at a time with the exception of rules containing only definitions.

(b) Adopted rules. The APA states that a rule takes effect 20 days after the date on which it is filed in the Office of the Secretary of State unless a later date is required by statute, specified in the rule, or required by federal mandate. When adopting rules, comply with the following procedures.

(1) Notice of an adopted action follows rulemaking procedures as specified in §91.61 and §91.67 of this title.

(2) When filing a rule adoption, incorporate any formatting changes made by the Texas Register staff to the proposal as published. If you submit the final version of the rules without accounting for these changes, we will reject the submission.

(3) If you submit the final version of the adopted rules without eliminating old and new language coding, we will reject the submission.

(4) Submit the text of new and amended rules even when they are adopted without changes and will not be republished in the *Texas Register*.

(5) The proposed and adopted version of a rule must have the same rule number.

(6) Do not withdraw an adopted rule.

(c) Withdrawn rules. When withdrawing rules, comply with the following procedures.

(1) Withdrawal of proposed rules.

(A) You may withdraw a proposed rule action prior to its adoption or before the effective date of the automatic withdrawal (see paragraph (2) of this subsection) by submitting a submission form in accordance with §91.63 of this title (relating to Submission Forms).

(B) The withdrawal takes effect immediately upon filing or on a stated date not later than 20 days after filing. The effective date may not be before the date of filing.

(C) You may take no further action on a proposal which you have withdrawn; however, this does not preclude a new proposal of an identical or similar rule following rulemaking procedures for proposed rules as specified in subsection (a) of this section.

(2) Automatic withdrawals.

(A) We automatically withdraw a proposed rule six months after the date of publication in the *Texas Register* if the agency neither adopts nor withdraws it.

(B) We publish the notice of the automatic withdrawal. The effective date of the automatic withdrawal is the day after the last day of the six-month period.

(C) You may take no further action on the proposal after the expiration of the six-month period; however, this does not preclude a new proposal of an identical or similar rule following rulemaking procedures for proposed rules as specified in subsection (a) of this section.

(d) Emergency rules.

(1) Under the APA, §2001.034, you may promulgate emergency rulemaking action on less than 30 days' notice.

(2) Notice of adoption of emergency action follows rulemaking procedures as specified in §91.61 and §91.67 of this title.

(3) Emergency rulemaking action does not preclude proposed and final rulemaking action in accordance with the Government Code, Chapters 2001 and 2002.

(4) Emergency action becomes effective immediately upon filing or on a stated date less than 20 days after filing. The effective date cannot be earlier than the filing date. The APA limits the effectiveness of emergency action to 120 days, renewable for no more than 60 days, for a maximum of 180 days. Calculate the period of effectiveness by counting the effective date as day one. File the renewal notice during the last 20 days of the original period of effectiveness. You may not renew the effective period after the expiration date. The expiration date is the day after the final full calendar day in the count.

(5) After the original filing of an emergency rule, emergency amendments may be made to the original action as many times as needed during the 180-day period of effectiveness (120 days original period of effectiveness plus 60 days renewal of effectiveness). All such amendments expire on the original expiration date. Do not withdraw an emergency rule and file it a second time in order to extend the 180-day effective period.

(e) Multiple rule filing. You may file more than one rule number in a submission, if the rules share the same chapter and, if applicable, the same subchapter or division. Do not submit repeals on a submission form containing new or amended rules.

(f) Invalid rules. You must formally revise or repeal rules rendered invalid by legislation, constitutional amendment, or court decision in accordance with rulemaking procedures in this chapter.

(g) Rule transfers. If legislation transfers rulemaking authority from one agency to another, the transferring and/or receiving agency requests that we administratively transfer the affected rules. The agency should send a written request to the director of the Texas Register. The written request will cite the legislation that requires this transfer and include a copy of the legislation, the effective date of the transfer, and a conversion chart containing the old and new chapters, subchapters (if applicable), and rule numbers affected by the transfer. We will notify the agencies of the transfer notice publication date.

#### §91.67. Rule Submission Preambles.

(a) A preamble is a narrative introduction to a rule submission containing the information cited in paragraphs (1)-(3) of this subsection.

(1) Proposed rule submissions include the information required by Texas Government Code, §2001.024.

(2) Adopted rule submissions include the information required by the Texas Government Code, §2001.033.

(3) Emergency rule submissions include the information required by the Texas Government Code, §2001.034.

(b) You may submit one preamble for all submissions which share the same chapter and fiscal impact note. The "common preamble" accompanies the submission with the lowest rule number. If a repeal and new rule submission have the same number, the common preamble accompanies the repeal. The common preamble addresses all the affected rules; however, each rule submission has its own statutory authority note.

#### §91.71. Notice of Texas Department of Insurance Filings under the Insurance Code, Article 5.96 and Article 5.97.

(a) Actions under the articles specified in this subsection are exempt from the requirements of APA and are subject to the requirements of the Insurance Code, Article 5.96 and Article 5.97, Chapter 5, Subchapter L.

(b) Emergency action under Article 5.96 and Article 5.97 may become effective immediately on filing or on a stated date less than 15 days after filing. The action cannot have an effective date earlier than the file date.

#### §91.73. Adoption by Reference (ABR).

(a) A document which is being adopted by reference follows the same requirements as other rule actions specified in §91.61 and §91.65 of this title (relating to Electronic Procedures for Filing Rules and Miscellaneous Documents and Procedures for Filing Rules); however, the actual text of the ABR material need not conform to the Texas Register format requirements and will not be published in

the *Texas Register* or TAC. You may adopt the following documents by reference:

- (1) federal statutes and regulations;
- (2) state statutes and regulations;
- (3) state plans, including those circulated under OMB Circular A-95 for review and comment; and
- (4) forms.

(b) The director of the Texas Register must approve ABR information not listed in subsection (a)(1)-(4) of this section before you adopt it by reference. To be eligible for ABR the information must be cumbersome, expensive, or otherwise inexpedient to include in the *Texas Register*.

(c) Give notice of intention to adopt by reference in the form of a numbered rule and, except for federal or state statutes or regulations, note the revision date of the ABR document. Except for rules adopting federal or state statutes or regulations, amend the rule to adopt a newer version of the ABR document.

(d) Agencies are responsible for maintaining and distributing to interested parties all versions of the ABR. We are responsible only for maintaining the most current version of ABR material for public inspection purposes.

*§91.75. Procedures for Filing a Federally Mandated Document.*

(a) If you are required by federal mandate to implement a rule by a certain date, the rule is effective on the prescribed date.

(b) If time allows, follow all format and content requirements for proposed rules as specified in §91.65(a) of this title (relating to Procedures for Filing Rules).

(c) If federal law or rule specifies a date that does not allow time for notice of proposed action, follow all format and content requirements in the notice of adopted action as specified in §91.65(b) of this title.

(d) The preamble will state the legal authority for which the rule is proposed or adopted pursuant to federal requirements.

*§91.77. Graphic Material.*

(a) Graphic material accompanying a rule appears in the Tables and Graphics section of the *Texas Register*. Label each graphic with a reference code comprised of the word Figure, the TAC citation, and the level of the rule that references the material. Example: "Figure: 34 TAC Section 3.334(a)(1)." The rule text must reference the same label at the appropriate level.

(b) Explain in the preamble changes made to amended graphic material. Do not use the <etb>, [ ], <new>, or <\*> codes in graphic material. If a table or graphic attached to an amended subdivision is not amended or deleted, you may mark it as (No change.), e.g., "Figure: 34 TAC Section 3.334(a)(1) (No change.)"

(c) Label a table or graphic within a preamble with the word "Figure," TAC citation, and the word "preamble." Example: "Figure: 34 TAC Chapter 3—preamble."

(d) Do not refer to the Tables and Graphics section of the *Texas Register* in rule text. Place all table citations at the end of the appropriate subdivision and not within the text of the subdivision. The figure label should not be the only text in a subdivision.

(e) Provide a new or amended table or graphic with an adopted rule submission, whether or not the rule is being republished. You may be required to provide a complete table or graphic for publication in the *Texas Administrative 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.

Filed with the Office of the Secretary of State on January 28, 1998.

TRD-9801230

Clark Ervin

Assistant Secretary of State

Office of the Secretary of State

Effective date: February 17, 1998

Proposal publication date: July 29, 1997

For further information, please call: (512) 463-5561



## Part V. General Services Commission

### Chapter 111. Executive Administration Division

#### Memorandum of Understanding Between the Texas Department of Economic Development and the General Services Commission

##### 1 TAC §111.25

The General Services Commission adopts new section §111.25, a memorandum of understanding (MOU) between the General Services Commission and the Texas Department of Economic Development (the "TDED") concerning cooperation in program planning, budgeting relating to procurement information, and certification and technical assistance to small and historically underutilized businesses. The new section is adopted without changes to the proposed text as published in the December 19, 1997, issue of the *Texas Register* (22 TexReg 12361).

The new section allows for enactment of the Texas Government Code, Section 481.028 (Vernon 1998).

The MOU will enhance opportunities, education, and knowledge of Historically Underutilized Businesses.

No comments were received regarding the adoption of new section.

The new section is adopted under the Texas Government Code, §481.028 and the Texas Government Code, Title 10, Subtitle D, Section 2161, which provides the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of that Chapter.

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

Filed with the Office of the Secretary of State on January 26, 1998.

TRD-9801179

Judy Ponder

General Counsel

General Services Commission

Effective date: February 15, 1998

Proposal publication date: December 19, 1997

For further information, please call: (512) 463-3960



## Chapter 115. Building and Property Services Division

### Space Allocation

#### 1 TAC §115.50

The General Services Commission adopts an amendment to §115.50, concerning space allocation and the 153 square feet usable office space rule, without changes to the proposed text as published in the December 19, 1997, issue of the *Texas Register* (22 TexReg 12362).

The amendment is being adopted to correct the old statutory cite for the State Purchasing and General Services Act referenced in subsection 115.50(a) to its current location under the Texas Government Code, Title 10, Subtitle D; and adds new language under subsection 115.50(g) concerning exemptions and/or exclusions to the 153 square feet rule.

The amendments enable the commission to efficiently allocate facilities to state agencies for an emergency lease, negotiated lease with a political subdivision, and a negotiated lease in the absence of competition.

No comments were received regarding the adoption of amendment.

The amendment is adopted under the Texas Government Code, Title 10, Subtitle D., Chapter 2165, §2165.108, which provides the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of that Chapter.

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

Filed with the Office of the Secretary of State on January 26, 1998.

TRD-9801173

Judy Ponder

General Counsel

General Services Commission

Effective date: February 15, 1998

Proposal publication date: December 19, 1997

For further information, please call: (512) 463-3960



## Part X. Texas Department of Information Resources

### Chapter 201. Planning and Management of Information Resources Technologies

#### Subchapter

#### 1 TAC §201.2

The Department of Information Resources adopts new §201.2, concerning complaints, without changes to the proposed text as published in the October 31, 1997 issue of the *Texas Register* (22 TexReg 10593).

The new section requires the department to notify consumers and service recipients of the name, mailing address, and

telephone number of an identified employee of the department for the purpose of directing complaints to the department.

The department received no comments regarding the proposed new section.

The new section is proposed in accordance with Texas Government Code §2054.035(c), which requires the board of the department by rule to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department.

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

Filed with the Office of the Secretary of State on January 27, 1998.

TRD-9801201

C. J. Brandt, Jr.

General Counsel

Texas Department of Information Resources

Effective date: February 16, 1998

Proposal publication date: October 31, 1997

For further information, please call: (512) 475-2153



#### 1 TAC §201.13

The Department of Information Resources adopts an amendment to §201.13, concerning information resources standards, with changes to the proposed text as published in the September 12, 1997, issue of the *Texas Register* (22 TexReg 9196).

The effect of the amendment is to require state agencies to adhere to building wiring standards when wiring or re-wiring state-owned or state-leased space.

The department received one comment regarding the proposed rule. The commenter suggested that the language in subparagraph (f)(2)(A)(i) of the proposed subsection should be deleted. This language had been derived from a recommendation issued by the department in 1993 and would have prohibited the use of an optional eight-position jack pin/pair assignment under a particular specified wiring standard. However, the commenter pointed out that the optional pin/pair assignment is now commonly in use. Because common industry wiring practice has evolved since the initial publication of the wiring recommendation in 1993, the department agrees with the comment and has deleted the language in question.

Names of those making comments for and against the section:

For: the University of Texas at Austin.

Against: None.

The amendment is adopted pursuant to the provisions of Texas Government Code, §2054.051(b), which requires the department to develop and publish standards relating to information resource management by state agencies, and Texas Government Code, §2054.052(a), which permits the department to adopt rules as necessary to implement its responsibilities. The amendment is also adopted in accordance with the provisions of House Bill 1, 75th Legislature, Article IX, §171.

§201.13. *Information Resource Standards.*

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

(f) Communications Wiring Standards for State Facilities.

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

(A) ANSI— the American National Standards Institute.

(B) EIA – the Electronics Industry Association.

(C) TIA – the Telecommunications Industry Association.

(2) All state agencies will adhere to the following standards when wiring or re-wiring state-owned or state-leased space:

(A) ANSI/EIA/TIA-568-1995, Commercial Building Telecommunications Wiring Standard or its most recent successor document. This applies to the telecommunications wiring for buildings that are office-oriented and when ANSI/EIA/TIA-570-1991 is not selected. The term "commercial enterprises" is used in ANSI/EIA/TIA-568-1991 to differentiate between office buildings and buildings designed for industrial enterprises. ST-type fiber connectors shall be used for fiber optic terminations.

(B) ANSI/EIA/TIA-570-1991, Residential and Light Commercial Building Telecommunications Wiring Standard or its most recent successor document, when planning and designing premises-wiring systems intended for connecting one to four exchange access lines to various types of customer-premises equipment when ANSI/EIA/TIA-568-1991 is not selected.

(C) ANSI/EIA/TIA-569-1990, Commercial Building Telecommunications Pathways and Spaces or its most recent successor document, when planning and designing state-owned and state-leased space to accommodate telecommunications system wiring.

(D) ANSI/EIA/TIA-606-1993, Administration Standard for the Telecommunications Infrastructure of Commercial Buildings or its most recent successor document, when documenting and administering telecommunications infrastructures in state-owned and state-leased space.

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

Filed with the Office of the Secretary of State on January 27, 1998.

TRD-9801199

C. J. Brandt, Jr.

General Counsel

Texas Department of Information Resources

Effective date: February 16, 1998

Proposal publication date: September 12, 1997

For further information, please call: (512) 475-2153

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**1 TAC §201.16**

The Department of Information Resources adopts new §201.16, concerning minimum standards for meetings held by videoconference call, without changes to the proposed text as published in the November 7, 1997 issue of the *Texas Register* (22 TexReg 10870).

The new section requires governmental bodies to adhere to certain technical and operational standards when holding an open or closed meeting by videoconference call.

The department received no comments regarding the proposed new section.

The section is adopted in accordance with Texas Government Code §551.126(h), which requires the department by rule to specify minimum standards for audio and video signals at a meeting held by videoconference call.

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

Filed with the Office of the Secretary of State on January 27, 1998.

TRD-9801202

C. J. Brandt, Jr.

General Counsel

Texas Department of Information Resources

Effective date: February 16, 1998

Proposal publication date: November 7, 1997

For further information, please call: (512) 475-2153

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**TITLE 7. BANKING AND SECURITIES**

**Part VI. Credit Union Department**

**Chapter 91. Chartering, Operations, Mergers, Liquidations**

**Loans**

**7 TAC §91.705**

The Texas Credit Union Commission adopts an amendment to §91.705, concerning loans to credit union officials, with changes to the proposed text as published in the October 31, 1997 issue of the *Texas Register* (22 TexReg 10594). No substantive change was made as proposed.

The amendment will increase the dollar amount of secured credit a credit union may extend to any one official without seeking prior approval from the board of directors, and will set a limit on the aggregate amount of loans to credit union officials as a whole that a credit union may have outstanding at any one time. Increasing the secured credit dollar threshold is warranted given current economic conditions and the higher price of automobiles and other tangible goods in today's market place. Instituting an aggregate limit for loans to officials will ensure that a credit union has the ability to meet its other members' lending needs. The amendment also allows the credit union to apply to the commissioner for a waiver from the aggregate limit, and establishes reporting requirements.

Comments generally in support of the amendment were received from the Texas Credit Union League and Dallas Teachers Credit Union. One comment received indicated that additional wording is needed to clarify the commission's intention of having the 20% aggregate limit apply to all loans made to all credit union officials and senior executive staff, along with loans made to those persons' immediate family members. Therefore, the commission added the word "all" to subsection (d) after the words "guaranteed by", made plural the preceding nouns, and changed the wording "any such individual" to "all such individuals."

Another comment made relates to the commission requiring that the report described in subsection (e) include a statement regarding compliance with loan policies for each loan made under this rule. The commenting party believes the use of such boilerplate language will cause the requirement to lose its usefulness. Furthermore, as the board is responsible for developing loan policies in the first place, board members should know whether a reported transaction is compliant. Therefore, placing such a statement in the report could be perceived as encouraging less diligence on the board's part. The commission, however, disagrees with this comment. Because directors and senior executive staff have a responsibility to ensure that a credit union operates in a safe and sound manner and practices are in compliance with board and internal policies, it is imperative that loans made to those individuals withstand scrutiny. Unless a loan is in excess of the amounts contained in the rule, the board is merely being notified of the loans made to credit union officials and senior executive staff. The statement of compliance, therefore, will provide the board with a greater degree of comfort that those loans are above reproach, as well as make the board aware of any loans to officials that are out of policy compliance. Also in regard to subsection (e), a comment was made that it would be more appropriate to identify the type of collateral taken on the loan rather than the purpose of the loan as currently required for the report described in subsection (e). The commission believes that identification of the collateral type will allow the credit union to identify the loans that would require approval by the board prior to the loan being made, which was the original intent of requiring the purpose to be stated. The commission has reflected this recommendation in the final rule.

The amendment is adopted under the provisions of the Texas Finance Code, §124.201 and §124.202, which provide the Credit Union Commission with the authority to establish, by rule, lending conditions and limits for loans to directors, employees, and credit committee members.

The specific section affected by this amendment is Texas Finance Code, §124.202.

*§91.705. Loans to Officials.*

(a) The rates, terms, conditions, and availability of any loan or extension of credit made to, or endorsed or guaranteed by, a director, employee, loan officer, credit manager, members of the credit committee or an immediate family member of any such individual shall not be more favorable than the rates, terms, conditions, and availability of comparable loans or credit to other credit union members.

(b) Before making a loan, extending credit, or becoming contractually liable to make a loan or extend credit to a director, employee, loan officer, credit manager, members of the credit committee or members of their immediate families, the board of directors must approve the transaction if the loan or the extension of credit or aggregate of outstanding loans or extensions of credit to any one person, the person's business interests, and members of the person's immediate family is greater than \$25,000 if unsecured credit or \$75,000 if secured credit, plus pledged shares and deposits. A loan secured by a lien on improved residential real estate which is the homestead and is actually occupied by the borrower shall not be subject to, or included in the aggregate amounts included in this section.

(c) For purposes of this section, the term immediate family member includes a spouse or other family member living in the same household.

(d) The aggregate of all outstanding loans or extensions of credit made to, or endorsed or guaranteed by all directors, committee members, senior executive staff, and immediate family members of all such individuals shall not exceed 20% of the credit union's total assets. The requirements described in this subsection shall apply unless waived in writing by the commissioner for good cause shown.

(e) The president shall make a report to the board of directors on all loans approved since the previous board meeting for any director, committee member, senior executive staff or immediate family members of such individual. The report shall consist of at least the official's loan number, the amount of the loan, the type of collateral securing the loan, if applicable, the aggregate amount of indebtedness to the credit union, and a statement regarding compliance with loan policies. The board of directors must review this loan approval report at each regular monthly board meeting.

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

Filed with the Office of the Secretary of State on January 28, 1998.

TRD-9801289

Harold E. Feeney

Commissioner

Credit Union Department

Effective date: February 17, 1998

Proposal publication date: October 31, 1997

For further information, please call: (512) 837-9236

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**Chapter 97. Commission Policies and Administrative Rules**

**General Provisions**

**7 TAC §97.103**

The Texas Credit Union Commission adopts new §97.103, concerning recusal and disqualification of commission members, with changes to the proposed text published in the October 31, 1997, issue of the *Texas Register* (22 TexReg 10595).

Adoption of the rule is necessary to comply with new statutory requirements enacted by the passage of Senate Bill 358, effective September 1, 1997, 75th Legislature, Chapter 338, 1997 Texas Session Law (to be codified at Texas Finance Code Annotated, §15.208), which requires the Commission to adopt rules for recusal by its members. The new rule requires a member who has a personal or private interest in a matter to disqualify him- or herself from any participation in the decision.

Comments generally supporting adoption of the rule were received from the Texas Credit Union League and from Dallas Teachers Credit Union. One comment related to the fact that there are two basic conflict of interest provisions in the Texas Finance Code for commission members, and the proposed rule does not make a distinction between them. One provision states that no commission member may act on matters under consideration which directly affect any credit union of which the member of the commission is an officer, director, or member. The second provision requires recusal of members who have a personal or private interest in a measure, proposal, or decision pending before the commission. In response, the commission has expanded subsection (a) to address both provisions. Even if

the law might not expressly prohibit a member from participating in the discussion of a matter directly affecting a credit union with which the member is affiliated, participation in the discussion would allow the commission member to advocate a position which is basically what a vote entails. Therefore, the proposed rule precludes a member from both discussing and voting on such matters.

Another comment recommended deletion of the portion of the text in subsection (b) that states the term "personal or private interest" includes a direct personal or financial interest in a credit union which is the subject of commission action. The commenting party opines that, as written, a member having a small dollar balance in a credit union's share account would potentially need to recuse him- or herself from any discussion relating to that credit union specifically or to all credit unions in general. Should the commission not make the recommended change, the commenting party suggests language should be added to further define the term "personal or financial interest." In response, the commission believes that a change to proposed subsection (b) is not necessary. The proposed rule references Section 572.058 of the Texas Government Code in defining what constitutes a "personal or private interest." The definition in that citation excludes an individual engaged in a profession, trade, or occupation from having a personal or private interest in a matter if the individual's interest is the same as all others similarly engaged in the profession, trade, or occupation. Therefore, a commission member whose interest in a matter before the commission is the same as that of other credit union members would not be considered to have a personal or private interest for the purposes of this rule. Furthermore, since the commission members must adhere to the provisions of Texas Government Code and have the benefit of any case law precedents related thereto, any additions to the proposed rule would be redundant.

Both parties commented that a commission member could potentially have an personal or private interest in a matter before the commission that is not credit union related, and that it may be appropriate to address such a circumstance in subsection (b). In response, the Commission has added language to subsection (b) to include a direct personal or financial interest in other matters subject to commission action.

The new section is adopted under Texas Finance Code, §15.402, which provides the Credit Union Commission with the authority to adopt reasonable rules; and under Section 9 of Senate Bill 358, effective September 1, 1997, 75th Legislature, Chapter 338, 1997 Texas Session Law (codified at Texas Finance Code Annotated, §15.208), which requires the Commission to adopt rules for recusal by its members.

*§97.103. Recusal Or Disqualification Of Commission Members.*

(a) A commission member may not vote on or otherwise participate in the deliberation or decision of a matter pending before the commission:

- (1) in which the commission member has a personal or private interest; or
- (2) which directly affects the credit union of which the commission member is an officer, director, or member.

(b) The term "personal or private interest" shall be given the meaning as prescribed in Texas Government Code, §572.058, and includes a direct personal or financial interest in a credit union or other matter which is the subject of commission action.

(c) A commission member who is disqualified under subsection (a) of this section shall publicly disclose the fact to the commission in a meeting called and held in compliance with the Open Meetings Act, Texas Government Code, Chapter 551. The disclosure shall be entered in the minutes of the meeting.

(d) A commission member who is recused or disqualified will be counted in determining a quorum.

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

Filed with the Office of the Secretary of State on January 28, 1998.

TRD-9801292

Harold E. Feeney

Commissioner

Credit Union Department

Effective date: February 17, 1998

Proposal publication date: October 31, 1997

For further information, please call: (512) 837-9236

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**7 TAC §97.106**

The Texas Credit Union Commission adopts new §97.106, concerning the methods by which members of credit unions are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department, with only a minor, nonsubstantive change from the proposed text published in the October 31, 1997, issue of the *Texas Register* (22 TexReg 10596).

Adoption of the rule is necessary to comply with new statutory requirements enacted by the passage of Senate Bill 358, effective September 1, 1997, 75th Legislature, Chapter 338, 1997 Texas Session Law (to be codified at Texas Finance Code Annotated, §15.409), which requires the commission to adopt rules governing the methods by which credit union members will be notified that they may file complaints with the department. The commission selected the method of providing notification through signage in the place of business of each credit union regulated by the department.

Comments in support of the adoption of the rule were received from the Texas Credit Union League and from Dallas Teachers Credit Union. Dallas Teachers Credit Union recommended a minor technical change in the form of deleting the word "conspicuously" from subsection (a), based on the belief that the word is unnecessary given the requirements set forth in subsection (b). As a result of this comment, the Commission has omitted the word "conspicuously" from subsection (a).

The new section is adopted under Texas Finance Code, §15.402, which provides the Credit Union Commission with the authority to adopt reasonable rules; and under Section 13 of Senate Bill 358, effective September 1, 1997, 75th Legislature, Chapter 338, 1997 Texas Session Law (to be codified at Texas Finance Code Annotated, §15.409), which requires the Commission to adopt rules governing the methods by which credit union members will be notified that they may file complaints with the department.

*§97.106. Complaint Notice.*

(a) Every credit union shall post, in its principal place of business and all other offices and service facilities, a public notice



which provides the name, address, and telephone number of the department. The notice shall further inform members that complaints to the department may be directed to that address or telephone number.

(b) The notice shall be printed in at least 14-point type or larger, and shall be clearly visible in a public entrance or lobby area. The commissioner shall prescribe the design and content of the notice to be used for this purpose.

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

Filed with the Office of the Secretary of State on January 28, 1998.

TRD-9801293

Harold E. Feeney

Commissioner

Credit Union Department

Effective date: February 17, 1998

Proposal publication date: October 31, 1997

For further information, please call: (512) 837-9236

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## TITLE 16. ECONOMIC REGULATION

### Part IV. Texas Department of Licensing and Regulation

#### Chapter 70. Industrialized Housing and Buildings

##### 16 TAC §§70.20, 70.22, 70.23, 70.50, 70.60, 70.61, 70.70, 70.71, 70.75, 70.80

The Texas Department of Licensing and Regulation adopts amendments to §§70.20, 70.22, 70.23, 70.50, 70.60, 70.61, 70.70, 70.71, 70.75 and 70.80 concerning industrialized housing and buildings. Sections 70.20, 70.50, 70.71 and 70.80 are adopted with changes to the proposed text as published in the September 19, 1997, issue of the *Texas Register* (22 TexReg 9405). Sections 70.22, 70.23, 70.60, 70.61, 70.70 and 70.75 are adopted without changes and will not be republished.

The amendment in §70.20 broadens the scope of the installation permit as recommended by the Texas Industrialized Building Code Council. The amendments to §70.22 and §70.23 will permit the acceptance of the Building Officials and Code Administrators International, Inc. (BOCA) certifications as well as the International Conference of Building Officials (ICBO) and the Southern Building Code Congress International (SBCCI) certifications.

The amendments to §70.50 clarify changes in reporting requirements due to the addition of the installation permit and the changes in §70.60 clarify that the Industrialized Building Code Council is responsible for establishing procedures for certification inspections.

The amendments to §70.61(a) clarify that third party inspection agencies and third party inspectors must conduct Texas IHB inspections in accordance with the procedures established by the Council. The changes in §70.61(c) clarify that manufacturers must designate in writing the third party inspection agency responsible for inspections in their facility.

The amendments in §70.70 eliminate the requirement that plans be submitted on 8-1/2 inch by 11 inch pages. The changes in §70.71 from what was proposed is to correct a typographical error and the changes in §70.75 revises permit/owner information requirements to include installation permit holders.

The changes in §70.80 (f), (g), (i) and (j) will permit travel costs to be reimbursed directly to contract providers. The amendments to §70.80(h) and (k) raise fees for decals and insignia, eliminate fees for alteration inspections, and add a fee for an installation permit.

The Department received a recommendation from the Texas Industrialized Building Code Council in favor of the proposed amendments with minor changes.

The amendments will function by increasing program integrity.

The amendments are adopted under Texas Revised Civil Statutes Annotated, article 5221f-1 (Vernon 1989) which provides the Texas Department of Licensing and Regulation the authority to promulgate and enforce a code of rules and take action necessary to assure compliance with the intent and purpose of the Act.

The Article that is affected by the amendment is Texas Revised Civil Statutes Annotated, article 5221f-1 (Vernon 1989).

#### §70.20. *Registration of Manufacturers and Industrialized Builders.*

Manufacturers and industrialized builders shall not engage in any business activity relating to the construction or location of industrialized housing or buildings without being registered with the department.

(1) An application for registration shall be submitted on a form supplied by the department, and shall contain such information as may be required by the department. The application must be verified under oath by the owner of a sole proprietorship, the managing partner of a partnership, or the chief executive or chief operating officer of a corporation. The application must be accompanied by the fee set forth in §70.70 of this title (relating to Commission Fees).

(2) A person who does not purchase industrialized housing or buildings from a manufacturer for sale or lease to the public may file for an installation permit in lieu of registering as an industrialized builder. A person who is not registered as an industrialized builder and who buys or leases industrialized housing or buildings from an industrialized builder and assumes responsibility for the installation of the unit or units shall apply for an installation permit. The application shall be submitted on a form supplied by the department and shall contain such information as may be required by the Department. A separate application must be submitted for each building containing industrialized housing and buildings modules or modular components. The application must be accompanied by the fee set forth in §70.80 of this title (relating to Commission Fees).

(3) The registration shall be valid for 12 months and must be renewed annually. Every corporate entity must be separately registered. Each separate manufacturing facility must be registered; a manufacturing facility is separate if it is not on property which is contiguous to a registered manufacturing facility. An industrialized builder must register each separate sales office but is not required to register each job location.

(4) A registered manufacturer or industrialized builder shall notify the department in writing within 10 days if:

- (A) the corporate or firm name is changed;
- (B) the main address of the registrant is changed;
- (C) there is a change in 25% or more of the ownership interest of the company within a 12-month period;
- (D) the location of any manufacturing facility is changed;
- (E) a new manufacturing facility is established; or
- (F) there are changes in principal officers of the firm.

(5) A manufacturer certified pursuant to §70.61 of this title (relating to Responsibilities of the Department - Plant Certification), whose registration expires shall have his certification revoked if the registration is not renewed within 30 day of the expiration date. A manufacturer whose certification has been revoked must undergo another certification inspection to reinstate the certification.

(6) An application for original registration or renewal may be rejected if any information contained on, or submitted with, the application is incorrect. The certificate of registration may be revoked or suspended or a penalty or fine may be imposed for any violation of the Act, violation of the rules and regulations in this chapter or administrative orders of the department, or violations of the instructions and determinations of the council in accordance with §70.90 of this title (relating to Sanctions - Administrative Sanctions/Penalties), and §70.91 of this title (relating to Revocation or Suspension because of a Criminal Conviction).

*§70.50. Manufacturer's and Builder's Monthly Reports.*

(a) The manufacturer shall submit a monthly report to the department, of all industrialized housing, buildings, modules, and modular components which were constructed and to which decals and insignia were applied during the month. The manufacturer shall keep a copy of the monthly report on file for a minimum of five years. The report must state the name and address of the industrialized builder to whom the structures, modules, or modular components were sold, consigned, or shipped. If any such units were produced and stored, the report must state the storage location. The report shall also contain:

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

(3) the registration number of the industrialized builder (as assigned by the department) to whom the units were sold, consigned, and shipped or the installation permit number issued by the Department;

(4)-(7) (No Change.)

(b) Each industrialized builder shall submit a monthly report to the department of all industrialized housing, buildings, modules, and modular components which were installed during the month. A copy of the report shall be kept on file by the industrialized builder for a minimum of five years. The report shall contain:

(1) (No change.)

(2) identification of the type of foundation system in accordance with the following:

(A) if the unit was installed within the corporate limits of a city, the name of the city responsible for the site inspection;

(B) if the unit was installed outside the corporate limits of a city and if the builder is not responsible for the installation and site work, then identification of the installation permit number

or builder registration number obtained from the Department by the person responsible;

(C) if the unit was installed outside the corporate limits of a city and if the builder is responsible for the installation and site work and the unit is installed on a permanent foundation system, identification of the Texas approved inspector that performed the site inspection; or

(D) if the unit was installed outside the corporate limits of a city and if the builder is responsible for the installation and the site work and the unit is installed on a temporary foundation system, then the builder shall provide a notarized statement certifying that the unit was installed on a temporary foundation system in compliance with the engineered plans and all applicable codes.

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

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

*§70.71. Responsibilities of the Registrants - Manufacturer's Data Plate.*

(a) The manufacturer will attach a data plate to each dwelling unit of a residential structure containing industrialized housing and buildings modules and to each appropriate unit of a commercial structure containing industrialized housing and buildings modules. The data plate must be made of a material that will not deteriorate over time and be permanently placed so that it cannot be removed without destruction. The data plate will be placed on or near the electrical distribution panel or in some other easily accessible location as designated in the approved design package.

(b) The data plate must contain, as a minimum, the following information:

(1) the manufacturer's name, registration number, and address;

(2) (No change.)

(3) the State decal numbers;

(4)-(11) (No change.)

(c) All modular components shall be marked with, or otherwise have permanently affixed, a data plate containing the following information:

(1) the manufacturer's name, registration number, and address;

(2) the serial or identification number of the component or components;

(3) the State insignia number or numbers;

(4) the name and date of applicable codes;

(5) the design loads for the component; and

(6) any special conditions of use for the component.

(d) The information required in subsection (c) of this section may be placed in the crate in which the component or components are shipped or on a tag attached to the crate or to the component if the component is such that the information may not be marked or permanently affixed to the component.

(e) Structures designated by the manufacturer as not being designed for placement on a permanent foundation shall have a manufacturer's seal permanently attached inside the door of the electrical panel or near the entrance door if the unit does not have an electrical panel. The seal shall not be smaller than 2 by 1 - 1/2 inches

and shall be constructed of a metallic alloy. The seal must contain the following capitalized statement: THIS STRUCTURE IS NOT DESIGNED FOR PLACEMENT ON A PERMANENT FOUNDATION AND DOES NOT MEET THE REQUIREMENTS OF TEXAS CIVIL STATUTES, ARTICLE 5221f-1, INDUSTRIALIZED HOUSING AND BUILDINGS.

§70.80. *Commission Fees.*

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

(f) The fee for department personnel for certification inspections at a manufacturing facility shall be \$40 per hour. Travel and per diem costs shall be reimbursed by the manufacturer in accordance with the current rate as established in the current Appropriations Act. The department shall present a billing statement to the manufacturer at the completion of the inspection that is payable upon receipt.

(g) When the department acts as a design review agency, the fee for such services is \$40 per hour. The manufacturer for whom the services are performed shall pay the fee before approval of the designs, plans, specifications, compliance control documents, and installation manuals and before the release of the documents to the manufacturer. Travel and per diem costs shall be reimbursed by the manufacturer in accordance with the current rate as established in the current Appropriations Act.

(h) The fees for issuing decals and insignia are:

(1) modules (decals): \$0.07 per square foot of floor area, with a minimum of \$25 for each decal; and

(2) modular component (insignia): \$0.02 per square foot of surface area with a minimum of \$0.60 for each insignia or \$0.07 per square foot of floor area with a minimum of \$15 for each insignia.

(i) The fee for department personnel for special inspections shall be \$40 per hour. A special inspection is any inspection for industrialized housing and buildings that is not covered by other fees. The Department will present a billing statement at the conclusion of the inspection that is payable upon receipt. Travel and per diem costs shall be reimbursed in accordance with the current rate as established in the current Appropriation Act.

(j) The fee for department monitoring of design review agencies and third party inspection agencies outside headquarters shall be \$40 per monitor hour. Travel and per diem costs shall be reimbursed in accordance with the current rate as established in the current Appropriations Act. The department will present the agency or manufacturer a statement at the conclusion of the monitoring trip, and it is payable upon receipt.

(k) The fee for an installation permit shall be \$75 for each building containing industrialized housing and buildings modules or modular components. A separate application must be submitted for each building containing industrialized housing and buildings modules or modular components.

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

Filed with the Office of the Secretary of State on February 2, 1998.

TRD-9801441

Tommy V. Smith

Executive Director

Texas Department of Licensing and Regulation

Effective date: March 16, 1998

Proposal publication date: September 19, 1997

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

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**TITLE 25. HEALTH SERVICES**

**Part VII. Texas Medical Disclosure Panel**

**Chapter 601. Informed Consent**

**25 TAC §§601.4, 601.6, 601.8**

The Texas Medical Disclosure Panel (panel), by majority vote of the panel on January 13, 1998, enters this order finally adopting amendments to §601.4 and §601.6, and adopting new §601.8, concerning informed consent with changes to text as published in the October 31, 1997, issue of the *Texas Register* (22 TexReg 10615). The proposed amendments and new section were published in the October 17, 1997, issue of the *Texas Register* (22 TexReg 10236) in error without the proposed disclosure and consent forms, and with the wrong certifying official. The proposal was republished correctly in the October 31, 1997.

Section 601.4 adopts the form to be used to inform a patient or person authorized to consent for the patient of the possible risks and hazards involved in the medical treatments and surgical procedures named on the form. The amendment to §601.4 adds language providing exceptions to using the general disclosure and consent form. The language addresses the exceptions to using the general disclosure and consent form for radiation therapy, electroconvulsive therapy, and the new exception, hysterectomy procedures. There are no changes to the disclosure and consent form for medical and surgical procedures. Section 601.4(a) is adopted with minor clarification changes.

Section 601.6 provides a history of rule actions. The amendment to §601.6 updates the history of rules changes, by including the rules adopted by the panel effective October 3, 1995, as stated in new subsection (g); the rules adopted by the panel effective October 23, 1997, as stated in new subsection (h); and these rules which were adopted by the panel on January 13, 1998, with an effective date of February 18, 1998, as stated in new subsection (i). Section 601.6 (g), (h), and (i) is adopted with minor clarification changes. The panel clarified language in subsection (i) to include the effective date of the adoption and to include the legislative directive that the section applies to hysterectomies performed at least 90 days following publication of the adopted section in the *Texas Register*.

New §601.8 establishes a new disclosure and consent form which shall be used by a physician or health care provider to inform a patient or person authorized to consent for the patient of the possible risks and hazards involved in performing a hysterectomy. The form was established in response to House Bill 723, which amended the Medical Liability and Insurance Improvement Act of Texas (Act), Texas Civil Statutes, Article 4590i, Subchapter F, by adding §6.08, which requires the panel to develop and prepare written materials to inform a patient or person authorized to consent for a patient of the possible risks and hazards of a hysterectomy. The form includes the information required by HB 723 and incorporates current language from the general disclosure and consent form to meet the requirements of §6.08(d) of the Act, which requires a physician or health care provider to obtain informed consent under both §6.05 and §6.08 of the Act from a patient or person authorized to consent for the patient before performing a

hysterectomy. The form also incorporates the risks associated with the use of blood and blood byproducts previously adopted by the panel. Sections 6.08(a)-(b) of the Medical Liability and Insurance Act required the panel to develop and prepare the materials to be available in English, Spanish, and any other language the panel considers appropriate. The panel determined that it was only appropriate to prepare the form in English and Spanish at this time. The English form is published as part of the rule. Both English and Spanish versions of the form will be available from the Texas Department of Health. In response to a comment received during the comment period, the panel has included a designation for hysterectomies performed using endoscopy/laparoscopy, together with the risks and hazards for same, to the consent form. The panel has also added clarifying language to specify that the form is required for hysterectomies performed at least 90 days after publication of the adopted section, and that the Spanish version is available from the Texas Department of Health.

The following is a summary of written comments received during the comment period ending December 1, 1997. All comments concern the disclosure and consent form for a hysterectomy in §601.8.

COMMENT: A commenter suggested that the language contained in the "NOTICE" portion of the form be changed to read, "Refusal to consent to a hysterectomy will not result in the withdrawal or withholding of any benefits provided by programs or projects receiving federal funds or state funds or otherwise affect your right to future care or treatment." The commenter also suggested changing the language in the third sentence of paragraph six of the consent form to read, "I understand that I have the right to seek a second opinion from a second physician if I so desire."

RESPONSE: The panel appreciates the comment but determined that the suggested changes would exceed the panel's statutory authority since the language in the proposed rule is mandated by House Bill 723. No change was made as a result of the comments.

COMMENT: A commenter stated that "Section 1 of House Bill 723, §§6.08(a)-(b) of the Medical Liability Insurance Act requires the panel to develop and prepare materials available in English, Spanish, and any other language the panel considers appropriate. While the proposed form includes the required statutory material in English, it does not provide the material in Spanish as required by §6.08(b). Also, the proposed rule does not specify if the panel considers any other language as appropriate." The commenter asked, since proposed §601.8 provided that, "the form shall be available in both English and Spanish," whether it is assumed that the panel has determined that no other language is appropriate at this time." The commenter further recommended that, since §2 of House Bill 723 states that the panel shall prescribe the form and content of the materials required to be distributed under §6.08, the panel should also publish the required form in Spanish.

RESPONSE: No comments were received suggesting that the form be made available in any other languages. The panel has determined that the form shall be available only in English and Spanish at this time. However, the provider must present the information in a manner understandable to the individual patient regardless of what languages the panel has deemed be made available pursuant to House Bill 723. In response to the commenter's recommendation that the panel publish the form in

Spanish, on advice of the Texas Department of Health's Office of General Counsel (OGC), House Bill 723 does not require the panel to publish the form in Spanish. Both the English and the Spanish version of the form will be provided by the Texas Department of Health. The OGC believes that this meets the intent of House Bill 723. No change was made as a result of the comments.

COMMENT: One commenter suggested that the panel include a Spanish version of the form for Spanish speaking patients as required by House Bill 723, and add a signature line for an interpreter to sign if the patient is in need of an interpreter to understand the consent form. The commenter further stated that by adding these components the form would meet the federal Medicaid requirement.

RESPONSE: The panel appreciates the comments and, as previously noted, is not publishing the form in Spanish. The Spanish version of the form will be available from the Texas Department of Health. In response to the commenter's other concern, providers are free to include additional documentation when an interpreter is used. No change was made as a result of the comments.

COMMENT: One commenter expressed concern, "that as a result of the new law it appears a facility may need three consents prior to performing a hysterectomy," referencing the new Texas Medical Disclosure Panel consent form, the consent form with National Heritage Insurance Corporation (NHIC) language, and the "routine facility consent form." The commenter wanted the panel to be aware of these factors when considering the implementation of the consent form. The commenter is in favor of streamlining the process.

RESPONSE: The panel appreciates the commenter's concern, however, the panel has promulgated the form required by House Bill 723. The form meets the requirements of §6.05 and §6.08, as set forth in House Bill 723. While the panel supports attempts to streamline the process of obtaining consent, it would exceed the panel's charge to attempt to incorporate language required by NHIC and the panel is not aware of the content or purpose of a "routine facility consent form." No change was made as a result of the comment.

COMMENT: One commenter suggested, "that a designation for endoscopy/laparoscopy, together with the risks and hazards for same, be added to the proposed consent form." The commenter believes that, if the suggested change is made, a patient undergoing a laparoscopically assisted vaginal hysterectomy (LAVH), for example, will only need to sign one form. "Otherwise, practitioners will either have to have the patient sign the standard form in addition to the hysterectomy form, or else they will have to write in the endoscopy/laparoscopy information on the hysterectomy form. Neither of these latter choices would seem preferable to the signing of one, completely pre-printed form."

RESPONSE: The panel agrees and has revised the form to list the additional risks associated with endoscopy/laparoscopy.

COMMENT: Concerning §601.8, a commenter asked if the rules included a Spanish version of the form as required by House Bill 723.

RESPONSE: As previously stated, the Spanish version of the form will be available from the Texas Department of Health. No change was made as a result of the comment.

The commenters include a representative from Representative Dawnna M. Duke's office; Texas Hospital Association, Austin, Texas; Hermann Hospital, Houston, Texas; Providence Health Center, Waco, Texas; Texas State Board of Medical Examiners, Austin, Texas; and an individual. The commenters were generally in favor of the rules, but expressed concerns, asked questions, and made recommendations as previously mentioned.

The amendments and new section are adopted under the Medical Liability and Insurance Improvement Act of Texas, Texas Civil Statutes, Article 4590i, §6.04, which provides the Texas Medical Disclosure Panel with the authority to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards and to prepare the form(s) for the treatments and procedures which do require disclosure; and §6.08 which requires the panel to develop and prepare written materials to inform a patient or person authorized to consent for a patient of the risks and hazards of a hysterectomy.

*§601.4. Disclosure and Consent Form.*

(a) The Texas Medical Disclosure Panel adopts the following form which shall be used by a physician or health care provider to inform a patient or person authorized to consent for the patient of the possible risks and hazards involved in the medical treatments and surgical procedures named in the form. Except for the procedures shown in subsection (b) of this section, the following form shall be used for the medical treatments and surgical procedures described in §601.2 of this title (relating to Procedures Requiring Full Disclosure—List A).

Figure 1: 25 TAC §601.4(a)

(b) Informed consent for:

(1) radiation therapy shall be provided in accordance with §601.5 of this title (relating to Radiation Therapy Disclosure and Consent Form);

(2) electroconvulsive therapy shall be provided in accordance with §601.7 of this title (relating to Informed Consent for Electroconvulsive Therapy); and

(3) hysterectomy procedures shall be provided in accordance with §601.8 of this title (relating to Hysterectomy Disclosure and Consent Form).

*§601.6. History.*

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

(g) Effective October 3, 1995, §601.1 - 601.4 of this title were repealed and replaced with new §601.1 of this title (relating to General), §601.2 of this title (relating to Procedures Requiring Full Disclosure (List A), §601.3 of this title (relating to Procedures Requiring No Disclosure (List B), and §601.4 of this title (relating to Disclosure and Consent Form), §601.5 of this title (relating to Radiation Therapy Disclosure and Consent Form), this section, and §601.7 of this title (relating to Informed Consent for Electroconvulsive Therapy). The sections were repealed to incorporate List A and List B into Texas Register format. In addition, sections were added to include general provisions; to provide a history of the rules of the panel; and to adopt a section which addresses informed consent for electroconvulsive therapy.

(h) Effective October 23, 1997, §601.2 of this title was amended to update risks and hazards requiring full disclosure prior to performing abdominal endoscopic/laparoscopy procedures and endoscopic surgery of the thorax.

(i) Effective February 18, 1998, §601.4 of this title and this section were amended and new §601.8 of this title (relating to Hysterectomy Disclosure and Consent Form) was added to address legislative requirements relating to informed consent for hysterectomies. Section 601.8 of this title adopts a form to be used in providing informed consent prior to performing a hysterectomy and applies to hysterectomies performed at least 90 days after the date of publication of adopted §601.8 of this title in the Texas Register.

*§601.8. Hysterectomy Disclosure and Consent Form.*

The Texas Medical Disclosure Panel adopts the following form which shall be used to provide informed consent to a patient or person authorized to consent for the patient of the possible risks and hazards involved in the hysterectomy surgical procedure named in the form. This form is to be used in lieu of the general disclosure and consent form adopted in §601.4 of this title (relating to Disclosure and Consent Form) for disclosure and consent relating to only hysterectomy procedures. Providers are required to use the form to obtain consent for hysterectomies performed at least 90 days following publication of this adopted section in the Texas Register. Providers shall have the form available in both English and Spanish language. The Spanish version is available from the Texas Department of Health.

Figure 1: 25 TAC §601.8

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

Filed with the Office of the Secretary of State on January 29, 1998.

TRD-9801382

Melba W. Swafford, M.D.

Chairperson

Texas Medical Disclosure Panel

Effective date: February 18, 1998

Proposal publication date: October 31, 1997

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

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**TITLE 28. INSURANCE**

**Part I. Texas Department of Insurance**

**Chapter 3. Life, Accident, Health Insurance and Annuities**

**Subchapter MM. Assessment**

**28 TAC §3.13001**

The Commissioner of Insurance adopts new §3.13001, concerning definitions, procedures, criteria and forms for the making and collecting of assessments on insurers that provide health insurance in this state by the Texas Health Insurance Risk Pool. The section is adopted with changes to the proposed text as published in the December 19, 1997 issue of the *Texas Register* (22 TexReg 12394). A public hearing on the section was held on January 8, 1998.

The new section is required by Insurance Code, Article 3.77, §8 which directs the commissioner of insurance to adopt rules to provide the procedures, criteria and forms necessary for the Texas Health Insurance Risk Pool to implement, collect and deposit assessments made to recoup the Pool's net loss under

Insurance Code, Article 3.77, §13. The section was developed with the assistance of the Board of Directors of the Texas Health Insurance Risk Pool to assure that it met the needs of the pool. The board of directors of the pool has frequently expressed its desire to minimize administrative costs so that the maximum amount of money collected in premiums and assessments can be used by the pool to pay claims, therefore the adopted section is intended to meet the requirement of Insurance Code, Article 3.77, §8, while minimizing the cost of compliance with the section for the pool. Besides the board's contribution in the drafting of the section, several changes were made to the proposed section in response to the board's testimony at the hearing on the section and written comments submitted by the board. The definition of "insurer" in §3.13001(a)(2) was changed, a new paragraph in §3.13001(c)(5) was inserted, §3.13001(c)(3) was changed and §3.13001(e) was changed, all in response to comments from the pool. In addition to the latitude provided in the procedures for making assessments and the criteria for those assessments, the section provides the pool with an outline for the forms to be used in determining and collecting assessments, instead of adopting a specific form. The adopted section provides an uncomplicated procedure and clear criteria for the making of assessments by the board of directors of the pool.

Every insurer that collects health insurance premiums in this state will be affected by the section. The Texas Health Insurance Risk Pool is authorized by Insurance Code, Article 3.77, §13, to assess insurers providing health insurance in this state for operating funds and for any net loss experienced by the pool in providing insurance to medically uninsurable Texans. The new section provides definitions, procedures, criteria and forms for the making and collecting of assessments by the Texas Health Insurance Risk Pool. Section 3.13001(a) contains definitions of the terms used in the section. The definition of "insurer" was changed in response to a comment to conform it to the definition of "insurer" in Insurance Code, Article 3.77. Section 3.13001(b) authorizes the board of directors of the pool to consider and determine the need for, and the amount of, any regular and interim assessments at any meeting of the board. Section 3.13001(c)(1)-(3) provides that interim assessments shall cover estimated cash requirements of the pool and shall be credited against the regular assessment for the applicable fiscal year. Section 3.13001(c)(4) directs the board to request insurers to provide the board information on their health insurance premiums in this state. If an insurer does not provide the information, the section provides that the board may presume that all the insurer's health insurance premiums reported to the Texas Department of Insurance are assessable. A new section 3.13001(c)(5) was inserted in response to a comment and proposed §3.13001(c)(4) was renumbered as paragraph (5). Proposed §3.13001(c)(5) was renumbered as paragraph (6). It provides that the pool may audit the information on health insurance premiums submitted by insurers. Section 3.13001(c)(6) was renumbered as paragraph (7). It provides that the board shall determine the date an assessment must be paid by an insurer and charge interest if an assessment is not paid when due. Section 3.13001(c)(7) was renumbered as paragraph (8). It provides that the limitation on assessments of one-half of one percent of an insurer's collected health insurance premiums in this state in Insurance Code, Article 3.77, §13(e) shall be calculated on the insurer's collected health insurance premiums for that year. It further provides that the limit shall not apply after

January 1, 2000, which is consistent with the expiration date in the statute.

Section 3.13001(d) prescribes the information the board will provide an insurer when an insurer is notified of an assessment. It directs the board to adopt a form for the gathering information on health insurance premiums provided for in Section 3.13001(c)(4).

Section 3.13001(e) was changed in response to a comment by changing the title of the subsection changed to "Unpaid Assessments or Abatements." Also in response to a comment, a sentence was added at the end of the subsection providing that an insurer receiving an abatement or deferment shall remain liable to the pool for the deficiency. Since the sentence is identical to the language in Insurance Code, Article 3.77, §13(e), there is no substantive change caused by the addition of this sentence.

Five commenters suggested that the definition of "health insurance premium" in §3.13001(a)(1) be changed by adding Medicare supplement premiums subject to Insurance Code, Article 3.74 and small group health insurance premiums subject to Insurance Code, Articles 26.01 through 26.76 to the coverages that are excluded from the definition of the term under §3.13001(a)(1)(B).

RESPONSE: Staff disagrees with the comments, but has inserted a new paragraph (5) in §3.13001(c) and renumbered the subsequent paragraphs. The definition of "health insurance premiums" in the section is patterned after the definition of "health insurance" in Insurance Code, Article 3.77, §2. Medicare supplement premiums and small group health insurance premiums are clearly health insurance coverages, however Insurance Code, Article 3.77 §13(d) specifically provides that the premium for these coverages is excluded in the calculation of the amount of an assessment on an insurer. Since the calculation of an assessment is expressly described in Article 3.77, §13(d), the department did not repeat it in the regulation. To address the concerns expressed by the commenters, the department has inserted a new paragraph (5) in §3.13001(c) and renumbered paragraphs (5) through (7). The new §3.13001(c)(5) paraphrases Article 3.77, §13(d), therefore the new paragraph has no substantive effect.

Two commenters suggested that long term care insurance be excluded from the definition of health insurance premium.

RESPONSE: The definition of "health insurance premiums" is patterned after the definition of "health insurance" in Article 3.77, §2. The statutory definition does not mention long term care, and is not susceptible to an interpretation that would allow excluded coverages to be expanded by a regulation of the department. For example, in the Health Insurance Portability and Availability Act (Insurance Code, Article 26.035), the Legislature excluded long term care coverage from the definition of "creditable coverage", therefore, the department believes the Legislature could have used similar language in Article 3.77 if it intended to exclude long term care premiums.

Another commenter noted that the definition of "insurer" in §3.13001(a)(2) did not include the language in Insurance Code, Article 3.77 that provides "and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation."

RESPONSE: The department has added the language to the definition of "insurer" in the section.

One commenter said there was inconsistency in terms between §3.13001(c)(3) and §3.13001(c)(2) and suggested that "incurred claims" in paragraph (3) be changed to "incurred losses for the current calendar year."

RESPONSE: The department agrees with the comment and changed §3.13001(c)(3) in accordance with the comment.

One commenter stated that "each insurer" be deleted from §3.13001(c)(4) because it was redundant.

RESPONSE: The intent of §3.13001(c)(4) is to direct the board of directors of the pool to determine the total amount of health insurance premiums collected in this state by all insurers and the total amount of health insurance premiums collected in this state by each insurer. These two numbers will be used as the denominator and the numerator, respectively, in the calculation of an insurer's assessment.

One commenter stated that the title of §3.13001(e) should be changed since the subsection did not address enforcement of the section. The commenter suggested the subsection be titled "Unpaid Assessments or Abatements."

RESPONSE: The department agrees with the comment and changed §3.13001(e) in accordance with the comment.

One commenter recommended that §3.13001(e)(2) be changed by adding a sentence at the end of the paragraph so it would conform with Insurance Code, Article 3.77, §13(c).

RESPONSE: The sentence, "The insurer receiving such abatement or deferment shall remain liable to the pool for the deficiency," was added to paragraph(2).

Comments on the provisions of the section were received from Texas Health Insurance Risk Pool, American Council of Life Insurance, Texas Association of Life and Health Insurers and Health Insurance Association of America. The Texas Health Insurance Risk Pool and the Texas Association of Life and Health Insurers also testified at the hearing. No comments for or against the section were received.

The new section is adopted under the Insurance Code, Articles 3.77 and 1.03A. Article 3.77, §8 provides authorization for the Commissioner of Insurance to adopt rules to provide the procedures, criteria and forms necessary to implement, collect, and deposit assessments made and collected under the Insurance Code, Article 3.77, §13. Article 1.03A provides that the commissioner of insurance may adopt rules and regulations for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by a statute.

### §3.13001. Assessments.

(a) Definitions. Words and terms used in this section that are defined in Insurance Code, Article 3.77, 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) Health insurance premiums - any consideration collected by an insurer for individual or group medical or health care services for residents of the State of Texas whether by insurance or otherwise, or received by a health care plan or arrangement that pays for or furnishes medical or health care services whether by insurance or otherwise.

(A) The term includes, but is not limited to the coverages described in clauses (i) - (iv) of this paragraph:

(i) individual or group medical or health care services;

(ii) Stop-loss or excess loss insurance for physicians, health care providers, hospitals, or for any benefit arrangements to the extent permitted by Section 3, Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002);

(iii) Hospital, medical or surgical expense incurred coverages or any combination of coverages; or

(iv) Health coverage provided through a multiple employer welfare arrangement, except for any amount for stop loss or excess loss insurance.

(B) The term does not include the coverages described in (i) - (x) of this paragraph:

(i) short term limited duration coverage;

(ii) coverage only for accident (including accidental death and dismemberment);

(iii) disability income insurance;

(iv) dental only or vision only benefits that are limited in scope to a narrow range or type of benefits and that are generally excluded from policies that combine hospital medical or surgical benefits;

(v) credit insurance;

(vi) coverage only for a specified disease or illness (for example, cancer policies), or hospital indemnity or other fixed indemnity insurance (for example "Hospital Confinement Indemnity Coverage" as defined in §3.3073 of this title (relating to Minimum Standards for Hospital Confinement Indemnity Coverage) provided that:

(I) there is no coordination between the provision of benefits and benefits provided under any other policy; and

(II) benefits are paid with respect to a covered event regardless of whether benefits are provided with respect to the same event under any policy.

(vii) coverage issued as a supplement to liability insurance;

(viii) insurance arising out of workers' compensation or similar law;

(ix) automobile medical-payment insurance and personal injury protection; or

(x) insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self insurance.

(2) Insurer - any entity that provides health insurance in this state, including stop-loss or excess loss insurance. The term includes, but is not limited to, an insurance company; a health maintenance organization operating under the Texas Health Maintenance Organization Act (Chapter 20A, Insurance Code); an approved nonprofit health corporation; a fraternal benefit society; a stipulated premium insurance company; a group hospital service corporation subject to Chapter 20, Insurance Code; a multiple employer welfare arrangement subject to Insurance Code, Article 3.95-1 et seq., a surplus lines carrier; an insurer providing stop-loss or excess loss insurance to physicians, health care providers, hospitals, or to any benefit arrangements to the extent permitted by Section 3, Employee Retirement Income Security Act of 1974 (29

U.S.C. Section 1002); and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation.

(3) Interim assessment - an assessment made for the purpose of funding anticipated shortfall of revenues to cover organizational and interim operating expenses, including claims, of the pool.

(4) Regular assessment - an assessment made for the purpose of recouping any net losses of the pool during the previous calendar year.

(b) Procedures.

(1) For the purpose of providing the funds necessary to carry out the powers and duties of the pool, the board shall determine interim and regular assessments, at such times and for such amounts as the board finds necessary.

(2) Interim and regular assessments may be considered at any meeting of the board and must be approved by the board in accordance with the plan of operation.

(c) Criteria.

(1) Computation of the funds necessary to carry out the powers and duties of the pool shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(2) Regular assessments shall cover the net losses of the pool, including administrative expenses and incurred losses, for the preceding calendar year as determined by the board and reported in the annual statement of the pool filed with the commissioner. Any interim assessments made in a fiscal year shall be credited as offsets against the regular assessment for that fiscal year.

(3) Interim assessments shall cover projected cash requirements of the pool, as determined by the board, after taking into account operating and investment activity and expected and incurred losses for the current calendar year which may exceed collected premiums.

(4) The board shall determine the health insurance premiums of all insurers and each insurer in the state from information provided by the insurers, subject to verification as provided in paragraph (6) of this subsection. If an insurer fails to timely respond to a request for information, the board shall presume that the unresponsive insurer has no health insurance premiums exempt from assessment and the amount reflected in the Schedule T of the annual statement for the preceding year for accident, health insurance premium including policy, membership and other fees shall be used in determining its assessment. In the event the entity does not file on schedule T, or does not file schedule T for all affected premiums, the board shall use the most comparable available information.

(5) The assessment imposed against each insurer shall be in an amount that is equal to the ratio of the health insurance premiums collected by the insurer in this state during the preceding calendar year, except for Medicare supplement premiums subject to Insurance Code, Article 3.74 and small group health insurance premiums subject to Insurance Code, Articles 26.01 through 26.76, to the health insurance premiums collected by all insurers in this state during the preceding calendar year, except for Medicare supplement premiums subject to Insurance Code, Article 3.74 and small group health insurance premiums subject to Insurance Code, Articles 26.01 through 26.76.

(6) The board may audit from time to time the information provided by insurers under paragraph (4) of this subsection.

(7) The board shall determine the due date for payment of the assessment, which shall not be less than the 30th day after the date on which the notice of the assessment is mailed to the insurers. Interest shall accrue on any unpaid amount at a rate determined by the board, beginning on the due date.

(8) The total amount of all assessments on an insurer in a calendar year shall not exceed one-half of one percent of the insurer's health insurance premiums for that year. The limitation in this paragraph does not apply on or after January 1, 2000.

(d) Forms.

(1) The board shall adopt a form for the invoicing of each insurer's portion of any assessment. The form shall include:

(A) The health insurance premiums for all insurers for the preceding calendar year except for Medicare supplement premiums subject to Article 3.74 and small group health insurance premiums subject to Articles 26.01 through 26.76;

(B) The health insurance premiums for the individual insurer for the preceding calendar year except for Medicare supplement premiums subject to Article 3.74 and small group health insurance premiums subject to Articles 26.01 through 26.76;

(C) The amount of total assessment and whether the assessment is a regular assessment or interim assessment;

(D) If a regular assessment, the amount of any interim assessment credited toward that regular assessment;

(E) The amount of the assessment for the insurer; and

(F) The payment due date for the assessment and the interest rate which will apply to any delinquent payment.

(2) The board shall adopt a form for requesting the data necessary to determine the amount of assessments.

(e) Unpaid Assessments or Abatements.

(1) Any insurer whose certificate of authority to do business in this state is canceled or surrendered shall be liable for any unpaid assessments that relate to health insurance premiums written prior to the date of such cancellation or surrender.

(2) An insurer may petition the commissioner for an abatement or deferment of all or part of an assessment imposed by the board. The commissioner may abate or defer, in whole or in part, such assessment if the commissioner determines that the payment of the assessment would endanger the ability of the participating insurer to fulfill its contractual obligations. If an assessment against an insurer is abated or deferred in whole or in part, the amount of such assessment abated or deferred shall be assessed against the other insurers in a manner consistent with the basis for assessments set forth in Insurance Code, Article 3.77, §13(e). The insurer receiving such abatement or deferment shall remain liable to the pool for the deficiency.

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

Filed with the Office of the Secretary of State on January 27, 1998.

TRD-9801200

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: February 16, 1998



Proposal publication date: December 19, 1997  
For further information, please call: (512) 463-6327



## Chapter 12. Independent Review Organizations

### Subchapter C. General Standards of Independent Review

#### 28 TAC §12.208

*Due to a technical error on behalf of the Texas Register, the text of the following rule submitted by the Texas Department of Insurance was inadvertently omitted from the November 21, 1997, issue of the Texas Register (22 TexReg 8853). Section 12.208 was adopted with changes and should have been republished.*

#### §12.208. Confidentiality.

(a) An independent review organization shall preserve the confidentiality of individual medical records, personal information, and any proprietary information provided by payors. Personal information shall include, at a minimum, name, address, telephone number, social security number and financial information.

(b) An independent review organization may not disclose or publish individual medical records or other confidential information about a patient without the prior written consent of the patient or as otherwise required by law. An independent review organization may provide confidential information to a third party under contract or affiliated with the independent review organization for the sole purpose of performing or assisting with independent review. Information provided to third parties shall remain confidential.

(c) The independent review organization may not publish data which identify a particular payor, physician or provider, including any quality review studies or performance tracking data, without prior written consent of the involved payor, physician or provider. This prohibition does not apply to internal systems or reports used by the independent review organization.

(d) All payor, patient, physician, and provider data shall be maintained by the independent review organization in a confidential manner which prevents unauthorized disclosure to third parties. Nothing in this chapter shall be construed to allow an independent review organization to take actions that violate a state or federal statute or regulation concerning confidentiality of patient records.

(e) To assure confidentiality, an independent review organization must, when contacting a utilization review agent, a physician's or provider's office, or hospital, provide its certification number and the caller's name and professional qualifications to the provider or the provider's named independent review representative.

(f) The independent review organization's procedures shall specify that specific information exchanged for the purpose of conducting review will be considered confidential, be used by the independent review organization solely for the purposes of independent review, and be shared by the independent review organization with only those third parties who have authority to receive such information. The independent review organization's plan shall specify the procedures that are in place to assure confidentiality and that the independent review organization agrees to abide by any federal and state laws governing the issue of confidentiality. Summary data which does not provide sufficient information to allow identification of individual patients, providers, payors or utilization review agents need not be considered confidential.

(g) Medical records and patient-specific information shall be maintained by the independent review organization in a secure area with access limited to essential personnel only.

(h) Information generated and obtained by the independent review organization in the course of the review shall be retained for at least four years if the information relates to a case for which an adverse decision was made at any point.

(i) Destruction of documents in the custody of the independent review organization that contain confidential patient information or payor, physician or provider financial data shall be by a method which ensures complete destruction of the information, when the organization determines that the information is no longer needed.

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

Filed with the Office of the Secretary of State on November 6, 1997.

TRD-9714792

Lynda H. Nesenholtz

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Proposal publication date: September 5, 1997

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## TITLE 34. PUBLIC FINANCE

### Part IV. Employee Retirement System of Texas

#### Chapter 85. Flexible Benefits

#### 34 TAC §§85.1, 85.3, 85.5, 85.7, 85.13

The Employees Retirement System of Texas (ERS), adopts amendments to §§85.1, 85.3, 85.5, 85.7, and 85.13, concerning the Flexible Benefits (Cafeteria Plan) Program without changes to the proposed text as published in the November 7, 1997 issue of the *Texas Register* (22 TexReg 10922).

These rules are being amended to reflect the inclusion of the premium conversion plan into the Uniform Group Insurance Program rules.

Premium conversion plan rules will be located in the Uniform Group Insurance Program rules.

No comments were received regarding adoption of these amendments.

The amendments are adopted under Insurance Code, Article 3.50-2, §4A, which provides the ERS with the authority to promulgate all rules and regulations necessary to implement and to administer the Uniform Group Insurance Program and the Flexible Benefits (Cafeteria Plan) Program.

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

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

TRD-9801101

Sheila W. Beckett  
Executive Director  
Employee Retirement System of Texas  
Effective date: February 12, 1998  
Proposal publication date: November 7, 1997  
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**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**Part VI. Texas Department of Criminal Justice**

**Chapter 163. Community Justice Assistance Division Standards**

**37 TAC §163.34**

The Texas Department of Criminal Justice adopts new §163.34 concerning carrying of weapons without changes to the proposed text as published in the December 5, 1997, issue of the *Texas Register* (22 TexReg 12025). The new section is needed in order to address all of the requirements necessary for CSCD officers carrying weapons.

One interagency comment was received from the director of training and staff development concerning a Memorandum of Understanding between the Department and the Texas Commission on Law Enforcement Officer Standards and Education. House Bill 2909 (Chapter 1261, Session Laws, 75th Legislature) requires the two agencies to enter into an agreement regarding firearms proficiency training for supervision officers. The Texas Commission on Law Enforcement Officer Standards and Education has proposed in the December 26, 1997, issue of the *Texas Register* (22 TexReg 12708), 37 TAC §211.33 (relating to Memorandum of Understanding Regarding Firearms Proficiency Training for Supervision Officers). In response to the comment received and to comply with House Bill 2909 (Chapter 1261, Session Laws, 75th Legislature), the Department is proposing, in this issue of the *Texas Register*, new §159.9 which adopts by reference 37 TAC §211.33.

The new section is adopted under §76.0051, Government Code, which authorizes CSOs to carry weapons; §415.038, which requires TCLEOSE training for CSOs; and §509.003, which provides general rulemaking authority for CJAD standards.

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

Filed with the Office of the Secretary of State on February 2, 1998.

TRD-9801438

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Effective date: February 22, 1998

Proposal publication date: December 5, 1997

For further information, please call: (512) 463-9693

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**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**Part I. Texas Department of Human Services**

**Chapter 19. Nursing Facility Requirements for Licensure and Medicaid Certification**

The Texas Department of Human Services (DHS) adopts the repeal of §19.2147; amendments to §§19.1, 19.101, 19.201, 19.204, 19.210, 19.212, 19.214, 19.216, 19.326, 19.401, 19.403, 19.408, 19.415, 19.502, 19.503, 19.601, 19.602, 19.801, 19.1001, 19.1010, 19.1101, 19.1104, 19.1912, 19.1918, 19.1920, 19.1921, 19.2002, 19.2004, 19.2008, 19.2102, 19.2104, 19.2106, 19.2110, 19.2112, 19.2146, 19.2308, 19.2320; and new 19.205, 19.209, 19.2111, 19.2114, 19.2115, 19.2147, and 19.2148, concerning Nursing Facility Requirements for Licensure and Medicaid Certification. The repeal of §19.2147; amendments to §§19.1, 19.201, 19.204, 19.210, 19.212, 19.216, 19.326, 19.401, 19.403, 19.408, 19.415, 19.503, 19.601, 19.801, 19.1001, 19.1010, 19.1101, 19.1912, 19.1918, 19.1920, 19.1921, 19.2002, 19.2004, 19.2008, 19.2102, 19.2104, 19.2146, 19.2308, 19.2320; and new §§19.205, 19.209, 19.2111, 19.2114, 19.2115, and 19.2147 are adopted without changes to the proposed text published in the November 7, 1997, issue of the *Texas Register* (22 TexReg 10928), and the text will not be republished. Sections 19.101, 19.214, 19.502, 19.602, 19.1104, 19.2104, 19.2106, 19.2110, 19.2112, and 19.2148 are adopted with changes to the proposed text.

The justification for the repeals, amendments, and new sections is that the department is implementing new legislation which gives DHS additional authority to deny, suspend, or revoke the licenses of providers of poor quality care and also provides greater enforcement remedies for providers who violate licensure rules. Texas nursing facility residents will be better protected through these amendments.

The amendments and new sections will function by implementing the changes to the Health and Safety Code mandated by major parts of Senate Bill 190 and Senate Bill 118 passed during the 75th legislative session and by making other minor changes.

The department received the following comments from Advocates for Nursing Home Reform, the National Committee to Preserve Social Security and Medicare, the Texas Health Care Association, the Texas Dietetic Association, the American Association of Retired Persons, Texas Advocates for Nursing Home Residents, the Texas Association of Homes and Services for the Aged, the Texas Association of Licensed Facility Administrators and individuals at the December 3, 1997, public hearing and during the comment period:

Comment: Numerous commenters expressed concern about the term "willful" in the proposed definition of "abuse" because it sets a very high standard for proving culpability in cases of alleged abuse. Retaining the former definition which contains the terms "knowingly" and "recklessly" will provide broader protection for the residents.

Response: The department concurs and will retain the current language.

Comment: Regarding §19.101, since the definitions for abuse, neglect and misappropriation have changed, a new letter to nursing facilities (NFs) advising them on when to report abuse, neglect and misappropriation of resident property is needed. The current letter of instruction is inconsistent with the proposed change in definitions.

Response: The department's response to the previous comment will make a new letter unnecessary.

Comment: Numerous commenters asked to retain the language proposed to be deleted at §19.502, regarding notifying the department when a facility is planning to discharge a resident with less than 30 days notice. The commenters stated that the current rule has served as a deterrent to unnecessary immediate discharges.

Response: The department concurs and will retain the current language.

Comment: Retain the current language at §19.1912(e)(1)(C) regarding starting a new medication sheet after a resident returns to a facility from a brief hospitalization. The current language provides some hope that staff will be actively aware of what medications a readmitted resident is to have.

Response: The department does not concur and will adopt the rule as proposed. The deleted language requires nursing staff to spend time on an unnecessary task: copying a medication record on to a new sheet. Deleting the requirement will allow nursing staff to make a notation of the hospitalization, delete any discontinued medications, add any new medications prescribed as a result of the hospitalization, and continue the previously prescribed medications. This method will actually promote nursing staff's awareness of all medications of a readmitted resident.

Comment: Regarding §19.1001, adopt the Consumer's Minimum Staffing Standard for every nursing facility, which includes a full-time RN Director of Nursing, a full-time RN Assistant Director of Nursing in facilities of 100 beds or more, a full-time RN Director of In-service Education in facilities of 100 beds or more, an RN nursing supervisor on duty at all times, and the following ratios: Direct Caregivers (licensed nurse or certified nurse aide) to resident - day: 1 to 5; evening: 1 to 10; and night: 1 to 15; and Licensed Nurse to Resident - day: 1 to 15; evening: 1 to 25; and night: 1 to 35.

Response: Nursing facilities in Texas utilize a case-mix system. The impact of this is that each NF has a different staffing need based on the service requirements of its residents. This difference in case-mix makes it difficult to propose any one minimum standard that would be meaningful. However, the department will study this issue seriously and will make recommendations prior to the 76th legislative session.

Comment: Change §19.601(a)(1) to require that restrained residents be observed at least every ten minutes, with restraints released and the resident repositioned every hour.

Response: The language at §19.601(a)(1) will be retained. The current language requires that "restraints must be released and the resident repositioned as needed to prevent deterioration in the resident's condition." The rules further state that at a minimum restraints should be released and the resident repositioned every two hours. This rule does not preclude releasing the restraints more often than every two hours.

Comment: In §19.801, please specify that the full Resident Assessment Instrument be used, including the Minimum Data Set and the Resident Assessment Protocols, and that assessment reviews be routinely required every three months.

Response: The current rules require the above. No changes are necessary.

Comment: The workgroup's consensus document includes, at §19.210(a)(2), the requirement that a "change in the owner holding the facility license" is a change in ownership which requires the submission of a full license application. The proposed rule omits this language. We therefore recommend modifying §19.210(a) to reflect the consensus document. In this regard, it may be necessary to add a provision to §19.2308 indicating that among the requirements to transfer ownership is the full re-licensure of the new owner. The functional definition of a "change in ownership" should be consistent in both §19.210 and §19.2308.

Response: The new wording does not reflect a change in the meaning of this rule. Draft subparts (a)(1) and (2) were combined to clarify that the department considers a change of ownership to be a change of 50% or more in the ownership of the business organization that is licensed to operate the facility, or, if the entity licensed to operate the facility is an actual person rather than some type of business entity, a change from that person to either another person or a business organization. The functional definition of "change of ownership" is consistent in §19.210 and §19.2308.

Comment: Add the sentence "Each day of a continuing violation constitutes a separate violation" to §19.2112(f) as the second sentence in that subsection, immediately after the sentence "Administrative penalties may be levied for each violation found in a single survey." This sentence was dropped from the workgroup's consensus document.

Response: The department has made the suggested change.

Comment: §19.214(a)(4) carries forward the outdated phrase "applicant, manager or affiliate." Change this to "person."

Response: The department has made the suggested change.

Comment: §19.1104(a), regarding Dietary Consultant Requirements, needs further modification to satisfy fully the mandate of Senate Bill 190, which required, at §242.403, "nutrition services...in scheduled consultation with (a licensed dietitian) as frequently and for such time as the department shall determine necessary to assure each resident a diet that meets the daily nutritional and special dietary needs of each resident." Therefore, we recommend the following changes to the first sentence of the proposed language:

"The facility must ensure that a qualified dietitian is available as frequently and for such time as is necessary to assure each resident a diet that meets the daily nutritional and special dietary needs of each resident, based upon the acuity and clinical needs of the resident."

Response: The department concurs and has made the suggested change.

Comment: The department should supply the bimonthly facility compliance record which §19.1921(e)(3)(A) requires a facility to post.

Response: The department does not concur and will propose that the facility will be responsible for the record.

Comment: Regarding §19.101 and §19.2110, change the definition of threatened violation to more closely follow the statute in Section 242.063(a)(1 ) and (2) so that it reads,"a situation which, unless immediate steps are taken to correct, the department has reason to believe creates a threat of injury or harm to a resident's health and safety."

Response: The proposed language was agreed upon in the SB 190 workgroup. The department will retain the proposed language.

Comment: Regarding §19.201(f), clarification is needed that based on the applicant's personal judgement he/she is signing the sworn affidavit of a satisfactory compliance history. Add to this section; "the applicant swears or affirms that in his personal judgement."

Response: The actual language of the affidavit on the application, which includes the affidavit of compliance history, is: My name is (person's name). I am over the age of 18, legally competent and in all respects qualified and authorized to make this affidavit. The facts set forth in the foregoing application are true and correct. I understand that submission of false information in the foregoing application will constitute grounds for denial, suspension, or revocation of my nursing facility license.

The department needs to receive accurate information so the application can be properly processed and evaluated. It is the responsibility of the applicant to be sure the information on the application is true and correct. If the applicant questions whether the information is true and correct, he should resolve the questions or verify the information before signing the affidavit.

Comment: Regarding §19.204 (c), the wording of this section for additional background information is too vague. It specifies that "at the request of DHS, an applicant or license holder must provide to the department any additional background information within 30 days of the request." This rule needs to specify that additional information as outlined by the application process can be requested.

Response: The department retains the right to request any and all information it deems necessary in investigating the background of an applicant. The language will be retained as proposed.

Comment: Regarding §19.205 (2), which proposes that all facilities must complete the supplemental licensure application information form and submit it to the Licensing Section of Long Term Care-Regulatory within 90 days. Instead of having the supplementation due within 90 days of the effective date of the regulation, we recommend that each license holder submit supplemental information at the time of renewal. At the end of item (2) delete "within 90 days" and add "at the time of renewal."

Response: The department does not concur. The recommendation above would take two years to implement because licenses are renewed every two years. All facilities must comply with the requirements of SB 190 as soon as possible.

Comment: Regarding §19.209 (a), the section on exclusion from licensure for two to ten years should only be applied when the failure is persistent and permeating throughout the operation. Add to the end of (a) "and this failure is persistent and permeating throughout the operation."

Response: The SB 190 workgroup fully discussed the language suggested above, but agreed upon the proposed language instead. The department will retain the proposed language.

Comment: Regarding §19.214 (a)(1)(A) and (B), a history of satisfactory compliance should be determined by conditions over the five-year period and not just a single incident or an isolated snapshot of the facility. The focus should be on the cumulative history and not a single violation. The department should look to see if there is a pattern of threat or a failure to fix problems and not a single violation. Other remedies are available to the department (i.e. revocation of a license) if there is a situation that warrants immediate remedies. Change (A) and (B) to reflect a pattern rather than a single incident.

Response: The department does not concur. A single violation is a part of a facility's compliance history, and as such, the department needs be aware of it. The department will retain the proposed language.

Comment: Regarding §19.214 (a)(1)(E), what is a "reasonable period of time?" This requirement should be more specific and tied to deadlines in the rules that are in accordance with promulgated guidelines.

Response: The department concurs and will change "reasonable period of time" to "an acceptable period of time, as specified in the plan of correction or credible allegation of compliance, whichever is appropriate."

Comment: Regarding §19.214 (a)(7)(B), this section should be limited to imposed (and not proposed) federal or state nursing facility sanctions or penalties. In item (c) of this section it states that only final actions are considered for the purposes of (a) (7). We agree with this and recommend that only final actions be reported. Add the word "final actions" at the beginning of (B).

Response: The department does not concur. The items listed under §19.214(a)(7) are instances for which the department may deny a license. As part of the decision-making process, the department needs to know if a facility has had sanctions or penalties proposed.

Comment: Regarding §19.401(b), the Statement of Resident Rights, the list of rights should follow the language in the bill for clarity. The bill speaks to residents not giving up their constitutional, civil, and legal rights. The proposed language is "You, the resident do not give up any rights when you enter a nursing facility." Change the wording to read: "You the resident do not give up constitutional, civil, and legal rights when you enter a nursing facility."

Also, resident right number 1 "to all care necessary for you to have the highest possible level of health" is not in the statute. This concept follows a rule from the OBRA statute and is already in state and federal rules. Delete number 1 from the list of resident rights.

There was discussion during the workgroup to incorporate all resident rights lists into this list. The department's list of resident rights needs to be an accumulation of all resident rights legislation that has been passed so the facility will only have to hand out one list of resident rights instead of multiples. This will assist the resident in understanding their rights. Has this been accomplished so facilities can give residents one list?

Response: The first two points were raised in the SB 190 workgroup. The consensus of the group was that "all rights" is a simpler and more easily understood way of saying "constitutional,

civil, and legal rights." The first right listed is a paraphrasing of the OBRA statute, and as such, the department wishes to retain it as proposed. A consolidation of all rights has not been accomplished at this time, but may occur when the Texas Department on Aging completes its listing of rights pursuant to the revisions of Chapter 102 of the Human Resources Code.

Comment: Regarding §19.1921(e)(4), what is the summary required in this rule as "non-technical language prepared by DHS?"

Response: The summary is Licensure Form 3630.

Comment: Regarding §19.2008, we recommend that the department encourage the complainant to identify himself/herself so the department can provide a follow-up on the complaint and obtain additional information if necessary. We also suggest that the following language from the SB 190 statute, found at §242.551(b), be added so that the department will encourage persons making an oral complaint to also submit a written, signed complaint: "The department shall encourage a person who makes an oral complaint to submit a written, signed complaint."

Response: The department does not disagree with the comments; however, they pertain more to TDHS's internal procedures than to rule language. As to the first comment, the department already encourages individuals to identify themselves upon initial contact. The other comment will be pilot-tested.

Comment: Regarding §19.2110, Referral to the Attorney General, add language from Appendix Q that the facility has the opportunity to correct. The referral for injunctions and restraining orders would occur if the facility were unable or not willing to comply with the requirements of participation.

Response: The department does not concur. Senate Bill 190 does not contain the opportunity to correct in relation to a referral to the Attorney General.

Comment: Regarding §19.2112, to effectively implement the administrative penalties system that is being proposed, we suggest that a comprehensive set of guidelines be developed. These guidelines can provide department staff the tools they need to implement a system that is consistent throughout the state.

Response: The department is developing a set of guidelines which should be available by February 1998.

Comment: Regarding §19.2114(d)(1)(B), the words "serious threat to health and safety of resident" and "substantially limits the facility's capacity to provide care" are not defined. Add definitions to the above phrases.

Response: The department does not wish to define the two terms listed above. In order to protect the department's ability to address the wide range of circumstances which might occur in one of Texas' 1100 NFs, it is important that the terms be subject to broad interpretation.

Comment: Regarding §19.2115, direction is needed on the use of amelioration of fines. Add the following language to clarify the amelioration of violation section: "If the facility has a history of correcting violations in a timely fashion, the Commissioner will allow amelioration of the fine. The department will direct the facility to use appropriate funds to correct the violation in lieu of assessing an administrative penalty."

Response: Many factors will be given consideration when making the decision to allow amelioration; your recommendation will be one of those factors. However, each situation will be different and the department does not want to limit in any way the Commissioner's discretion to use the amelioration of fines.

Comment: Regarding §19.2320(e)(2)(C), the wording in this item could require the nursing facility to obtain a prior-authorization for transport for everyone with nonemergency ambulance transportation needs. Some patients will require medical transportation indefinitely and prior-authorization would be unnecessary. The Texas Department of Health acknowledges this and does allow for an annual prior-authorization. Add the following sentence to the end of item (C): " For the resident that has a chronic or permanent medical condition that will require transportation by way of ambulance indefinitely, TDH shall grant "permanent certificate of permission."

Response: The department does not concur. Details about the prior-authorization procedure will be contained in the Medicaid Provider Manual, and therefore, are not needed in the rule.

Comment: The definition of "controlling person" and the language at §19.2116(b) regarding administrative penalties poses a problem to the extent that a licensed facility administrator could possibly be a "person in a position of actual control or authority with respect to a nursing facility" and also could be said to be a "managing employee of a licensed nursing facility." If so, then an administrator could be twice penalized for a single act of omission: the administrator could be subject to administrative penalties under §19.2112 and under the sanctions in the regulatory program for licensed facility administrators established by Senate Bill 84, currently found at 42 TAC §241.11 and §241.20. This effectively puts the administrator in double jeopardy.

Any and all administrative penalties against administrators should be assessed only through the regulatory scheme set in place under Senate Bill 84. We seek a specific exemption in §19.2112 for administrators or a statement in the adoption of proposed rules to the effect that any and all potential disciplinary actions, including the possibility of administrative penalties, against administrators will be conducted exclusively according to the requirements of Senate Bill 84 and rules implemented under that legislation.

Response: Both the definition of "controlling person" and §19.2112 were taken directly from statute. As such, the department cannot exempt administrators from their provisions.

In addition, the department made changes to several sections. In §19.101, Definitions, the department has deleted the proposed language of abuse, misappropriation of resident property, and neglect, and added the former definitions of abuse, misappropriation of funds, and neglect. In §19.214(a)(1), the department has changed the comma after nursing home regulations to a period and capitalized the word "in." In §19.602(d) the phone number is now 1-800-458-9858. In both §19.2104 and §19.2106 the reference in (a)(2) to §19.214(a)(2)-(6) now reads §19.2112(a)(2)-(6) of this title (relating to Administrative Penalties). In §19.2110, the department deleted "it" in the first sentence to clarify the sentence. In §19.2112(i) the department deleted "or" in the first sentence to correct a *Texas Register* error that left out the deletion in the proposal. In §19.2148 the department corrected the reference to 1 TAC Chapter 163 that was erroneously deleted by the *Texas Register*.

## Subchapter A. Basis and Scope

### 40 TAC §19.1

The amendment is adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license nursing facilities; under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Health and Safety Code, §§242.001- 242.804, and the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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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## Subchapter B. Definitions

### 40 TAC §19.101

The amendment is adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license nursing facilities; under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Health and Safety Code, §§242.001- 242.804, and the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

#### §19.101. Definitions.

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

Abuse - Any act, failure to act, or incitement to act done willfully, knowingly, or recklessly through words or physical action which causes or could cause mental or physical injury or harm or death to a resident. This includes verbal, sexual, mental/psychological, or physical abuse, including corporal punishment, involuntary seclusion, or any other actions within this definition.

(A) "Involuntary seclusion" - Separation of a resident from others or from his room against the resident's will or the will of the resident's legal representative. Temporary monitored separation from other residents will not be considered involuntary seclusion and may be permitted if used as a therapeutic intervention as determined by professional staff and consistent with the resident's plan of care.

(B) "Mental/psychological abuse" - Mistreatment within the definition of "abuse" not resulting in physical harm, including, but not limited to, humiliation, harassment, threats of punishment, deprivation, or intimidation.

(C) "Physical abuse" - Physical action within the definition of "abuse," including, but not limited to, hitting, slapping, pinching, and kicking. It also includes controlling behavior through corporal punishment.

(D) "Sexual abuse" - Any touching or exposure of the anus, breast, or any part of the genitals of a resident without the voluntary, informed consent of the resident and with the intent to arouse or gratify the sexual desire of any person and includes but is not limited to sexual harassment, sexual coercion, or sexual assault.

(E) "Verbal abuse" - The use of any oral, written, or gestured language that includes disparaging or derogatory terms to a resident or within the resident's hearing distance, regardless of the resident's age, ability to comprehend, or disability.

Controlling person - A person with the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of a nursing facility or other person. A controlling person does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of a facility. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a nursing facility;

(B) any person who is a controlling person of a management company or other business entity that operates a nursing facility or that contracts with another person for the operation of a nursing facility; and

(C) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a nursing facility, is in a position of actual control or authority with respect to the nursing facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

Misappropriation of funds - The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

Neglect - A deprivation of life's necessities of food, water, or shelter, or a failure of an individual to provide services, treatment, or care to a resident which causes or could cause mental or physical injury, or harm or death to the resident.

Person - An individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity, including a legal successor of those entities.

Threatened violation - A situation which, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety.

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### Subchapter C. Nursing Facility Licensure Application Process

#### 40 TAC §§19.201, 19.204, 19.205, 19.209, 19.210, 19.212, 91.214, 91.216

The amendments and new sections are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license nursing facilities.

The amendments and new sections implement the Health and Safety Code, §§242.001-242.804.

#### *§19.214. Criteria for Denying a License or Renewal of a License.*

(a) The Texas Department of Human Services (DHS) may deny an initial license or refuse to renew a license if an applicant, or any person required to submit background and qualification information:

(1) does not have a satisfactory history of compliance with state and federal nursing home regulations. In determining whether there is a history of satisfactory compliance with federal or state regulations, DHS at a minimum may consider:

(A) whether any violation resulted in significant harm or a serious and immediate threat to the health, safety, or welfare of any resident;

(B) whether the person promptly investigated the circumstances surrounding any violation and took steps to correct and prevent a recurrence of a violation;

(C) the history of surveys and complaint investigation findings and any resulting enforcement actions;

(D) repeated failure to comply with regulation;

(E) inability to attain compliance with cited deficiencies within an acceptable period of time as specified in the plan of correction or credible allegation of compliance, whichever is appropriate;

(F) the number of violations relative to the number of facilities the applicant or any other person named in §19.201(e) of this title (relating to Criteria for Licensing) has been affiliated with during the last five years; and

(G) any exculpatory information deemed relevant by DHS;

(2) has committed any act described in §19.2112(a)(2)-(6) of this title (relating to Administrative Penalties);

(3) violated Chapter 242 of the Texas Health and Safety Code in either a repeated or substantial manner;

(4) aids, abets, or permits a substantial violation described in paragraph (3) of this subsection about which the person had or should have had knowledge;

(5) fails to provide the required information and facts and/or references;

(6) fails to pay the following fees, taxes, and assessments when due:

(A) licensing fees as described in §19.216 of this title (relating to License Fees);

(B) reimbursement of emergency assistance funds within one year from the date on which the funds were received by the trustee in accordance with the provisions of §19.2116(e) and (f) of this title (relating to Involuntary Appointment of a Trustee); or

(C) franchise taxes;

(7) discloses any of the following actions within the five-year period preceding the application:

(A) operation of a facility that has been decertified and/or had its contract canceled under the Medicare or Medicaid program in any state;

(B) federal or state nursing facility sanctions or penalties, including, but not limited to, monetary penalties, downgrading the status of a facility license, proposals to decertify, directed plans of correction or the denial of payment for new Medicaid admissions;

(C) state or federal criminal convictions for any offense that provides a penalty of incarceration;

(D) unsatisfied final judgments;

(E) eviction involving any property or space used as a facility in any state; or

(F) suspension of a license to operate a health care facility, long-term care facility, personal care facility, or a similar facility in any state.

(b) DHS will not issue a license to an applicant to operate a new facility if the applicant discloses any of the following actions during the five-year period preceding the application:

(1) revocation of a license to operate a health care facility, long-term care facility, personal care facility, or similar facility in any state;

(2) debarment or exclusion from the Medicare or Medicaid programs by the federal government or a state; or

(3) a court injunction prohibiting the applicant or manager from operating a facility.

(c) Only final actions are considered for purposes of subsections (a)(7) and (b) of this section. An action is final when routine administrative and judicial remedies are exhausted. All actions, whether pending or final, must be disclosed.

(d) If an applicant for a new license owns multiple facilities, the overall record of compliance in all of the facilities will be examined. Denial of an application for a new license will not preclude the renewal of licenses of other of the applicant's facilities with satisfactory records.

(e) If DHS denies a license or refuses to issue a renewal of a license, the applicant or licensee may request an administrative

hearing. Administrative hearings are held under the provisions of the Administrative Procedures Act (APA), Title 10 of the Texas Government Code, §§2001.051 et seq. and DHS's formal hearing rules in §§79.1601 - 79.1614 of this title (relating to Formal Hearings).

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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## Subchapter D. Facility Construction

### 40 TAC §19.326

The amendment is adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license nursing facilities.

The amendment implements the Health and Safety Code, §§242.001- 242.804.

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## Subchapter E. Resident Rights

### 40 TAC §§19.401, 19.403, 19.408, 19.415

The amendments and new section are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license nursing facilities; under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments and new section implement the Health and Safety Code, §§242.001-242.804, and the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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## Subchapter F. Admission, Transfer, and Discharge Rights in Medicaid-Certified Facilities

### 40 TAC §19.502, §19.503

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042.

§19.502. *Transfer and Discharge in Medicaid-certified Facilities.*

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

(e) Timing of the notice.

(1) (No change.)

(2) The requirements described in paragraph (1) of this subsection and subsection (g) of this section do not have to be met if the resident, responsible party, or family or legal representative requests the transfer or discharge.

(3) (No change.)

(4) When an immediate involuntary transfer or discharge as specified in subsection (b)(3) or (4) of this section, is contemplated, unless the discharge is to a hospital, the facility must:

(A) immediately call the staff of the Quality Assurance Review and Investigations Section of the Texas Department of Human Services' (DHS's) state office to report their intention to discharge; and

(B) submit the required physician documentation regarding the discharge.

(f)-(g) (No change.)

(h) Notice of relocation to another room. Except in an emergency, the facility must notify the resident and either the responsible party or the family or legal representative at least five days before relocation of the resident to another room within the facility. The facility must prepare a written notice which contains:

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

(i) Fair hearings.

(1) Individuals who receive a discharge notice from a facility have 10 days to appeal. If the recipient appeals, he may remain in the facility, except in the circumstances described in



subsections (b)(5) and (e)(3) of this section, until the hearing officer makes a final determination. Vendor payments and eligibility will continue until the hearing officer makes a final determination. If the recipient has left the facility, Medicaid eligibility will remain in effect until the hearing officer makes a final determination.

(2) When the hearing officer determines that the discharge was inappropriate, the facility, upon written notification by the hearing officer, must readmit the resident immediately, or to the next available bed. If the discharge has not yet taken place, and the hearing officer finds that the discharge will be inappropriate, the facility, upon written notification by the hearing officer, must allow the resident to remain in the facility. The hearing officer will also report the findings to Long Term Care-Regulatory for investigation of possible noncompliance.

(3) When the hearing officer determines that the discharge is appropriate, the resident is notified in writing of this decision. Any payments made on behalf of the recipient past the date of discharge or decision, whichever is later, must be recouped.

(j) Discharge of married residents. If two residents in a facility are married and the facility proposes to discharge one spouse to another facility, the facility must give the other spouse notice of his right to be discharged to the same facility. If the spouse notifies a facility, in writing, that he wishes to be discharged to another facility, the facility must discharge both spouses on the same day, pending availability of accommodations.

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## Subchapter G. Resident Behavior and Facility Practice

### 40 TAC §19.601, §19.602

The amendments are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license nursing facilities; under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Health and Safety Code, §§242.001- 242.804, and the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§19.602. *Incidents of Abuse and Neglect Reportable to the Texas Department of Human Services (DHS) by Facilities.*

(a) Any facility staff member who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse or neglect caused by another

person must report the abuse or neglect. Facility staff must also report conduct or conditions resulting in:

- (1) exploitation of residents;
- (2) serious accidental injury to residents; or
- (3) hospitalization of residents.

(b) Each employee of a facility must sign a statement which states:

(1) the employee may be criminally liable for failure to report abuses; and

(2) under the Health and Safety Code, Title 4, §242.133, the employee has a cause of action against a facility, its owner(s) or employee(s) if he is suspended, terminated, disciplined, or discriminated or retaliated against as a result of:

(A) reporting any action described in subsection (a) of this section to DHS or a law enforcement agency;

(B) reporting the abuse or neglect or other complaint to the person's supervisors; or

(C) for initiating or cooperating in any investigation or proceeding of a governmental entity relating to care, services, or conditions at the nursing facility.

(c) The statements described in subsection (b) of this section must be available for inspection by DHS.

(d) Reports described in subsection (a) of this section are to be made to the DHS state office, Austin, Texas, at 1-800-458-9858. The person reporting must make an oral report immediately on learning of the alleged abuse or neglect.

(e) The facility must conduct an investigation of the reported acts in subsection (a) of this section. A written report of the investigation must be sent no later than the fifth calendar day after the oral report.

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## Subchapter I. Resident Assessment

### 40 TAC §19.801

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The amendment implements the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042.

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## Subchapter K. Nursing Services

### 40 TAC §19.1001, §19.1010

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The amendments implement the Health and Safety Code, §§242.001- 242.804, and the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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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## Subchapter L. Dietary Services

### 40 TAC §19.1101, §19.1104

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The amendments implement the Health and Safety Code, §§242.001- 242.804, and the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§19.1104. *Dietary Consultant Requirements.*

(a) The facility must ensure a qualified dietitian is available as frequently and for such time as is necessary to assure each resident a diet that meets the daily nutritional and special dietary needs of each resident, based upon the acuity and clinical needs of the resident. The facility must ensure that dietary consultant hours are provided, at a minimum, as follows:

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

(b)-(d) (No change.)

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## Subchapter T. Administration

### 40 TAC §§19.1912, 19.1918, 19.1920, 19.1921

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The amendments implement the Health and Safety Code, §§242.001- 242.804, and the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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## Subchapter U. Inspections, Surveys, and Visits

### 40 TAC §§19.2002, 19.2004, 19.2008

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The amendments implement the Health and Safety Code, §§242.001- 242.804.

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## Subchapter V. Enforcement

### Enforcement Generally

#### 40 TAC §19.2102

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The amendment implements the Health and Safety Code, §§242.001- 242.804, and the Human Resources Code, §§22.001-22.030 and §32.001-32.042.

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## Licensing Remedies

#### 40 TAC §§19.2104, 19.2106, 19.2110-19.2112, 19.2114, 19.2115

The amendments and new sections are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license nursing facilities.

The amendments and new sections implement the Health and Safety Code, §§242.001-242.804.

#### §19.2104. *Suspension of a License.*

(a) The Texas Department of Human Services (DHS) may suspend a facility's license when the license holder, or any other

person described in §19.201(e) of this title (relating to Criteria for Licensing), has:

(1) violated the requirements in either a repeated or substantial manner; or

(2) committed any act described in §19.2112(a)(2)-(6) of this title (relating to Administrative Penalties).

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

#### §19.2106. *Revocation of a License.*

(a) The Texas Department of Human Services (DHS) may revoke a facility's license when the license holder, or any other person described in §19.201(e) of this title (relating to Criteria for Licensing), has:

(1) violated the requirements of the Health and Safety Code, Chapter 242, or the rules adopted under that chapter, in either a repeated or substantial manner; or

(2) committed any act described in §19.2112(a)(2)-(6) of this title (relating to Administrative Penalties).

(b) Revocation of a license may occur simultaneously with any other enforcement provision available to DHS.

(c) The facility will be notified by certified mail of DHS's intent to revoke the license, including the facts or conduct alleged to warrant the revocation. The facility has an opportunity to show compliance with all requirements of law for the retention of the license as provided in §19.215 of this title (relating to Informal Reconsideration). If the facility requests an informal reconsideration, DHS will give the license holder a written affirmation or reversal of the proposed action.

(d) The facility will be notified by certified mail of DHS's revocation of the facility's license. The facility has 15 days from receipt of the certified mail notice to request a hearing in accordance with §§79.1601-79.1614 of this title (relating to Formal Hearings). The revocation will take effect when the deadline for appeal of the revocation passes, unless the facility appeals the revocation. If the facility appeals the revocation, the status of the license holder is preserved until final disposition of the contested matter. Upon revocation, the license must be returned to DHS.

#### §19.2110. *Referral to the Attorney General.*

In this section, "threatened violation" means a situation which, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety. The Texas Department of Human Services (DHS) may refer a facility to the attorney general who may petition a district court for:

(1) a temporary restraining order to restrain a person from a violation or threatened violation of the requirements or any other law affecting residents if DHS reasonably believes that the violation or threatened violation creates an immediate threat to the health and safety of a resident;

(2) an injunction to restrain a person from a violation or threatened violation of the requirements or any other law affecting residents if DHS reasonably believes that the violation or threatened violation creates a threat to the health and safety of a resident; or

(3) the assessment of civil penalties under the Texas Health and Safety Code, §242.065, for a violation that threatens the health and safety of a resident. DHS recognizes the limited immunity from civil liability granted to volunteers serving as officers, directors, or trustees of charitable organizations, under the Charitable Immunity

and Liability Act of 1987 (Texas Civil Practice and Remedies Code, Chapter 84).

§19.2112. *Administrative Penalties.*

(a) The Texas Department of Human Services (DHS) may assess an administrative penalty against a person who:

(1) violates Chapter 242, Health and Safety Code or a rule, standard or order adopted or license issued under Chapter 242;

(2) makes a false statement, that the person knows or should know is false, of a material fact:

(A) on an application for issuance or renewal of a license or in an attachment to the application; or

(B) with respect to a matter under investigation by DHS;

(3) refuses to allow a representative of DHS to inspect:

(A) a book, record, or file required to be maintained by a facility; or

(B) any portion of the premises of a facility;

(4) willfully interferes with the work of a representative of DHS or the enforcement of this chapter;

(5) willfully interferes with a representative of DHS preserving evidence of a violation of a rule, standard, or order adopted or license issued under Chapter 242, Health and Safety Code.

(6) fails to pay a penalty assessed by DHS under chapter 242, Health and Safety Code by the 10th day after the date the assessment of the penalty becomes final.

(b) The persons against whom DHS may impose an administrative penalty include:

(1) an applicant for a license;

(2) a license holder;

(3) a partner, officer, director, or managing employee of an applicant or a license holder; and

(4) a person who controls a nursing facility.

(c) DHS recognizes the limited immunity from civil liability granted to volunteers serving as officers, directors or trustees of charitable organizations, under the Charitable Immunity and Liability Act of 1987 (Texas Civil Practice and Remedies Code, Chapter 84).

(d) In determining whether a violation warrants an administrative penalty, DHS considers the facility's history of compliance and whether:

(1) a pattern or trend of violations exists; or

(2) the violation is recurrent in nature and type; or

(3) the violation presents danger to the health and safety of at least one resident; or

(4) the violation is of a magnitude or nature that constitutes a health and safety hazard having a direct or imminent adverse effect on resident health, safety, or security, or which presents even more serious danger or harm; or

(5) the violation is of a type established elsewhere in DHS's rules concerning licensing standards for long term care facilities.

(e) In determining the amount of the penalty, DHS considers at a minimum:

(1) the gradations of penalties;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or potential hazard to the health and safety of the residents;

(3) the history of previous violations;

(4) deterrence of future violations; and

(5) efforts to correct the violation.

(f) Administrative penalties may be levied for each violation found in a single survey. Each day of a continuing violation constitutes a separate violation. The following table contains the gradations of penalties in accordance with the relative seriousness of the violation. The penalties for a violation of the requirement to post notice of the suspension of admissions, additional reporting requirements found at §19.601(a) of this title (relating to Resident Behavior and Facility Practice), or residents' rights cannot exceed \$1,000 a day for each violation, unless the violation of a resident's right also violates a rule in Subchapter H, Quality of Life, or Subchapter J, Quality of Care.

Figure: 40 TAC 19.2112(f)

(g) No facility will be penalized because of a physician's or consultant's nonperformance beyond the facility's control or if documentation clearly indicates the violation is beyond the facility's control.

(h) DHS may issue a preliminary report regarding an administrative penalty. Within 10 days of the issuance of the preliminary report, DHS will give the facility written notice of the recommendation for an administrative penalty. The notice will include:

(1) a brief summary of the violations;

(2) a statement of the amount of penalty recommended;

(3) a statement of whether the violation is subject to correction under §19.2114 of this title (relating to Right to Correct) and if the violation is subject to correction, a statement of:

(A) the date on which the facility must file a plan of correction (POC) to be approved by DHS; and

(B) the date on which the POC must be completed to avoid assessment of the penalty; and

(4) a statement that the facility has a right to a hearing on the violation, the amount of the penalty, or both.

(i) Within 20 days after the date on which written notice of recommended assessment of a penalty is sent to a facility, the facility must give DHS written consent to the penalty, make a written request for a hearing, or if the violation is subject to correction, submit a plan of correction in accordance with §19.2114 of this title. If the facility does not make a response within the 20-day period, DHS will assess the penalty.

(j) The procedures for notification of recommended assessment, opportunity for hearing, actual assessment, payment of penalty, judicial review, and remittance will be in accordance with Health and Safety Code, §§242.067 - 242.069. Hearings will be held in accordance with DHS's formal hearing procedures in Chapter 79 of this title (relating to Legal Services). Interest on penalties is governed by Health and Safety Code §242.069(g).

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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## Remedies in Medicaid-Certified Facilities

### 40 TAC §§19.2146-19.2148

The amendment and new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment and new sections implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§19.2148. *Arbitration.*

A facility may elect arbitration as provided in 1 TAC Chapter 163 (concerning Arbitration Procedures for Certain Enforcement Actions of the Department of Human 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.

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### 40 TAC §19.2147

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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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## Subchapter X. Requirements for Medicaid-Certified Facilities

### 40 TAC §19.2308, §19.2320

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042.

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## TITLE 43. TRANSPORTATION

### Part I. Texas Department of Transportation

#### Chapter 25. Traffic Operation

##### Subchapter A. General

### 43 TAC §25.12

The Texas Department of Transportation adopts new §25.12, concerning the department's Procedures for Establishing Speed Zones. Section 25.12 is adopted without changes to the proposed text as published in the November 14, 1997, issue of the *Texas Register* (22 TexReg 11064) and will not be republished.

Transportation Code, §545.353 authorizes the Texas Transportation Commission to adopt procedures that will be used to determine speed limits on public roadways. Pursuant to this authority, the department has adopted a Procedures for Establishing Speed Zones manual. Transportation Code, Chapter 545, Subchapter H requires most speed limits, whether set by the commission, a county commissioners court, a tollway authority, or a municipality, to be determined from the results of an engineering and traffic investigation. The commission, and a municipality when setting a speed limit on the state highway

system, are required to use the department's Procedures for Establishing Speed Zones when conducting an investigation. The procedures may be used in all other circumstances.

Senate Bill 370, §1.45, 75th Legislature, 1997, authorizes a county commissioner court to request the commission determine and declare a reasonable and safe prima facie speed limit lower than the maximum speed allowable under state law. The commission may declare such a lower speed limit on a farm-to-market or ranch-to-market road of the state highway system in the county with a pavement width of twenty feet or less. In these instances, the commission is given greater flexibility in establishing speed limits by not being required to perform an engineering and traffic investigation. The commission is instead required to use sound and generally accepted traffic engineering practices. Senate Bill 370, §1.45 also requires the commission to establish standards for determining these lower speed limits within a set range by rule.

Concern over the rise in traffic fatalities that occurred statewide in 1996 also prompted the department to conduct a series of town meetings in conjunction with the Texas Department of Public Safety in order to examine the criteria and procedures for establishing speed limits on rural highways. These town meetings also identified a need to incorporate greater flexibility for setting speed limits on public roads where conditions warrant a lower speed than the maximum allowable under state law.

Section 25.12 adopts the department's Procedures for Establishing Speed Zones manual by reference, incorporates revisions to these procedures necessary to implement the provisions of Senate Bill 370, §1.45 and the public comments received at the town meetings, and provides the additional discretion needed to potentially reduce traffic accidents on some public roads.

The manual states that the posted speed limit may be reduced by as much as 10 miles per hour (12 miles per hour for locations with crash rates higher than the statewide average) below the 85th percentile speed, based on sound and generally accepted engineering judgment that includes consideration of the following factors: roadway pavement widths of 20 feet or less; horizontal and vertical curves; hidden driveways and other developments; a high density of driveways; a crash history at the location; rural residential or developed areas; and roadways without improved and striped shoulders.

No comments were received on the proposed new section.

The new section is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation and, more specifically, Transportation Code, Chapter 545, Subchapter H, as amended by Senate Bill 370, §1.45, 75th Legislature, 1997, which provides the commission and certain political subdivisions with the authority to alter speed limits established by state law, as determined from the results of an engineering and traffic investigation.

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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## Subchapter J. Municipal Restrictions on Use of State Highways

### 43 TAC §§25.601–25.603

The Texas Department of Transportation adopts new, §§25.601-25.603, concerning municipal restrictions on the use of state highways. Sections 25.601-25.603 are adopted without changes to the proposed text as published in the November 14, 1997, edition of the *Texas Register* (22 TexReg 11068) and will not be republished.

Senate Bill 773, 75th Legislature, 1997, added Transportation Code, §545.0651 to authorize municipalities by ordinance to restrict through traffic, by vehicle class, to two designated lanes of a highway in the municipality. Senate Bill 773 limits a municipality's authority in this regard to controlled access highways on the state highway system that have three or more lanes, excluding access or frontage roads, in each direction of traffic.

Senate Bill 773 requires a municipality, before adopting an ordinance restricting the use of a highway, to submit a description of the proposed restriction to the department for evaluation, and to obtain department approval of the restriction before it may be enforced. Department approval is required to be based on a traffic study that evaluates the effect of the proposed restriction. Department approval must also ensure, to the greatest extent practicable, coordination among adjacent municipalities to prevent inconsistent lane restrictions. Senate Bill 773 requires the department to install and maintain all traffic control devices necessary to implement and enforce a municipal ordinance which prescribes lane restrictions on a highway, and allows the department to suspend or rescind approval of a lane restriction based on criteria such as a change in pavement or traffic conditions.

New §25.601 describes the purpose of the new subchapter, which is to implement Senate Bill 773, authorizing a municipality by ordinance to restrict, by class of vehicle, through traffic to two designated lanes of traffic on highways in the municipality.

New §25.602 provides definitions for words and terms used in the new subchapter.

New §25.603 prescribes the responsibilities of municipalities in the development and designation of lane restrictions, prescribes responsibilities of municipalities related to the cost of restriction development, prescribes the responsibilities of the department in evaluating and approving municipal proposals for lane restrictions, and describes how the public will be involved in establishing lane restrictions.

A public hearing was held on December 2, 1997, and no comments were received on the proposed new sections.

The new sections are adopted under Transportation Code, §201.101, which authorizes the Texas Transportation Commission to promulgate rules for the conduct of the work of the Texas

Department of Transportation, and more specifically, Transportation Code, §545.0651 as added by Senate Bill 773, 75th Legislature, 1997.

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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## Subchapter K. Major Agricultural Interest Sign Program

### 43 TAC §§25.700-25.708

The Texas Department of Transportation adopts new §§25.700-25.708 concerning the major agricultural interest sign program. Section 25.704 is adopted with changes to the proposed text as published in the November 14, 1997, edition of the *Texas Register* (22 TexReg 11070). Sections 25.700-25.703 and 25.705-25.708 are adopted without changes and will not be republished.

Senate Bill 370, §2.04, 75th Texas Legislature, 1997 added §391.097 of the Transportation Code, to require that the Texas Transportation Commission enter into one or more contracts with an individual, firm, group, or association of this state to erect and maintain major agricultural interest signs at appropriate locations along eligible rural highways. This statute further requires the commission to adopt rules necessary to enforce and implement this section.

Section 25.700 describes the purpose of the subchapter which is to implement Transportation Code, §391.097.

Section 25.701 provides definitions for words and terms used in the subchapter.

Section 25.702 authorizes the department to award a contract for the placement of agricultural interest signs and describes the contractor's marketing responsibilities. This section describes the contractor's responsibilities for sign placement, installation, maintenance, cooperation with other contractors, annual reports, attendance at meetings, and record keeping. This section allows the department to install or perform other work on these signs under emergency conditions at which time the contractor is immediately required to pay the department for the cost of the work and authorizes the department to require the contractor to relocate or remove a major agricultural interest sign under certain conditions. It requires the contractor to remit a fee of 5.0% to the department to reimburse the department's administrative expenses, assess a one-time sign installation fee and an annual rental fee, and meet all bonding requirements contained in Government Code, Chapter 2253.

Section 25.703 describes the requirements and procedures that a contractor must follow to be eligible to bid on a contract and

describes the criteria the department will use to evaluate the contractor's prequalification documentation.

Section 25.704 describes the procedures under which the contract will be awarded and the requirements a contractor must follow in order to submit an acceptable bid. This section requires bids to be opened at a public hearing, and authorizes the commission to accept or reject all bids and award the contract to the lowest bidder.

Section 25.705 describes the specifications, design, and placement requirements for major agricultural interest signs.

Section 25.706 requires an agricultural interest to be a farm, ranch, winery, greenhouse, or other facility that sows an agricultural commodity, devotes at least five acres of land to the production of an agricultural commodity, markets the products on the premises as a retail sale, and conducts public tours of the grounds or facilities in order to be eligible for a sign. This section also requires the agricultural interest to be within five miles of an intersection with an eligible rural highway, post its hours of operation, provide modern restroom facilities and drinking water, provide adequate parking, and be ineligible for the logo sign program sign.

Section 25.707 describes the procedures for obtaining an application form, where the application must be submitted, the rights of the agricultural interest to renew its participation agreement with the contractor, and the conditions under which a major agricultural interest sign may be covered or removed by the contractor.

Section 25.708 describes the procedures by which the contractor may appeal a decision by the department or the contractor.

A public hearing was held on December 2, 1997, and no comments were received on the proposed new sections.

Section 25.704 is adopted with a change in subsection (b)(2) to correct a typographical error in the formula of Figure 1.

The new sections are adopted under Transportation Code, §201.101, which authorizes the Texas Transportation Commission to promulgate rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, §391.097 which requires the Texas Transportation Commission to enter into a contract to erect and maintain major agricultural interest signs at appropriate locations along eligible rural highways and adopt rules necessary to enforce and implement this section.

#### §25.704. *Contract Award Procedures.*

(a) Notice. The department will publish a notice of intent to award a sign program contract in industry related publications at least 45 calendar days prior to contractor selection. The notice shall include prequalification requirements for bidders.

(b) Bidding requirements.

(1) To be considered for award of a contract under this section, a prequalified bidder must file with the director of the traffic operations division a sealed bid proposal in a form prescribed by the department. Submission of the bid proposal must comply with the location, date, and time requirements of the notice. The bids shall be opened at a public hearing conducted by the director of the traffic operations division. All bidders may attend and all bids shall be opened in their presence.

(2) The bid amount for the sign program contract will be the total of the sign installation fee plus, one-tenth of the sum of the sign rental fees. Expressed as a formula:  
Figure 1: 43 TAC §25.704(b)(2)

(3) The department will not consider a bid which:

(A) fails to comply with any requirement of the notice; or

(B) specifies an installation fee that is less than 5% or greater than 25% of the sign annual rental fee.

(c) Award of contract.

(1) All bid proposals received by the director of the traffic operations division shall be tabulated and forwarded to the commission. The commission may accept or reject all bids, and if accepted, award the contract to the lowest bidder.

(2) The department will notify the contractor by certified mail of the award of the sign program contract within 10 calendar days of the date of the award. To accept the award, the contractor must execute a contract with the department within 30 calendar days of the date of the award.

(3) The contract shall be in a form prescribed by the department and shall, at a minimum, include all terms and conditions prescribed by this subchapter and such other terms and conditions the department deems advantageous to the state.

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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## Chapter 28. Oversize and Overweight Vehicles and Loads

### Subchapter G. Port Authority Permits

#### 43 TAC §§28.90-28.92

The Texas Department of Transportation adopts new §§28.90-28.92, concerning port authority permits, with changes to the proposed text as published in the November 21, 1997 issue of the *Texas Register* (22 TexReg 11334).

The new sections are necessary to implement the provisions of Senate Bill 1276 and to ensure the department's proper administration of the laws concerning the issuance of permits for the movement of oversize and overweight loads. Senate Bill 1276, 75th Legislature, 1997, amended Chapter 623, Transportation Code, by adding Subchapter K, to provide that the department may authorize a port authority to issue permits for the movement of oversize and overweight vehicles carrying cargo on State Highway 48/State Highway 4 between the Gateway International Bridge and the Port of Brownsville. The

new sections outline the procedures for the issuance of such permits.

Section 28.90, Purpose, provides that the purpose of this subchapter is to set forth the requirements and procedures applicable to the issuance of permits by the Brownsville Navigation District of Cameron County, Texas (Port of Brownsville) for the movement of oversize and overweight vehicles. Section 28.90 is adopted with changes to remove the term "non-divisible" in describing the type of cargo to be transported.

Section 28.91, Responsibilities, outlines responsibilities of the Port of Brownsville and the department under this subchapter; stipulates maximum fees and how fees collected under this subchapter shall be used; provides how the department will be reimbursed by the Port Authority for maintenance of State Highway 48/State Highway 4 between the Port of Brownsville and the Gateway International Bridge; stipulates how permits shall be issued by the Port of Brownsville and how such may be verified by the department or law enforcement personnel; provides for the department to conduct audits related to the issuance of permits under this subchapter and stipulates how such audits will be conducted; provides for revocation of the Port of Brownsville's authority to issue permits and provides procedures for appealing any such revocation; stipulates travel requirements and restrictions for any permits issued under this subchapter by the Port of Brownsville; and stipulates that the Port of Brownsville shall enter into a maintenance contract with the department for the maintenance of State Highway 48/State Highway 4 between the Gateway International Bridge and the Port of Brownsville. Section 28.91 is adopted with the following changes: subsection (b) is amended to remove the requirement that all permits issued by the Brownsville Navigation District of Cameron County, Texas ("Port of Brownsville") be provided electronically to the department, to provide that all permits shall be carried in the permitted vehicle, and to provide that the Port of Brownsville shall provide access or a telephone number for verification of permit authenticity by law enforcement or department personnel; and subsection (f) is amended to state that the department shall provide a 30 day notice of non-compliance prior to instituting procedures to revoke the Port of Brownsville's authority to issue permits.

Section 28.92, Permit Issuance Requirements and Procedures, stipulates the information to be included on a permit application, the form of application, and how permits issued under this subchapter may be used; payment of permit fees; weight limits and restrictions; vehicle registration requirements; motor carrier registration requirements; speed limit restrictions; and states that this subchapter expires March 1, 2001. Section 28.92 is adopted with changes to subsection (h) to delete the requirement that the Port of Brownsville "utilize" scales and to include a requirement that vehicles issued a permit by the Port of Brownsville must be weighed on scales capable of determining gross vehicle weights and individual axle loads and, to ensure the accuracy of the permit, a requirement that such scales must be certified by the Texas Department of Agriculture or must be accepted by the United Mexican States.

A public hearing was held on December 11, 1997. Fifty-seven oral and written comments were submitted in response to the proposed rules. The following provided verbal comments in favor of the proposed rules: Texas State Representative Rene Oliveira, two representatives of TRANS Montingue, one representative of the Brownsville Economic Development Council, two representatives of the Brownsville Navigation District of



Cameron County, Texas ("Port of Brownsville"), a representative of Texas State Senator Eddie Lucio's office, and three individuals. South Texas Grain Company and Brownsville Gulfside Warehouse provided verbal and written comments in favor of the proposed rules. Two individuals provided verbal comments against the proposed rules. Four individuals provided verbal and written comments against the proposed rules. A representative of the University of Texas Center for Transportation Research provided written comments against the proposed rules.

The following provided verbal comments in favor of the proposed rules with changes: Dix Shipping Company, a representative of the Brownsville Chamber of Commerce, Groendyke Transport Transporte Intermex, a representative of the Cameron County Commissioner's Court, and two individuals. The following provided verbal and written comments in favor of the proposed rules with amendments: Texas State Senator Eddie Lucio, seven representatives of the Port of Brownsville, Port Elevator of Brownsville, BND Lessee Association, Plitt Crane Equipment, and two individuals. Gulf Stream Marine provided written comments in favor of the proposed rules with amendments.

Comment: Regarding §28.90, Purpose, several commenters expressed concerns regarding restricting permits issued by the Port of Brownsville to non-divisible loads, felt that this limitation would defeat the legislation's intent, and that this restriction may be beyond the department's authority. Another commenter expressed concern regarding the ability to transport divisible loads under this permit and the deviation from the original intent of existing permit statutes, which were created for the transportation of non-divisible loads.

Response: Since the inception of the original permit law in 1929 all oversize/overweight permits, with the exception of one, have been for the transport of non-divisible loads. However, upon further evaluation of the specific highway corridor and the types of loads transported along this corridor, and upon evaluation of comments regarding the original intent of the enabling legislation, which was to allow the transport of divisible loads with this permit, the department has amended the rules to allow the transport of divisible loads.

Comment: Regarding §28.91(b), Transmission of permits, several commenters stated that the Port of Brownsville should not be required to transmit permits to the department at the time of issuance by the port. The commenters felt that this requirement would delay the issuance process and would create additional costs for the Port of Brownsville.

Response: The rules are amended to allow original permits to be carried in the permitted vehicle in lieu of electronic updating. The rules are further amended to state that it is the Port of Brownsville's responsibility to provide access or a telephone number for verification of permit authenticity by law enforcement or department personnel. The title of §28.91(b) has been changed to reflect these revisions.

Comment: Concerning §28.91(h)(1), Maintenance contract, several commenters felt that the department should tighten maintenance contract language to be more specific.

Response: The current language allows the department to protect public safety and the public's investment in the transportation system, and more specific language could limit the department's flexibility in seeking remedies as needed. The department has also amended this subsection to clarify that it is the

maintenance contract that shall provide for a system of payments.

Comment: Concerning §28.92(c), Maximum permit weight limits, one commenter stated that the rules may need to coincide with the weight limits of the United Mexican States for six-axle units of 106,000 pounds. Another commenter requested that the rules specify only gross weight, and not axle weight limits, and several commenters requested modifications to provide greater allowance for axle and gross weight tolerances.

Response: The rules mirror weight limits for all other oversize/overweight permits issued under Title 43, Texas Administrative Code, Chapter 28. These weight limits were developed based upon engineering analyses to determine weights sustainable by Texas' roads without unacceptable damage, and are standard weight limits accepted by the motor carrier industry. Additionally, the rules do not require Mexican law to be violated. Regarding allowances for axle and gross weight tolerances, the foregoing description of the development of weight limits also applies. To the extent the commenter is requesting an increased enforcement allowance, the department has no authority in this matter. This is an enforcement issue and the department is not an enforcement agency.

Comment: Concerning §28.92(f), Revocation of authority to issue permits, several commenters requested a 30-day grace period to correct improprieties, before procedures to revoke the port's authority to issue permits are instituted.

Response: Upon evaluation of these comments, the department has determined that, in fairness to all concerned parties, a mechanism allowing the Port of Brownsville time to correct any improprieties should be included in these rules. The rules are amended to allow for a 30-day grace period to correct improprieties before the department institutes actions to revoke permit issuance authority.

Comment: Several commenters requested that §28.92(f), regarding Travel conditions, be amended to require the District Engineer to make a determination regarding whether or not road conditions are hazardous.

Response: The determination of whether or not weather conditions are hazardous falls under the purview of law enforcement, rather than the department's District Engineers. The rules mirror language for all oversize/overweight permits issued under Title 43, Texas Administrative Code, Chapter 28, and law enforcement personnel are familiar with the current weather condition restrictions for all permitted vehicles.

Comment: Concerning §28.92(f), Travel conditions, one commenter stated that visibility restrictions for carriers should be extended from two-tenths of one mile to six-tenths of one mile.

Response: This requirement mirrors requirements addressing visibility in the issuance of all other oversize/overweight permits under Title 43, Texas Administrative Code, Chapter 28. The language concerning visibility has been utilized for more than 20 years, was established with law enforcement personnel input, and has proven effective in protecting the safety of the traveling public and the transportation infrastructure.

Comment: Concerning §28.92(h), Restrictions, several commenters expressed concerns relating to the terminology, "install" versus "utilize" scales. Additionally, one commenter expressed concerns with language stating the use of scales certified by the

Texas Department of Agriculture would nullify a certified weight ticket issued by the government of the United Mexican States.

Response: Upon further evaluation, the department has determined that the term "install" in the rules would imply that the Port of Brownsville must purchase and install new scales and would not be able to utilize existing scales owned by the Port or by others. In addition, the department has determined that it would be redundant to require the re-weighing of vehicles that were weighed in the United Mexican States prior to crossing into Texas. In order to clarify these provisions, §28.92(h)(1) is amended to remove the requirement that the Port of Brownsville install scales, to state that any vehicle issued a permit by the Port of Brownsville must be weighed on scales certified by the Texas Department of Agriculture, or on scales accepted by the United Mexican States, and to require that scales be capable of determining gross vehicle weights and individual axle loads.

Comment: Concerning §28.92(h)(6), Restrictions, several commenters stated that the maximum speed limit should be less than 55 miles per hour.

Response: Texas statutes specifically set the maximum speed at 55 miles per hour or the posted maximum, whichever is less, and the department does not have the authority to lower the speed limit as it pertains to the subject permits. Additionally, to require a lower speed limit could create abnormal traffic patterns, thereby creating a potential safety hazard.

Comment: Several commenters expressed overall general safety concerns, including concerns for area schoolchildren and concerns regarding the stopping distance for oversize vehicles. Other commenters felt that safety issues had been adequately addressed in the proposed rules.

Response: The department is sensitive to the commenters' concerns, and acknowledges the safety issues inherent in vehicular travel. However, the department is of the opinion that the rules adequately protect public safety by providing safety requirements, such as visibility and night movement restrictions, which are based upon sound engineering principles and detailed, long-term transportation studies. The rules also provide for a maximum speed limit.

Comment: Several commenters expressed concern for the integrity of pavement and structures as a result of issuing permits authorized by these rules.

Response: The department believes that the proposed rules protect the integrity of the transportation infrastructure by providing for a maintenance contract between the department and the Port of Brownsville. This contract will require the Port of Brownsville to provide maintenance as the department deems necessary to ensure that the roadways are maintained in an acceptable condition.

Comment: Several commenters requested that emergency rules be adopted to allow immediate issuance of permits by the Port of Brownsville.

Response: The adoption of emergency rules is limited to those situations where imminent peril will result if such are not adopted. As an emergency situation does not exist in this case, the rules will be effective 20 days after filing by the department with the Secretary of State, and subsequent entrance into a maintenance agreement between the Port of Brownsville and the department.

Comment: One commenter questioned the department's authority to adopt administrative rules implementing Senate Bill 1276, and stated that this legislation did not require administrative rules.

Response: The adoption of administrative rules implementing Senate Bill 1276 is a valid exercise of the Texas Transportation Commission's authority, and the department is required to adopt such rules under Government Code, Chapter 2001.

Comment: One commenter stated that insurance limits for Mexican vehicles should be increased.

Response: Insurance levels for vehicles owned or operated by citizens of the United Mexican States are not a part of this rulemaking process.

Comment: One commenter challenged the constitutionality of the proposed rules and stated that these rules encourage violation of state and federal laws.

Response: The department is unclear as to which state and federal laws the commenter refers. The proposed rules have been examined by the department's Office of General Counsel, and the department is unaware of any constitutional conflict regarding these rules.

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation and, more specifically, Transportation Code, Chapter 623, which authorizes the department to carry out the provisions of those laws governing the issuance of oversize and overweight permits.

#### §28.90. Purpose.

In accordance with Transportation Code, Chapter 623, Subchapter K, the department may authorize the Brownsville Navigation District of Cameron County, Texas (Port of Brownsville) to issue permits for the movement of oversize or overweight vehicles carrying cargo on State Highway 48/State Highway 4 between the Gateway International Bridge and the entrance to the Port of Brownsville. This subchapter sets forth the requirements and procedures applicable to the issuance of permits by the Port of Brownsville for the movement of oversize and overweight vehicles.

#### §28.91. Responsibilities.

(a) Surety bond. The Port of Brownsville shall post a surety bond in the amount of \$500,000 for the purpose of reimbursing the department for actual maintenance costs of State Highway 48/State Highway 4 in the event that sufficient revenue is not collected from permits issued under this subchapter.

(b) Verification of permits. All permits issued by the Port of Brownsville shall be carried in the permitted vehicle. The Port of Brownsville shall provide access or a phone number for verification of permit authenticity by law enforcement or department personnel.

(c) Training. The Port of Brownsville shall secure any training necessary for personnel to issue permits under this subchapter. The department may provide assistance with training upon request by the Port of Brownsville.

(d) Accounting. The department shall develop accounting procedures related to permits issued under this subchapter which the Port of Brownsville must comply with for the purpose of revenue collections and any payment made to the department under subsection (h) of this section.

(e) Audits. The department may conduct audits semi-annually or upon direction by the executive director of all Port of Brownsville permit issuance activities. In order to insure compliance, audits will at a minimum include a review of all permits issued, financial transaction records related to permit issuance, review of vehicle scale weight tickets and monitoring of personnel issuing permits under this subchapter.

(f) Revocation of authority to issue permits. If the department determines as a result of an audit that the Port of Brownsville is not complying with this subchapter, the executive director will issue a notice to the Port of Brownsville allowing 30 days to correct any non-compliance issue. If after 30 days it is determined that the Port of Brownsville is not in compliance, then the executive director may revoke the Port of Brownsville's authority to issue permits.

(1) Upon notification that its authority to issue permits under this subchapter has been revoked, the Port of Brownsville may appeal the revocation to the commission in writing.

(2) In cases where a revocation is being appealed, the Port of Brownsville's authority to issue permits under this subchapter shall remain in effect until the commission makes a final decision regarding the appeal.

(g) Fees. Fees collected under this subchapter shall be used solely to provide funds for the payments provided for under Transportation Code, §623.213, less administrative costs.

(1) The permit fee shall not exceed \$80 per trip. The Port of Brownsville may retain up to 10% of such permit fees for administrative costs, and the balance of the permit fees shall be used to make payments to the department for maintenance of State Highway 48/State Highway 4.

(2) The Port of Brownsville may issue a permit and collect a fee for any load exceeding vehicle size or weight as specified by Transportation Code, Chapter 621, Subchapters B and C, originating at the Gateway International Bridge traveling on State Highway 48/State Highway 4 to the Port of Brownsville or originating at the Port of Brownsville traveling on State Highway 48/State Highway 4 to the Gateway International Bridge.

(h) Maintenance Contract. The Port of Brownsville shall enter into a maintenance contract with the department for the maintenance of State Highway 48/State Highway 4 between the Gateway International Bridge and the Port of Brownsville.

(1) The maintenance contract shall provide for a system of payments from the Port of Brownsville to the department for all maintenance costs expended by the department to maintain State Highway 48/State Highway 4 to the current level of service or pavement conditions. Maintenance shall include, but is not limited to, routine maintenance, preventative maintenance, and total reconstruction of the roadway and bridge structures as determined by the department to maintain the current level of service for State Highway 48/State Highway 4.

(2) The Port of Brownsville may make direct restitution to the department for actual maintenance costs from this fund in lieu of the department filing against the surety bond described in subsection (a) of this section, in the event that sufficient revenue is not collected.

§28.92. *Permit Issuance Requirements and Procedures.*

(a) Permit application. Application for a permit issued under this subchapter shall be in a form approved by the department, and shall at a minimum include:

- (1) the name of the applicant;
- (2) date of issuance;
- (3) signature of the director of the Port of Brownsville;
- (4) a statement of the kind of cargo being transported;
- (5) the maximum weight and dimensions of the proposed vehicle combination, including number of tires on each axle, tire size for each axle, distance between each axle, measured from center of axle to center of axle, and the specific weight of each individual axle when loaded;
- (6) the kind and weight of each commodity to be transported, not to exceed loaded dimensions of 12' wide, 15'6" high, 110' long or 125,000 pounds gross weight;
- (7) statement of any condition on which the permit is issued;
- (8) a statement that the cargo shall be transported over the most direct route using State Highway 48/State Highway 4 between the Gateway International Bridge and the Port of Brownsville;
- (9) the name of the driver of the vehicle in which the cargo is to be transported;
- (10) the location where the cargo was loaded; and (11) the name of the specific Port of Brownsville employee issuing the permit.

(b) Permit issuance.

(1) General.

(A) The original permit must be carried in the vehicle for which it is issued.

(B) A permit is void when an applicant:

- (i) gives false or incorrect information;
- (ii) does not comply with the restrictions or conditions stated in the permit; or
- (iii) changes or alters the information on the permit.

(C) A permittee may not transport an overdimension or overweight load with a voided permit.

(2) Payment of permit fee. The Port of Brownsville may determine acceptable methods of payment. All fees transmitted to the department must be in U.S. currency.

(c) Maximum permit weight limits.

(1) An axle group must have a minimum spacing of four feet, measured from center of axle to center of axle, between each axle in the group to achieve the maximum permit weight for the group.

(2) Two or more consecutive axle groups must have an axle spacing of 12 feet or greater, measured from the center of the last axle of the preceding group to the center of the first axle of the following group, in order for each group to be permitted for maximum permit weight.

(3) Maximum permit weight for an axle or axle group is based on 650 pounds per inch of tire width or the following axle or axle group weights, whichever is the lesser amount:

- (A) single axle – 25,000 pounds;
- (B) two axle group – 46,000 pounds;

- (C) three axle group – 60,000 pounds;
- (D) four axle group – 70,000 pounds;
- (E) five axle group – 81,400 pounds;

(4) A permit issued under this subchapter does not authorize the vehicle to exceed manufacturer's tire load rating.

(d) Vehicles exceeding weight limits. Any vehicle exceeding weight limits outlined in subsection (c) of this section, shall apply directly to the department for an oversize or overweight permit in accordance with §28.11 of this title (relating to Permit Issuance Requirements and Procedures).

(e) Registration. Any vehicle or combination of vehicles permitted under this subchapter shall be registered in accordance with Transportation Code, Chapter 502.

(f) Travel conditions. Movement of a permitted vehicle is prohibited when visibility is reduced to less than 2/10 of one mile or the road surface is hazardous due to weather conditions such as rain, ice, sleet, or snow, or highway maintenance or construction work.

(g) Daylight and night movement restrictions. An oversize permitted vehicle may be moved only during daylight hours, as defined by Transportation Code, §541.401(1); however, an overweight only permitted vehicle may be moved at any time.

(h) Restrictions.

(1) Any vehicle issued a permit by the Port of Brownsville must be weighed on scales capable of determining gross vehicle weights and individual axle loads. For the purpose of ensuring the accuracy of the permit, the scales must be certified by the Texas Department of Agriculture or on scales accepted by the United Mexican States.

(2) A valid permit and certified weight ticket must be presented to the gate authorities before the permitted vehicle shall be allowed to exit or enter the port.

(3) A copy of the certified weight ticket shall be retained by the Port of Brownsville and become a part of the official permit record subject to inspection by department personnel or Texas Department of Public Safety personnel.

(4) The owner of a vehicle permitted under this subchapter must be registered as a motor carrier in accordance with Transportation Code, Chapters 643 or 645, prior to the oversize or overweight permit being issued. The Port of Brownsville shall maintain records relative to this subchapter, which are subject to audit by department personnel.

(5) Permits issued by the Port of Brownsville shall be in a form prescribed by the department.

(6) The maximum speed for a permitted vehicle shall be 55 miles per hour or the posted maximum, whichever is less.

(7) This subchapter expires March 1, 2001.

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

Filed with the Office of the Secretary of State on January 30, 1998.

TRD-9801426  
 Bob Jackson  
 Acting General Counsel  
 Texas Department of Transportation

Effective date: February 19, 1998  
 Proposal publication date: November 21, 1997  
 For further information, please call: (512) 463-8630



## Chapter 29. Maintenance

### Subchapter A. General

#### 43 TAC §29.3

The Texas Department of Transportation adopts the repeal of §29.3, concerning the distribution of roadway materials to counties. This section is no longer necessary due to the simultaneous adoption of this subject matter in new §29.3, concerning local government assistance.

No comments were received regarding the adoption on the repeal.

The repeal is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation and, more specifically, Transportation Code, §201.706 and Rider 43 to the department's appropriations for fiscal years 1998-1999, which require the department to develop rules and procedures to provide for the distribution of local government assistance.

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

Filed with the Office of the Secretary of State on January 30, 1998.

TRD-9801424  
 Bob Jackson  
 Acting General Counsel  
 Texas Department of Transportation  
 Effective date: February 19, 1998  
 Proposal publication date: November 14, 1997  
 For further information, please call: (512) 463-8630



The Texas Department of Transportation adopts new §29.3, concerning local government assistance, with changes to the proposed text as published in the November 14, 1997, issue of the *Texas Register* (22 TexReg 11076).

Transportation Code, §201.706, requires the department to assist counties with materials to repair and maintain county roads. Section 201.706 also requires the department to develop rules and procedures to implement that section and to provide for the distribution of the assistance. In order to ensure the equitable distribution of these materials, these procedures must give preference to counties with an above average number of overweight trucks receiving weight tolerance permits, as determined by the previous year's permit totals. Section 201.706 requires that the department supply the counties with at least \$12,000,000 of materials in both fiscal years 1998 and 1999 and at least \$6,000,000 of materials per fiscal year thereafter.

Rider 43 to the department's appropriations for fiscal years 1998-1999 requires the department to assist cities and counties with the maintenance of city streets and county roads by

providing engineering/maintenance expertise on roadway maintenance and by providing available surplus materials to any local government for the maintenance of city streets and county roads when these materials are available. New §29.3 describes the purpose of the section, defines words and terms used in that section, describes the assistance that will be provided, prescribes the formula for distributing materials on hand to counties, describes how engineering and maintenance expertise and surplus materials will be distributed under Rider 43, and prescribes procedures for applying for assistance.

On December 5, 1997, a public hearing was held for the purpose of receiving comments concerning the repeal of existing §29.3 and the proposed adoption of new §29.3. No oral comments were received at the hearing. However, on December 16, 1997, the department received written comments from Senator Stephen E. Ogden of the Texas Senate.

Senator Ogden stated that he believed the department's proposed rules are largely consistent with the language and legislative intent of the relevant statutes. However, he also stated that, in his opinion, the rules needed to be clarified to ensure that \$12 million of material assistance is made available to counties even if there is not \$12 million of surplus materials on hand.

In response, the department agrees that, regardless of whether the source of the materials is materials on hand, surplus materials, or new materials, a minimum amount of materials must be made available to the counties. The department has amended subsection (c) of §29.3 to specify that distributed materials may include surplus materials on hand or new materials. Subsection (c) also provides that new materials will be made available when surplus materials on hand are not sufficient to meet the required annual value.

Senator Ogden also stated that he thought the rules should address subparagraph (4) of §201.706, which directs the department to undertake cooperative and joint procurement of road materials under General Services Commission procedures. He stated that it was his intention with this language to give county governments access to some of the department's purchasing power, in order to lower their cost of acquisition.

In response, the department considers the statutory mandate to develop rules and procedures providing for the distribution of materials to counties and the mandate to undertake joint procurement efforts with counties to be separate concepts. The department also notes that the General Services Commission (GSC) has adopted rules implementing a Cooperative Purchasing Program (1 TAC §§113.81-113.88) and that a county may participate in the program by, among other things, submitting a resolution evidencing its intent to participate in the program. Participation in the program allows a county to issue purchase orders against a department or GSC contract. However, to comply with the proactive nature of the legislative mandate, the department has been in contact with GSC concerning the purchase of road materials and has suggested that GSC place an article in its Buyways newsletter, which is distributed to the 130 counties that currently participate in the state cooperative purchasing program. This article will provide information concerning how to purchase road materials. The department will also contact the 124 remaining counties and provide information concerning how to become part of the cooperative program, including describing the advantages of purchasing road materials using state pricing. The new section is adopted under Transportation Code, §201.101, which provides the Texas Transportation

Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation and, more specifically, Transportation Code, §201.706 and Rider 43 to the department's appropriations for fiscal years 1998-1999, which require the department to develop rules and procedures to provide for the distribution of local government assistance.

§29.3. *Local Government Assistance.*

(a) Purpose.

(1) Transportation Code, §201.706, requires the department to assist counties with materials to repair and maintain county roads. Section 201.706 also requires the department to develop rules and procedures to implement the section and to provide for the distribution of the assistance with preference given to counties with an above average number of overweight trucks receiving weight tolerance permits based on the previous year's permit totals.

(2) Rider 43 to the department's appropriations for fiscal years 1998-1999 requires the department to assist cities and counties with the maintenance of city streets and county roads by providing engineering/maintenance expertise on roadway maintenance and to provide available surplus materials to any local government.

(3) This section prescribes the policies and procedures for implementation of these two legal requirements.

(b) Definitions.

(1) City - Any municipality incorporated under the laws of the state.

(2) City street - A public street under the jurisdiction of a city.

(3) Cost of materials - Statewide average cost, actual cost, or fair market value of roadway maintenance material available to counties, such cost to include indirect costs in an amount prescribed by the department's Indirect Cost Recovery Program and the department's cost to administer the program.

(4) County - One of the 254 geographical political subdivisions of the state.

(5) County road - A public road under the jurisdiction of a county.

(6) Department - The Texas Department of Transportation.

(7) District - A subdivision of the department responsible for the day-to-day operations of the department in a specific geographically defined area.

(8) District engineer - The chief administrative officer of a district of the department.

(9) Engineering/maintenance expertise - Assistance consisting of providing existing department standards, specifications, or oral advice to cities or counties for use in roadway maintenance.

(10) Materials on hand - Roadway maintenance materials previously acquired by the department which are currently in department stock accounts.

(11) Surplus materials - Material on hand that the district engineer deems to be in excess of the district's need.

(12) Weight tolerance permits - A permit issued by the department under Transportation Code, 623.011, authorizing a vehicle to exceed maximum legal weight limitations.

(c) Distribution of assistance.

(1) Distribution of materials under Transportation Code, 201.706. Distributed materials may include surplus materials on hand or new materials. New materials will be made available when surplus materials on hand are not sufficient to meet the required annual value. The value of assistance to counties as required by Transportation Code, 201.706, will be allotted to districts as follows.

(A) 20% of the assistance will be based on the daily vehicle miles on county roads in a county divided by the total vehicle miles on county roads in the state.

(B) 15% of the assistance will be based on the number of lane miles of county roads in a county divided by the total lane miles of county roads in the state.

(C) 65% of the assistance will be based on the number of weight tolerance permits issued for a county divided by the total number of weight tolerance permits issued in the state.

(2) Distribution of assistance and material under Rider 43.

(A) Engineering/maintenance expertise will be provided to cities and counties upon written request from the local government.

(B) Material determined by the district engineer as surplus will be given to a local government upon request after the department has complied with the requirements of Transportation Code, 201.706.

(d) Application for assistance.

(1) Materials allocated under Transportation Code, 201.706.

(A) At the beginning of the fiscal year, or as soon as practical thereafter, each district engineer of the department shall notify each county in the district engineer's district of the assistance available to the county and provide a list of materials on hand, such list to include the cost of materials.

(B) Each county shall be requested to make a written request, within 45 days of the notification, to the local district engineer for assistance with materials in accordance with the requirements. Such requests shall be prioritized by the county.

(C) After the requested assistance to each county is determined for a fiscal year, any remaining unused fiscal year district allotment will be distributed based on need as determined by an engineering analysis.

(D) A county that receives assistance shall be responsible for the hauling of the department's material on hand from the site of storage unless otherwise approved by the department. If material is hauled by the department, the material price shall be increased by the cost of the haul.

(2) Assistance under Rider 43. Engineering/maintenance expertise shall be available to any city or county requesting such assistance. Materials shall be made available upon request, consistent with subsection (c)(2)(B) of this section.

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

Filed with the Office of the Secretary of State on January 30, 1998.

TRD-9801425

Bob Jackson

Acting General Counsel

Texas Department of Transportation

Effective date: February 19, 1998

Proposal publication date: November 14, 1997

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



# TEXAS DEPARTMENT OF INSURANCE

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## **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.

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Proposed Action

The Commissioner of Insurance at a hearing scheduled under Docket Number 2337 on March 25, 1998 at 9:00 a.m. in Room 100 of the William P. Hobby Jr., State Office Building, 333 Guadalupe Street in Austin, Texas, will consider the petition of Gary L. Wickert of Hughes, Watters & Askanase, L. L. P. The petition seeks the adoption of amendments to Endorsement WC 42 03 04-Texas Waiver of Our Right to Recover From Others Endorsement as contained in the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance. The proposed changes to the endorsement specify that the existence of a waiver of subrogation endorsement waives only the claim for past benefits paid, not its right to a statutory credit.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Article 5.56, 5.57 and 5.96.

A copy of the petition containing the full text of the proposed changes to the Texas Waiver of Our Right to Recover From Others Endorsement is available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 322-4147, (refer to Reference Number W-1297-42).

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001).

TRD-9801595  
Caroline Scott  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: February 4, 1998



Proposed Action

The Commissioner of Insurance will hold a public hearing under Docket Number 2339 on March 25, 1998, at 9:00 a.m., in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, to consider a petition by the staff of the Texas Department of Insurance proposing amendments to the Texas

Statistical Plan for Residential Risks. The proposed changes are necessary in order to comply newly adopted discounts for wind and hail resistant roofing materials and to include the ability to capture greater levels of detail as to the cause of loss for claims. Staff's petition (Reference P-0298-03-I) was filed on February 3, 1998.

The petition proposes amendments to the Texas Statistical Plan for Residential Risks to add fields for roof construction, hail resistant roof premium discounts, and cause of losses.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.96 and 21.69.

Copies of the full text of the staff petition and the proposed amendments are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the petition and proposed amendments, please contact Sylvia Gutierrez at (512) 463-6326 (refer to Reference Number P-0298-03-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, P.O. Box 149104, MC113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to C.H. Mah, Associate Commissioner for Technical Analysis, P.O. Box 149104, MC105-5G, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001).

TRD-9801596  
Caroline Scott  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: February 4, 1998



Proposed Action

The Commissioner of Insurance will hold a public hearing under Docket Number 2338 on March 25, 1998, at 9:00 a.m., in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe



Street in Austin, Texas, to consider a petition by the staff of the Texas Department of Insurance proposing amendments to the Texas Private Passenger Automobile Statistical Plan. The amendment in the staff petition which adds a field to gather statistical experience on the use of the youth group member discount is necessary to implement Article 5.03-5 of the Texas Insurance Code, enacted through H.B. 1498 passed by the 75th Legislature, which provides that an insurer may grant a discount for certain automobile insurance premiums for members of certain youth groups if necessary qualifications are met. Amendments are also proposed to an existing field to distinguish between youth driver training commercially provided and parent or guardian provided training. This proposal is the result of comments heard at a January 29, 1998 hearing in which a premium discount was approved for parent or guardian provided youth driver training. Staff's petition (Reference A-0298-02-I) was filed on February 3, 1998.

The petition proposes amendments to the Texas Private Passenger Automobile Statistical Plan to add a field to gather statistical experience on the use of the "youth group member" discount and to add additional codes to an existing field, "driver training discount", to distinguish between data concerning commercially provided and parent or guardian provided youth driver training. These amendments will only affect the Quarterly Detailed Experience module of the Texas Private Passenger Automobile Statistical Plan.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.96 and 21.69.

Copies of the full text of the staff petition and the proposed amendments are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the petition and proposed amendments, please contact Sylvia Gutierrez at (512) 463-6326 (refer to Reference Number A-0298-02-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, P. O. Box 149104, MC113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to C.H. Mah, Associate Commissioner for Technical Analysis, P.O. Box 149104, MC105-5G, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001).

TRD-9801597  
Caroline Scott  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: February 4, 1998

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# == REVIEW OF AGENCY RULES ==

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

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

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**Agency Rule Review Plan**

Texas Department of Criminal Justice

Filed: February 2, 1998



# TABLES & GRAPHICS

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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.

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Figure: 1 TAC §91.23(c)

1.1. Repair of Motor Vehicle Components or Accessories. A person <etb>shall<et> [may] repair a <etb>motor vehicle component<et> [car] or accessory for the general <etb>repairperson<et> [repairman] who is performing general repair work on a motor vehicle.

- (1) If the person repairing the component or accessory separates the price charged for parts from the repair labor, the general <etb>repairperson<et> [repairman] may issue a resale certificate for the parts.
- (2) If the person repairing the component or accessory charges one lump-sum amount for the repair of the component or accessory, the person is a lump-sum <etb>repairperson<et> [repairman] under this chapter.
- (3) If the person repairing the component or accessory <etb>fails to collect a service<et> [neglects to acquire the], tax the agency shall issue a fine in the amount of the service tax.

*1.1. Repair of Motor Vehicle Components or Accessories. A person shall [may] repair a motor vehicle component [car] or accessory for the general repairperson [repairman] who is performing general repair work on a motor vehicle.*

- (1) If the person repairing the component or accessory separates the price charged for parts from the repair labor, the general repairperson [~~repairman~~] may issue a resale certificate for the parts.
- (2) If the person repairing the component or accessory charges one lump-sum amount for the repair of the component or accessory, the person is a lump-sum repairperson [~~repairman~~] under this chapter.
- (3) If the person repairing the component or accessory fails to collect a service [~~neglects to acquire the~~], tax the agency shall issue a fine in the amount of the service tax.

Figure: 1 TAC §91.23(d)(1)

1.2. Economic Information and Projection.

(a) The application documents must describe the <etb>existing<et> economy of the area in which the racetrack is to be located and include a statement of the relative income produced by various segments of the economy including:

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

(3) professional [and social] services <etb>to the public<et>:

(A)-(D) (No change.)

(4) government [and military] operations; and

(5) (No change.)

(b)-(d) (No change.)

*1.2. Economic Information and Projection.*

(a) The application documents must describe the existing economy of the area in which the racetrack is to be located and include a statement of the relative income produced by various segments of the economy including:

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

(3) professional [~~and social~~] services to the public:

(A)-(D) (No change.)

(4) government [~~and military~~] operations; and

(5) (No change.)

(b)-(d) (No change.)

Figure: 1 TAC §91.23(d)(2)

1.3. Financial Forecasts.

(a) (No change.)

(b) The application must describe the costs of construction or improvement, including the costs of:

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

(4) facility construction~~etb~~; and~~et~~ [site planning.]

~~etb~~(5) equipment acquisition.~~et~~

*1.3. Financial Forecasts.*

(a) (No change.)

(b) The application must describe the costs of construction or improvement, including the costs of:

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

(4) facility construction; and [~~site planning.~~]

(5) equipment acquisition.

Figure: 1 TAC §91.23(d)(3)

1.4. Budget.

<etb>(a) Budget documents must state each loan made by the applicant in an amount that exceeds 1.0% of the applicant's net income.<et>

<etb>(b)<et> [(a)] The application must describe the costs of construction or improvement, including the costs of:

- (1) architectural and engineering services;
- (2) land acquisition;
- (3) site development;
- (4) facility construction; and
- (5) equipment acquisition.

<etb>(c)<et> [(b)] The application documents must describe the costs of operating the facility, including:

- (1) promotion and advertising;
- (2) application development; and
- (3) application fees.

*1.4. Budget.*

(a) Budget documents must state each loan made by the applicant in an amount that exceeds 1.0% of the applicant's net income.

(b) [(a)] The application must describe the costs of construction or improvement, including the costs of:

- (1) architectural and engineering services;
- (2) land acquisition;
- (3) site development;
- (4) facility construction; and
- (5) equipment acquisition.

(c) [(b)] The application documents must describe the costs of operating the facility, including:

- (1) promotion and advertising;
- (2) application development; and
- (3) application fees.



Figure: 7 TAC 97.113 (b)

For Credit Unions with Total Assets Of:

The Operating Fee is:

Less than \$200,000	\$0
\$200,000 but less than \$500,000	<del>\$450</del> [ <del>\$490</del> ] + <del>\$2.21</del> [ <del>\$2.45</del> ] per \$1,000 of the amount over \$200,000
\$500,000 but less than \$1M	<del>\$1,113</del> [ <del>\$1,225</del> ] + <del>\$ .85</del> [ <del>\$ .93</del> ] per \$1,000 of the amount over \$500,000
\$1M but less than <del>\$2.5</del> [ <del>\$5</del> ]M	<del>\$1,538</del> [ <del>\$1,690</del> ] + <del>\$ .37</del> [ <del>\$ .38</del> ] per \$1,000 of the amount over \$1M
<u>\$2.5M but less than \$5M</u>	<u>\$2,093 + .35 per \$1,000 of the amount over \$2.5M</u>
\$5M but less than \$10M	<del>\$2,968</del> [ <del>\$3,210</del> ] + <del>\$ .32</del> [ <del>\$ .33</del> ] per \$1,000 of the amount over \$5M
\$10M but less than \$25M	<del>\$4,568</del> [ <del>\$4,860</del> ] + <del>\$ .14</del> [ <del>\$ .13</del> ] per \$1,000 of the amount over \$10M
\$25M but less than \$50M	<del>\$6,668</del> [ <del>\$6,810</del> ] + <del>\$ .17</del> [ <del>\$ .16</del> ] per \$1,000 of the amount over \$25M
\$50M but less than \$100M	<del>\$10,918</del> [ <del>\$10,810</del> ] + <del>\$ .19</del> [ <del>\$ .17</del> ] per \$1,000 of the amount over \$50M
<u>\$100M but less than \$250M</u>	<u>\$20,418 + \$.082 per \$1,000 of the amount over \$100M</u>
<u>\$250M but less than \$500M</u>	<u>\$32,718 + \$.076 per \$1,000 of the amount over \$250M</u>
<u>\$500M but less than \$750M</u>	<u>\$51,718 + \$.074 per \$1,000 of the amount over \$500M</u>
<u>\$750M but less than \$1,000MM</u>	<u>\$69,468 + \$.071 per \$1,000 of the amount over \$750M</u>
<u>\$1,000MM [<del>\$100M</del>] and over</u>	<u>\$87,218 [<del>\$19,310</del>] + \$.069 [<del>\$ .07</del>] per \$1,000 of the amount over \$1,000MM [<del>\$100M</del>]</u>

## **Mental Retardation Local Authority Program Evidentiary Principles for Program Providers**

### **PURPOSE**

The mission of the Mental Retardation Local Authority (MRLA) Program service operations by both the program provider and the Mental Retardation Authority (MRA) is directed towards individualized choices, individualized alternatives and individualized receipt of services by consumers within the boundless context of a comprehensive system of integrated community service and program development. With a comprehensive, community-based system of services, the program offers a viable community-based alternative to institutional living for each person with mental retardation. The service operations should emphasize improved, independent functioning; promotion of person-directed planning; and achievement of individual outcomes for each person enrolled in the MRLA Program. In every facet of its operations and service delivery system, the program should ensure respect for the humanity and dignity of each person.

These are principles for the program providers of the MRLA Program services. These principles will be utilized in the survey and certification of program providers. It is expected that program providers meet all elements of the MRLA Program Medicaid Provider Agreement and provider enrollment requirements. Program providers are expected to be comprehensive service providers, provide those services and hours of service that are authorized by the Texas Department of Mental Health and Mental Retardation (TDMHMR), and maintain necessary communication with the MRA in order to provide continuity in services, notify the MRA of needed changes to individuals plan of care, and ensure service delivery to the individual.

The program provider must be able to demonstrate compliance with all of the following principles:

### **GENERAL NETWORK PROGRAM PROVIDER RESPONSIBILITIES**

- P1. The program provider shall provide to the MRA the data elements to complete the provider profiling for the MRA Network Management.
- P2. The program provider shall maintain in its records for each individual enrolled in the MRLA Program a current copy of:
  - P02.01 Individual Plan of Care (IPC);
  - P02.02 Person Directed Plan (PDP).

FIGURE 1:25 TAC §409.531(a)

- P3. The program provider shall ensure that service information is correct and clearly communicates to the MRA appropriate changes, pertaining to the development and delivery of each person's IPC and PDP.
- P4. The program provider shall be involved (at the request of the individual and/or their legally authorized representative) in the person directed planning process.
- P5. The program provider shall be involved in completion of the PDP and negotiation of the IPC with the individual, the individual's legally authorized representative and the MRA.

#### SERVICE DEFINITIONS/DELIVERY

The Health Care Financing Administration (HCFA) requires that each service provided under the MRLA Program be specifically defined and delivered according to those definitions. In order to be reimbursed, services must be covered in an approved IPC and documented as delivered.

- P6. The program provider shall ensure that services and supports assist individuals in achieving outcomes as identified in the PDP.

#### Adaptive Aids

- P7. The program provider shall deliver adaptive aids as authorized in the IPC in accordance with the MRLA Program service definition set forth in the MRLA Program Medicaid Provider Agreement. Adaptive aids consist of the following services, including repair and maintenance not covered by the warranty: the full range of lifts, mobility aids, control switches/pneumatic switches and devices, environmental control units, medically necessary supplies, and communication aids.

#### Counseling and Therapeutic Services

- P8. The program provider shall deliver Counseling and Therapeutic Services as authorized in the IPC in accordance with the MRLA Program service definition set forth in the MRLA Program Medicaid Provider Agreement. Service Components include:

- P08.01 Audiology Services;
- P08.02 Speech/Language pathology services;
- P08.03 Occupational Therapy services;

FIGURE 1:25 TAC §409.531(a)

- P08.04 Physical Therapy services;
- P08.05 Dietary Services;
- P08.06 Social Work Services; and
- P08.07 Psychology services.

#### Day Habilitation

- P09. The program provider shall deliver Day Habilitation Services as authorized in the IPC in accordance with the MRLA Program service definition set forth in the MRLA Program Medicaid Provider Agreement.
  - P9.01 Assisting individuals in acquiring, retaining, and/or improving self-help, socialization, and adaptive skills necessary to reside successfully in the community;
  - P9.02 Providing individuals with age-appropriate activities that enhance self esteem and maximize functional level;
  - P9.03 Complementing any counseling and therapies listed in the IPC;
  - P9.04 Reinforcing skills or lessons taught in school, therapy, or other settings;
  - P9.05 Providing training and support activities which promote the individual's integration and participation in the community;
  - P9.06 Providing assistance for individuals who cannot manage their personal care needs during day habilitation activities;
  - P9.07 Providing transportation necessary for the individual's participation in day habilitation activities; and,
  - P9.08 Providing services which are not funded under Section 110 of the Rehabilitation Act of 1973 or Section 602(16) and (17) of the Individuals with Disabilities Education Act.

#### Dental

- P10. The program provider shall deliver Dental Treatment as authorized in the IPC in accordance with the MRLA Program service definitions as set forth in the MRLA Program Medicaid Provider Agreement.
  - P10.01 Emergency dental treatment;
  - P10.02 Preventive dental treatment;
  - P10.03 Therapeutic dental treatment; and
  - P10.04 Orthodontic dental treatment, excluding cosmetic orthodontia.

FIGURE 1:25 TAC §409.531(a)

Minor Home Modifications

P11. The program provider shall deliver minor home modifications as authorized in the IPC in accordance with the MRLA Program service definition set forth in the MRLA Program Medicaid Provider Agreement.

- P11.01 Purchase and repair of wheelchair ramps;
- P11.02 Modifications to bathroom facilities;
- P11.03 Modifications to kitchen facilities; and
- P11.04 Specialized accessibility and safety adaptations, including repair and maintenance.

Nursing

P12. The program provider shall deliver nursing services, as authorized in the IPC, in compliance with the MRLA Program service definition as set forth in the MRLA Program Medicaid Provider Agreement.

- P12.01 Administering medication;
- P12.02 Monitoring the individual's use of medications;
- P12.03 Monitoring health data and information;
- P12.04 Assisting the individual to secure emergency medical services;
- P12.05 Making referrals for appropriate medical services;
- P12.06 Performing health care procedures ordered/prescribed by a physician/medical practitioner and required by standards of professional practice or law to be performed by licensed nursing personnel; and
- P12.07 Delegation and monitoring of tasks assigned to other service providers by a Registered Nurse (R.N.) in accordance with state law.

Residential Assistance

P13. The program provider shall deliver Residential Assistance as authorized in the IPC in accordance with the MRLA Program service definitions as set forth in the MRLA Program Medicaid Provider Agreement.

- (a) Supported Home Living - provided to individuals residing in their own residence or the residence of their natural or adoptive family or to individuals receiving foster care services from the Texas Department of Protective and Regulatory Services;
- (b) MRLA Foster/Companion Care - provided in a residence by a foster or

FIGURE 1:25 TAC §409.531(a)

- companion care provider exclusive of Texas Department of Protective and Regulatory Services; and
- (c) Residential Support - provided to individuals by daily shift staff or by an individual staff member with periodic relief staff.

Residential Assistance includes:

- P13.01 Direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);
- P13.02 Assistance with meal planning and preparation;
- P13.03 Securing and providing transportation;
- P13.04 Assistance with housekeeping;
- P13.05 Assistance with ambulation and mobility;
- P13.06 Reinforcement of counseling and therapy activities;
- P13.07 Assistance with medications and the performance of tasks delegated by a Registered Nurse;
- P13.08 Supervision of individuals' safety and security;
- P13.09 Facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities and development of socially valued behaviors; and
- P13.10 Habilitation, exclusive of Day Habilitation.
- P14. The program provider shall have evidence that residences for persons living outside their natural or adoptive family homes are designed for family-style living with a maximum of four (4) unrelated persons sharing a residence. With the exception of natural or adoptive family homes, any residence accommodating persons enrolled in the MRLA Program can have no more than three (3) unrelated persons with disabilities living in a residence at any one time. Examples include but are not limited to:
- (a) one (1) to three (3) persons enrolled in the MRLA Program and one (1) service provider;
- (b) one (1) to three (3) persons enrolled in the MRLA Program residing with one (1) service provider and the service provider's family; and
- (c) one (1) to three (3) persons enrolled in the MRLA Program living together with support provided by service providers not residing with the persons enrolled in the MRLA Program.
- P15. Providers of Supported Home Living and Residential Support are employed by the program provider.

FIGURE 1:25 TAC §409.531(a)

### Respite

P16. The program provider shall deliver respite services as authorized in the IPC in accordance with the MRLA Program service definition set forth in the MRLA Program Medicaid Provider Agreement.

- P16.01 Assistance with training in self-help and independent living skills;
- P16.02 Provision of room and board when provided overnight in a setting other than the person's normal residence;
- P16.03 Support for all consumers of MRLA Waiver Program Services in need of emergency or planned short-term care;
- P16.04 Be provided on a 24-hour increment or any part of that increment for no more than 30 days respite per year per consumer;
- P16.05 Assistance with on-going provision of needed waiver services; and
- P16.06 Assistance with securing and providing transportation.

### Supported Employment

P17. The program provider shall deliver Supported Employment as authorized in the IPC in accordance with the MRLA Program service definition.

- P17.01 Employment in an integrated work setting (generally no more than one employee or 3% of the work force members have disabilities) away from the individual's place of residence;
- P17.02 Provision of on-going individualized support services needed to sustain paid work by the individual, including supervision and training;
- P17.03 Compensation by the employer to the individual in accordance with the Fair Labor Standards Act; and,
- P17.04 Provision of services not available or funded through the state education agency or the state rehabilitation agency.

### QUALIFIED STAFF

HCFA requires that all services are provided by qualified staff and that those qualifications be specified.

P18. The program provider will utilize service providers of the individual's choice if the service provider meets the minimum qualifications necessary to provide the service, is willing to deliver the service within the direct services portion of the modeled

FIGURE 1:25 TAC §409.531(a)

MRLA rates, and will contract or be employed by the program provider.

- P19. The program provider shall ensure that its employees or contractors possess legally necessary licenses, certifications, registration, or other credentials and are in good standing with the appropriate professional agency in performing any function or delivering services.
- P20. The program provider shall ensure that in instances where a high school education or "equivalent" is a requirement, when "equivalent" is applied, the personnel or service provider involved shall possess a GED, or documentation of being at least 18 years old and a proficiency evaluation of experience and competence to perform the job tasks. The evaluation of experience and competency shall include:
  - P20.01 written competency-based assessment of the ability to document service delivery and observations of the individuals to be served; and
  - P20.02 at least three personal references from persons not related by blood which indicate the ability to provide a safe, healthy environment for the individuals being served.

#### Counseling and Therapeutic Services

- P21. The program provider shall ensure that each provider of Counseling and Therapeutic Services is currently qualified by being licensed and/or certified by the State of Texas in the specific area for which services are delivered or be providing services in accordance with state law. Psychologists employed by State Operated Community Service Divisions and Community MHMR Centers are required to be licensed in accordance with state law or certified by the TDMHMR.

#### Day Habilitation and Supported Employment

- P22. The program provider shall ensure that the provider of Day Habilitation and/or Supported Employment is currently qualified by having a high school diploma or its equivalent and a valid driver's license if providing transportation.

#### Dental

- P23. The program provider shall ensure that the provider of Dental Treatment is currently qualified by being licensed in the State of Texas by the Texas State Board of Dental Examiners in accordance with Texas Revised Civil Statutes Article 4543.



FIGURE 1:25 TAC §409.531(a)

Nursing

- P24. The program provider shall ensure that the provider of nursing services is currently qualified by:
- P24.01 being currently licensed as a registered nurse in Texas by the Board of Nurse Examiners for the State of Texas; or
  - P24.02 licensed as a licensed vocational nurse in Texas by the Board of Vocational Nurse Examiners for the State of Texas.

Residential Assistance and Respite Services

- P25. The program provider shall ensure that the provider of Residential Assistance and/or Respite is currently qualified by having a high school diploma or its equivalent and a valid driver's license if providing transportation. Assistance with tasks delegated by a Registered Nurse must be in accordance with state law.

HEALTH, SAFETY, AND RIGHTS

- P26. The program provider shall have and implement a process to review its decisions to limit individual rights and to report any individual's dissatisfaction with decisions regarding restricted rights to the MRA.
- P27. The program provider shall implement processes to ensure that individuals receiving services are free from abuse and neglect.
- P28. The program provider shall ensure that individuals receiving services have health care services.
- P29. The program provider shall protect the rights of the individuals receiving services.
- P30. The program provider shall implement procedures for reporting to Department of Protective and Regulatory Services and the MRA all alleged instances of abuse and neglect.
- P31. The program provider shall ensure that its program owns, operates, or leases buildings that comply with all applicable fire and sanitation codes.
- P32. The program provider shall implement procedures for meeting all emergencies such as fire, severe weather, and health.

FIGURE 1:25 TAC §409.531(a)

- P33. The program provider shall ensure compliance with all applicable local, state, and federal rules, regulations, and laws.
- P34. The program provider must provide services to any eligible individual who selects that provider, unless that provider is serving at capacity as stated in its MRLA Program Medicaid Provider Agreement.
- P35. The program provider shall ensure that charges assessed by the program provider against an individual's personal funds for items and services, including, but not limited to, room and board, are at a reasonable cost to the individual and at a cost comparable to the costs of similar items and services generally available in the community.
- P36. The program provider shall ensure costs for items and services reimbursed through the MRLA Program are not charged to the individual.
- P37. The program provider shall ensure that the individual or his/her legally authorized representative is informed of and agrees in writing to any charges assessed by the program provider against the individual's personal funds, the purpose of those charges, and effects of those charges in relation to the individual's financial status.

## **Mental Retardation Local Authority Program Principles for Mental Retardation Authorities**

### **PURPOSE**

The mission of the MRLA Program service operations by both the provider and the MRA is directed towards individualized choices, individualized alternatives, and individualized receipt of services by consumers within the boundless context of a comprehensive system of integrated community service and program development. With a comprehensive community-based system of services, the program offers a viable community-based alternative to institutional living for each person with mental retardation. The service operations should ensure a teaching and training philosophy that emphasizes improved, independent functioning; promotion of person-directed planning; and achievement of individual outcomes for each person enrolled in the MRLA Program. In every facet of its operations and service delivery system, the MRLA Program should ensure respect for the humanity and dignity of each person.

The MRA must be able to demonstrate compliance with all of the following principles:

### **AUTHORITY AND SERVICE COORDINATION RESPONSIBILITIES**

- A1. The MRA shall develop an Individual Plan of Care (IPC) and Person-Directed Plan (PDP) for each individual enrolled in the MRLA Program. The MRA shall also maintain for each individual a current:
  - A01.01 Individual Plan of Care;
  - A01.02 Person Directed Plan; and
  - A01.03 ICF-MR Level of Care (LOC) and Level of Need (LON).
- A2. The MRA shall furnish to each program provider within its network a copy of the current IPC, PDP, and documentation reflecting the LOC/LON regarding each individual receiving services by the program provider.
- A3. The MRA shall report all findings from the survey and certification of its provider network to the Texas Department of Mental Health and Mental Retardation (TDMHMR).
- A4. The MRA shall ensure that Service Coordinators are employed by the MRA.

FIGURE 2:25 TAC §409.541(a)

- A5. The MRA shall ensure that Service Coordinators:
- A05.01 initiate, coordinate, and facilitate the Person Directed Planning process to meet the desires and needs of the individual;
  - A05.02 coordinate the development and implementation of each individual's PDP;
  - A05.03 assist in the performance of resource authorization;
  - A05.04 coordinate and develop the IPC from the PDP;
  - A05.05 coordinate and monitor the delivery of waiver and generic services;
  - A05.06 integrate various aspects of services delivered under the waiver and through other sources;
  - A05.07 record each individual's progress;
  - A05.08 develop a pre-discharge plan; and
  - A05.09 keep records as they pertain to the individual receiving services.
- A6. The MRA shall ensure that its employees and contractors possess legally necessary licenses, certifications, registrations, or other credentials and are in good standing with the appropriate professional agency in performing any function or delivering services.
- A7. The MRA shall ensure that Service Coordinators are currently qualified by having a:
- A07.01 bachelor's degree with major specialization in social, behavioral or human services or related fields;
  - A07.02 high school diploma or GED with related volunteer experience comparable to two years full-time work in a social, behavioral or human services or related fields;
  - A07.03 high school diploma or GED with a minimum of two years full-time work experience in social, behavioral, human services or related work; or
  - A07.04 license by the State of Texas as an Licensed Vocational Nurse (LVN) or Registered Nurse (RN) with one year of experience in human services.
- A8. The MRA shall maintain current service information and clearly communicate to appropriate sources (e.g. individual, legally authorized representative, TDMHMR, provider) changes to the development and delivery of each person's IPC and PDP as they occur.
- A9. The MRA shall ensure that it follows the requirements of 25 TAC §409.523 in

FIGURE 2:25 TAC §409.541(a)

coordination and management of the MRLA Program Waiting List.

- A10. The MRA has a mechanism to ensure objectivity in the process used to assist individuals in the selection of providers.
- A11. The MRA shall initiate a Person-Directed Planning process for each individual to determine supports and services necessary for an individual to continue to live in the community.
- A12. The MRA shall ensure the development and completion of the initial IPC and recommended resource authorization based on the PDP, the Service Protocol Guidelines, and all necessary assessments within 45 working days of the individual indicating his/her desire for MRLA Program services.
- A13. The MRA shall submit to TDMHMR an application within 10 working days of the individual's selection of a provider.
- A14. The Service Coordinator shall develop a completed PDP in conjunction with each individual and/or his or her legally authorized representative and the provider based on the PDP within 30 calendar days of the projected IPC implementation date.
- A15. The MRA shall ensure standardization with TDMHMR in the survey and certification process.
- A16. The MRA shall comply with all applicable local, state, and federal rules, regulations, and laws.
- A17. The MRA shall provide each consumer with an objective means for addressing complaints regarding restriction of an individual's rights by the provider.

#### PROVIDER MONITORING RESPONSIBILITIES

- A18. The MRA shall monitor the non-MRA operated MRLA Program providers for adherence to the MRLA Program Principles for Program Providers and report findings to TDMHMR. This monitoring will be conducted by MRA employees for adherence to service definitions and service delivery for the following components: Adaptive Aids, Counseling and Therapeutic Services, Day Habilitation, Dental, Minor Home Modifications, Nursing, Residential Assistance, Respite, and Supported Employment.

FIGURE 2:25 TAC §409.541(a)

- A18.01 The MRA shall monitor non-MRA program providers for adherence to the MRLA Principles for program providers and report its findings to TDMHMR.
- A18.02 The MRA shall assure the availability and provision of services and supports through a network of program providers.
- A19. The MRA shall monitor to determine if providers in its network utilize only those staff that meet the qualifications required by the MRLA Program guidelines for the provision of the following service components: Counseling and Therapeutic Services, Day Habilitation and Supported Employment, Dental, Nursing, Residential Assistance, and Respite Services.
- A20. The MRA shall monitor to determine if providers in its network contract with service providers of the individual's choice if they meet the minimum qualifications necessary to provide the service, and the service provider is willing to deliver the service within the direct services portion of the model MRLA rates and will contract or be employed by the program provider.
- A21. The MRA shall monitor to determine if services and supports are provided to assist each individual in achieving outcomes as identified within the PDP.
- A22. The MRA shall monitor to determine if program providers are affording each individual receiving services a process for a review if rights are limited and shall provide consumers with an objective means for addressing complaints regarding restriction of rights by the provider.
- A23. The MRA shall monitor to determine if individuals receiving their services from the program providers are free from abuse and neglect.
- A24. The MRA shall monitor to determine if individuals receiving their services from the program provider have health care services.
- A25. The MRA shall monitor to determine if program providers programs protect the rights of the individuals they serve.
- A26. The MRA shall monitor to determine if program providers implement procedures for reporting to the Department of Protective and Regulatory Services and the MRA all alleged instances of abuse and neglect.
- A27. The MRA shall monitor to determine if sites owned, operated, or leased by program providers comply with all applicable fire and sanitation codes.

FIGURE 2:25 TAC §409.541(a)

- A28. The MRA shall monitor to determine if program providers implement procedures for meeting all emergencies such as fire, severe weather, and health.

# DISCLOSURE AND CONSENT

## Medical and Surgical Procedures

*TO THE PATIENT: you have the right, as a patient, to be informed about your condition and the recommended surgical, medical, or diagnostic procedure to be used so that you may make the decision whether or not to undergo the procedure after knowing the risks and hazards involved. This disclosure is not meant to scare or alarm you; it is simply an effort to make you better informed so you may give or withhold your consent to the procedure.*

I (we) voluntarily request Dr. \_\_\_\_\_ as my physician, and such associates, technical assistants and other health care providers as they may deem necessary, to treat my condition which has been explained to me as: \_\_\_\_\_

I (we) understand that the following surgical, medical, and/or diagnostic procedures are planned for me and I (we) voluntarily consent and authorize these procedures: \_\_\_\_\_

I (we) understand that my physician may discover other or different conditions which require additional or different procedures than those planned. I (we) authorize my physician, and such associates, technical assistants and other health care providers to perform such other procedures which are advisable in their professional judgment.

I (we) (do) (do not) consent to the use of blood and blood products as deemed necessary.

I (we) understand that no warranty or guarantee has been made to me as to result or cure.

Just as there may be risks and hazards in continuing my present condition without treatment, there are also risks and hazards related to the performance of the surgical, medical, and/or diagnostic procedures planned for me. I (we) realize that common to surgical, medical, and/or diagnostic procedures is the potential for infection, blood clots in veins and lungs, hemorrhage, allergic reactions, and even death. I (we) also realize that the following risks and hazards may occur in connection with this particular procedure: \_\_\_\_\_

I (we) understand that anesthesia involves additional risks and hazards but I (we) request the use of anesthetics for the relief and protection from pain during the planned and additional procedures. I (we) realize the anesthesia may have to be changed possibly without explanation to me (us).



I (we) understand that certain complications may result from the use of any anesthetic including respiratory problems, drug reaction, paralysis, brain damage or even death. Other risks and hazards which may result from the use of general anesthetics range from minor discomfort to injury to vocal cords, teeth or eyes. I (we) understand that other risks and hazards resulting from spinal or epidural anesthetics include headache and chronic pain.

I (we) have been given an opportunity to ask questions about my condition, alternative forms of anesthesia and treatment, risks of nontreatment, the procedures to be used, and the risks and hazards involved, and I (we) believe that I (we) have sufficient information to give this informed consent.

I (we) certify this form has been fully explained to me, that I (we) have read it or have had it read to me, that the blank spaces have been filled in, and that I (we) understand its contents.

DATE: \_\_\_\_\_ TIME: \_\_\_\_\_ A.M.  
P.M.

\_\_\_\_\_  
PATIENT/OTHER LEGALLY RESPONSIBLE PERSON SIGN

WITNESS:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address (Street or P.O. Box)

\_\_\_\_\_  
City, State, Zip Code

## DISCLOSURE AND CONSENT FOR HYSTERECTOMY

*TO THE PATIENT: You have the right, as a patient, to be informed about your condition and the recommended surgical, medical, or diagnostic procedure to be used so that you may make the decision whether or not to undergo the procedure after knowing the risks and hazards involved. This disclosure is not meant to scare or alarm you; it is simply an effort to make you better informed so you may give or withhold your consent to the procedure.*

**NOTICE:** Refusal to consent to a hysterectomy will not result in the withdrawal or withholding of any benefits provided by programs or projects receiving federal funds or otherwise affect your right to future care or treatment.

I (we) voluntarily request Dr. \_\_\_\_\_ as my physician, and such associates, technical assistants and other health care providers as they may deem necessary, to treat my condition which has been explained to me as: \_\_\_\_\_

I (we) understand that the following surgical, medical, and/or diagnostic procedures are planned for me and I (we) voluntarily consent and authorize these procedures: \_\_\_\_\_

I (we) understand that a hysterectomy is a removal of the uterus through an incision in the lower abdomen or vagina. I also understand that additional surgery may be necessary to remove or repair other organs, including an ovary, tube, appendix, bladder, rectum, or vagina.

I (we) understand that the hysterectomy is permanent and not reversible. I understand that I will not be able to become pregnant or bear children. I understand that I have the right to seek a consultation from a second physician.

I (we) understand that my physician may discover other or different conditions which require additional different procedures than those planned. I (we) authorize my physician, and such associates, technical assistants and other health care providers to perform such other procedures which are advisable in their professional judgment.

I (we) (do) (do not) consent to the use of blood and blood products as deemed necessary. I (we) understand that the following risks and hazards may occur in connection with the use of blood and blood products:

1. Fever
2. Transfusion reaction which may include kidney failure or anemia
3. Heart failure
4. Hepatitis
5. AIDS (acquired immune deficiency syndrome)
6. Other infections

I (we) understand that no warranty or guarantee has been made to me as to result or cure.

Just as there may be risks and hazards in continuing my present condition without treatment, there are also risks and hazards related to the performance of the surgical, medical, and/or diagnostic procedures planned for me. I (we) realize that common to surgical, medical, and/or diagnostic procedures is the potential for infection, blood clots in veins and lungs, hemorrhage, allergic reactions, and even death. I (we) also realize that the following risks and hazards may occur in connection with this particular procedure (check applicable procedure):

<p><input type="checkbox"/> <b>ABDOMINAL HYSTERECTOMY</b></p> <ol style="list-style-type: none"> <li>1. Uncontrollable leakage of urine</li> <li>2. Injury to the bladder.</li> <li>3. Sterility.</li> <li>4. Injury to the tube (ureter) between the kidney and the bladder.</li> <li>5. Injury to the bowel and/or intestinal obstruction.</li> </ol>	<p><input type="checkbox"/> <b>VAGINAL HYSTERECTOMY *</b></p> <ol style="list-style-type: none"> <li>1. Uncontrollable leakage of urine.</li> <li>2. Injury to the bladder.</li> <li>3. Sterility.</li> <li>4. Injury to the tube (ureter) between the kidney and the bladder.</li> <li>5. Injury to the bowel and/or intestinal obstruction.</li> <li>6. Completion of operation by abdominal incision.</li> </ol>
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\* For **LAPROSCOPICALLY ASSISTED VAGINAL HYSTERECTOMY**, the additional risks include: damage to intra-abdominal structures (e.g. bowel, bladder, blood vessels, or nerves); intra-abdominal abscess and infectious complications; trocar site complications (e.g., hemotoma/bleeding, leakage of fluid, or hernia formation); conversion of the procedure to an open procedure; cardiac dysfunction.

**ADDITIONAL COMMENTS:** \_\_\_\_\_  
 \_\_\_\_\_

I (we) understand that anesthesia involves additional risks and hazards but I (we) request the use of anesthetics for the relief and protection from pain during the planned and additional procedures. I (we) realize the anesthesia may have to be changed possibly without explanation to me (us).

I (we) understand that certain complications may result from the use of any anesthetic including respiratory problems, drug reaction, paralysis, brain damage or even death. Other risks and hazards which may result from the use of general anesthetics range from minor discomfort to injury to vocal cords, teeth or eyes. I (we) understand that other risks and hazards resulting from spinal or epidural anesthetics include headache and chronic pain.

I (we) have been given an opportunity to ask questions about my condition, alternative forms of anesthesia and treatment, risks of nontreatment, the procedures to be used, and the risks and hazards involved, and I (we) believe that I (we) have sufficient information to give this informed consent.

I (we) certify this form has been fully explained to me, that I (we) have read it or have had it read to me, that the blank spaces have been filled in, and that I (we) understand its contents.

**NAME OF PHYSICIAN EXPLAINING PROCEDURE:** \_\_\_\_\_

**NAME OF PERSON PROVIDING MATERIALS:** \_\_\_\_\_

**PATIENT/OTHER LEGALLY RESPONSIBLE PERSON SIGN (signature required)** \_\_\_\_\_

**DATE:** \_\_\_\_\_ **TIME:** \_\_\_\_\_ **A.M./P.M.**

**WITNESS:**

Signature \_\_\_\_\_

Name (Print) \_\_\_\_\_

Address (Street or P. O. Box) \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

**FIGURE NO. 1: 28 TAC §5.501(c)**

[OPTIONAL PROVISION]

THIS NOTICE IS REQUIRED BY LAW. IT DOES NOT CONSTITUTE AN ADMISSION OF LIABILITY BY THE INSURANCE COMPANY.

**REQUIRED NOTICE TO INSURANCE CLAIMANTS FOR MOTOR VEHICLE REPAIRS**

BY LAW, YOU HAVE THE RIGHT TO SELECT WHERE YOUR MOTOR VEHICLE IS REPAIRED AND THE PARTS USED FOR REPAIRS. HOWEVER, AN INSURANCE COMPANY IS NOT REQUIRED TO PAY MORE THAN A REASONABLE AMOUNT FOR SUCH REPAIRS AND PARTS. YOUR RIGHTS ARE EXPLAINED IN MORE DETAIL IN INSURANCE POLICY PROVISIONS AND IN THE ENCLOSED OR ATTACHED COPY OF THE INSURANCE CODE, ARTICLE 5.07-1.

IF YOU HAVE ANY QUESTIONS ABOUT YOUR MOTOR VEHICLE REPAIR RIGHTS, CONTACT THE TEXAS DEPARTMENT OF INSURANCE AT:

TELEPHONE: 1-800-252-3439

MAILING ADDRESS: TEXAS DEPARTMENT OF INSURANCE  
P.O. BOX 149091  
AUSTIN, TX 78714-9091

FAX NUMBER 512-475-1771

WEB ADDRESS [www.tdi.state.tx.us](http://www.tdi.state.tx.us)

Figure for 40 TAC 19.2112(f)

NURSING FACILITY REQUIREMENTS	Maximum Amount of Penalties			
	\$1000	\$2500	\$5000	\$10,000
§19.201, Licensure Application		X		
§19.301, Construction			X	
§19.401, Resident Rights	X			
§19.401, Resident Rights with Violation of Quality of Life or Care				X
§19.601, Resident Behavior				X
§19.701, Quality of Life				X
§19.801, Resident Assessment			X	
§19.901, Quality of Care				X
§19.1001, Nursing				X
§19.1101, Dietary				X
§19.1201, Physician			X	
§19.1301, Rehabilitation			X	
§19.1401, Dental Services		X		
§19.1501, Pharmacy Services				X
§19.1601, Infection Control				X
§19.1701, Physical Plant			X	
§19.1901, Administration			X	
§19.2006, Reporting Incidents		X		

Figure 1: 43 TAC §25.704(b)(2)

$B = IF + (0.10 \times (ASARF))$  where:

B = Bidder's bid

IF = Installation fee for one business logo

ASARF = Annual rental fee for one sign

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# OPEN MEETINGS

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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).

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## Texas State Board of Public Accountancy

Thursday, February 19, 1998, 9:00 a.m.

333 Guadalupe Street, Tower III, Suite 900, Room 910

Austin

Technical Standards Review Committee

### AGENDA:

#### A. Informal Conferences

1. File Number 97-05-18L — 9:00 a.m.
2. File Number 97-05-08L — 10:00 a.m.
3. File Number 97-08-53L — 11:00 a.m.
4. File Number 97-08-63L — 1:00 p.m.

#### B. Investigations:

1. File Number 97-01-17L and 97-01 16L
2. File Number 97-10-29L
3. File Number 97-11-08L
4. File Number 97-11-07L
5. File Number 97-09-29L

#### C. Discussion Items

1. Possible Investigations

Contact: Amanda G. Birrell, 333 Guadalupe, Tower III, Room 900,  
Austin, Texas 78701-3900, (512) 305-7842.

Filed: February 3, 1998, 1:49 p.m.

TRD-9800512



## State Office of Administrative Hearings

Tuesday, February 10, 1998, 10:00 a.m.

1700 North Congress Avenue

Austin

Utility Division

### AGENDA:

A. Prehearing conference is scheduled for the above date and time in:

SOAH Docket Number 473-98-0091 — Application of North American Telecommunications Corporation for a Service Provider Certificate of Operating Authority (PUC Docket Number 18190)

Contact: William G. Newchurch, P.O. Box 13025, Austin, Texas 78711-3025., (512) 936-0728.

Filed: January 29, 1998, 3:23 p.m.

TRD-9801381



Thursday, March 12, 1998, 9:30 a.m.

1700 North Congress Avenue

Austin

Utility Division

### AGENDA:

A Hearing on the Merits is scheduled for the above date and time in:

SOAH Docket Number 473-98-0156 —( PUC Docket 17697) Application of Preferred Payphone, Inc. for a Service Provider Certificate of Operating Authority.



Contact: William G. Newchurch, P.O. Box 13025, Austin, Texas  
78711-3025, (512) 936-0728.  
Filed: February 2, 1998, 4:36 p.m.

TRD-9801476

◆ ◆ ◆  
**Automobile Theft Prevention Authority**

Thursday, February 12, 1998, 9:00 a.m.

El Paso Police Department, Pebble Hills Regional Command Center  
10700 Pebble Hills Drive

El Paso

Board Meeting

Agenda:

I. Call to Order and Introductions; Approval of Minutes of Previous Meeting.

II. Report on Statewide HEAT Program, Patty Gonzales, Texas Department of Public Safety.

III. Director/Staff Report; Budget, Travel, Grant Analysis and Adjustments, and Public Awareness.

IV. Proposed Amendment to 43 TAC §57.48, Defining "Motor Vehicle Insurance" and "Motor Vehicle", published August 29, 1997, 22 TexReg 8611.

V. Proposed Repeal of 1 TAC §4.47, Relating to Preparation of 1994 Assessment Form, 1 TAC §4.47, published November 7, 1997, 22 TexReg 10841.

VI. Proposed Amendment to 43 TAC §57.48, Relating to the ATPA Assessment Report Form, published November 7, 1997, 22 TexReg 10948.

VII. Proposed Rules Relating to ATPA Advisory Committees.

VIII. Pending Litigation: Cause Number 96-10843, Texas Public Policy Foundation vs. Texas Automobile Theft Prevention Authority.

IX. Request by State Farm Insurance for Sufficiency Determination for 1991, 1993, and 1994 ATPA Assessment Fee.

X. Approval of Interagency Contract Between the ATPA and the Office of the Attorney General of Texas.

XI. Report on Texas Action Council on Theft, Protect Our Parts (POP) Program, Susan Sampson, ATPA.

XII. Disposition of ATPA Equipment from Discontinued Programs.

XIII. Report on Border Solutions Committee Meeting, November 5-6, 1997, Pat Ayala, Committee Chair.

XIV. Report on Grantee Advisory Committee Meeting, February 11, 1998, Mac Tristan, Committee Chair.

XV. Selection of Grantee Advisory Committee Members.

XVI. Public Comment.

XVII. Adjournment.

Contact: Agustin De La Rosa, 200 East Riverside Drive, Austin, Texas  
78704, (512) 416-4600.

Filed: January 30, 1998, 4:37 p.m.

TRD-9801420

◆ ◆ ◆

**State Board of Barber Examiners and Texas  
Cosmetology Commission**

Tuesday, February 10, 1998, 9:00 a.m.

Texas Cosmetology Commission, 5717 Balcones Drive

Austin

Joint Commission Meeting

AGENDA:

1. Call to Order.

2. Introductions.

3. Discussion of Interagency contract, and Possible Vote.

4. Adjourn.

Contact: Charles Clay Mills, 333 Guadalupe, Suite 2-110, Austin,  
Texas 78701, (512) 305-8475.

Filed: January 29, 1998, 11:52 a.m.

TRD-9801364

◆ ◆ ◆

**Texas Bond Review Board**

Tuesday, February 10, 1998, 10:00 a.m.

Clements Building, Committee Room Five, 300 West 15th Street

Austin

AGENDA:

I. Call to Order

II. Approval of Minutes

III. Discussion of Proposed Issues

Texas Public Finance Authority-revenue Bonds for the Texas Department of Health- laboratory project

IV. Other Business

Texas Department of Housing and Community Affairs — discussion of future multi-family housing transactions

Discussion of Debt Training Seminars

V. Adjourn

Contact: Jose A. Hernandez, 300 West 15th Street, Suite 409, Austin,  
Texas 78701, (512) 463-1741.

Filed: February 2, 1998, 4:04 p.m.

TRD-9801470

◆ ◆ ◆

**Coastal Coordination Council**

Wednesday, February 11, 1998, 1:30 p.m.

Bauer Community Center, 2300 Highway 35, Room 2

Port Lavaca

AGENDA:

I. Call to Order and opening remarks; II. PUBLIC COMMENT: The public is invited to present any coastal issues of local concern. III. ACTION ITEM: Approval of the minutes of the November 12, 1997 meeting. IV. ACTION ITEM: Proposal of amendments to Chapter 506 of Council rules concerning consistency review of federal

restoration plans. V. Discussion of consistency determination for the U.S. Army Corps of Engineers dredging projects submitted to the Council in October 1997. VI. ACTION ITEM: Approval of Grant Cycle 4 guidance and schedule. VII. ACTION ITEM: Approval of the annual report. VIII. ACTION ITEM: Approval to begin review of Council rules pursuant to §167 of House Bill One. IX. Regular Program Updates: (a) Small business and Individual Permitting Assistance Program; (b) Coastal nonpoint-source pollution control program; (c) NOAA cooperative agreement/CMP grants program; (d) Consistency review report; (d) Natural Resource Damage Assessment program. X. Adjourn.

Contact: Janet Fatheree, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, (512) 463-5385.  
Filed: February 2, 1998, 11:24 a.m.

TRD-9801447



### **Office of Court Administration**

Thursday, February 19, 1998, 10:00 a.m.

State Bar Building, 1414 Colorado, Rooms 101 and 102

Austin

Texas Judicial Council

AGENDA:

- I. Commencement of Meeting — Chief Justice Thomas R. Phillips
- II. Attendance of members
- III. Minutes of October 30, 1997 Meeting
- IV. Reports from the Council Committees
  - A. Committee on Judicial Selection — Jr. Joseph Callier
  - B. Committee on Juvenile Reform/Impact on the Courts- Judge Penny Pope
  - C. Committee on Judicial Redistricting — Chief Justice Thomas R. Phillips
  - D. Working Group on Alternative Dispute Resolution — Mr. Diego J. Pena
  - E. Committee on Visiting and Retired Judges
  - F. Committee on Court Records
- V. Report on Appellate Caseload Management through Visiting Judge Assignment — Chief Justice Thomas R. Phillips
- VI. Other Business
- VII. Date of Next Meeting (Calendar)
- VIII. Adjournment

Contact: Amy Chamberlain, P.O. Box 12066, Austin, Texas 78711-2066, (512) 463-1625.  
Filed: February 4, 1998, 9:56 a.m.

TRD-9801567



### **State Board of Dental Examiners**

Friday, February 20, 1998, 8:30 a.m.

333 Guadalupe, Hearing Room 102, William Hobby Building, Main Lobby Area

Austin

AGENDA:

- I. Call to order
- II. Discuss, consider and vote on making a settlement offer for the following complaints:
  - A. 97-104-0913, 97-504-0321, 97-625-0522
  - B. 97-381-1231JF
  - C. 96-450-0619F
  - D. 97-1399-1009JF
  - E. 97-262-1117VF
  - F. 97-163-1008SC
  - G. 96-430-0611LG, 96-431-0613LG, 96-432-0614LG, 96-453-0619LG, 96-460-0620LG, 96-461-0620LG, 97-078-0905LG
- III. Executive Session to discuss pending contemplated litigation and/or a settlement offer pursuant to §551.071 Texas Government Code, VTCS, 1998:
  - A. 97-104-0913, 97-504-0321, 97-625-0522
  - B. 97-381-1231JF
  - C. 96-450-0619VF
  - D. 97-139-1009JF
  - E. 97-262-1117VF
  - F. 97-163-1008SC
  - G. 96-430-0611LG, 96-431-0613LG, 96-432-0614LG, 96-453-0619LG, 96-460-0620LG, 96-461-0620LG, 97-078-0905LG
- IV. Adjourn

Contact: Mei Ling Clendennen, SBDE Offices, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400  
Filed: February 2, 1998, 8:30 a.m.

TRD-9801450



### **Texas Planning Council for Developmental Disabilities**

Thursday, February 12, 1998, 10:00 a.m.

Embassy Suites N, 5901 North IH35, Boardroom

Austin

Executive Committee

AGENDA:

10:00 a.m. — Call to Order

- I. Introductions
- II Approval of Minutes
- III. Public Comments
- IV. Chair's Report
- V. Executive Director's Report
- VI. Review of Stipends Applications
- VII. Administrative Support to the Council

VIII. Budget Update

A. FY 1998 Budget Status Report

B. Review of Proposed Costs from TRC and HHSC

IX. Other Discussion Items

A. Traumatic Brain Injury Advisory Board Update

12:30 p.m. — Adjourn.

Persons requiring ADA assistance or services are requested to contact Rosalinda Lopez at (512) 424-4094 several days prior to the meeting so that appropriate arrangements can be made.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas, 78751, (512) 424-4080.

Filed: January 28, 1998, 1:13 p.m.

TRD-9801274



Friday, February 13, 1998, 8:30 a.m.

Embassy Suites N, 5901 North IH35, Ballroom

Austin

Council Meeting

AGENDA:

8:30 a.m. — Call to Order

I. Introductions

II Public Comments

III. Approval of Minutes

IV. Nominating Committee Report

A. Nomination of Council Vice-Chair

B. Nomination for Consumer Member-At-Large to Executive Committee

V. Chair's Report

A. Recommendations for Committees

B. Other Discussion Items

VI. Executive Director's Report

A. Supported Employment Update

VII. Planning Committee Report

A. Consideration of Future Funding Activities

B. Other Discussion Items

VIII. Advocacy and Public Information Committee Report

A. Discussion of TPCDD Input on Sunset Review Issues

B. State and Federal Policy Issues Update

IX. Executive Committee Report

A. Administrative Support to the Council

B. Budget Update

C. Other Discussion Items

X. Other Discussion Items

A. University Affiliated Program Update

B. Protection and Advocacy, Inc., Update

2:30 — Adjourn

Persons requiring ADA assistance or services are requested to contact Rosalinda Lopez at (512) 424-4094 several days prior to the meeting so that appropriate arrangements can be made.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas, 78751, (512) 424-4080.

Filed: January 28, 1998, 1:13 p.m.

TRD-9801275



**Texas Education Agency (TEA)**

Wednesday, February 25, 1998, 8:30 a.m.

Red Lion Hotel, 6121 IH35 North, Lone Star 1-2

Austin

Continuing Advisory Committee (CAC) for Special Education

AGENDA:

Wednesday, February 25, 1998, beginning at 8:30 a.m., the CAC will hear welcoming remarks and approve the minutes from the November 13, 1997 meeting. The CAC will hear presentations on the status of the Office of Special Education Programs (OSEP) corrective action plan; monitoring issues and evaluation stakeholders group; and statewide reading initiatives and students with disabilities. Beginning at 12:45 p.m., the CAC will elect a chairperson and vice-chairperson; review the purpose of the CAC; and identify CAC priorities. The CAC will hear presentations on proposed State Board of Education and Commissioner rules and the state implementation plan for the Individuals with Disabilities Education Act. The CAC will determine priorities and unmet needs, set future meetings and meeting agendas, and adjourn.

Contact: Shirley Sanford and Laura Taylor, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9414.

Filed: February 4, 1998, 9:56 a.m.

TRD-9801566



**Texas Board of Professional Engineers**

Tuesday, February 17, 1998, 2:00 p.m.

1917 IH35 South, Board Room

Austin

Licensing Committee

AGENDA:

Call to order; roll call; recognize visitors; discuss and possibly act on: software engineering, engineering education issues, residency issues, NCEED issues, correspondence, and personal interviews; adjourn.

Contact: John R. Speed, 1917 IH35 South, Austin, Texas 78741, (512) 440-7723.

Filed: February 3, 1998, 9:42 a.m.

TRD-9801489



Tuesday-Wednesday, February 17-18, 1998, 9:00 a.m.

1917 IH35 South, Board Room

Austin

AGENDA:

Call to order; roll call; recognize visitors; consider and possibly act on: new board member training and licensing committee issues concerning software engineering education issues, residency issues, NCEES issues, correspondence and personal interviews; recess until 9:00 a.m. on February 18, 1998; Reconvene; roll call; recognize visitors; discuss and approve minutes of regular quarterly board and committee meetings; receive board member activity reports; discuss and possibly act on: directors' reports, staff members' reports, enforcement and disciplinary matters, communications, personal interviews, old business including future meeting dates, discussion and possible action on reports from licensing, enforcement and the general issues committees, and discussion and possible adoption of board rules 131.1-131.3, 131.7-131.10, 131.12, 131.14, 131.15, 131.17-131.19, 131.52-131.55, 131.71, 131.81, 131.101-131.104, 131.113, 131.131, 131.134-131.136, 131.151, 131.152, 131.162, 131.163, and 131.166-131.168; new business including discussion and possible action on: NCEES matters, annual re-establishment of advisory committees, proposed changes to board rule 131.54(b), and examination fees for upcoming examinations; applications requiring board rulings; automatic non-approvals; reconfirm votes on applications; adjourn.

Contact: John R. Speed, 1917 IH35 South, Austin, Texas 78741, (512) 440-7723.

Filed: February 3, 1998, 9:42 a.m.

TRD-9801488



**Texas Ethics Commission**

Friday, February 13, 1998, 9:30 a.m.

Capitol Extension, Room E1.010

Austin

AGENDA:

The commission will take roll call; hear comments by the commissioners and the executive director, and communications from the public; approve the minutes of the January 16, 1998 meeting; briefing, discussion, and possible action to waiver certain fines assessed for late filing of campaign finance reports, lobby reports, or personal financial statements; discussion and possible action in response to the following Advisory Opinion Request Nos. 431, 432, 433, and 434; adjourn.

Contact: Tom Harrison, 10th Floor, 201 East 14th Street, Austin, Texas 78701, (512) 463-5800.

Filed: February 4, 1998, 11:01 a.m.

TRD-9801589



**Finance Commission of Texas**

Friday, February 20, 1998, 8:30 a.m.

Finance Commission Building, 2601 North Lamar Boulevard

Austin

AGENDA:

The complete agenda is available on the World Wide Web at: <http://www.banking.state.tx.us/exec/fcagenda.html>.

A. Review and Approval of Minutes of the December 19, 1997 Finance Commission Meeting.

B. Finance Commission Matters.

1. Discussion of and Possible Vote on Finance Commission Study Under Texas Finance Code §11.305(c)

2. Discussion of and Possible Vote to Issue the Request for Proposals to Conduct the 1998 Finance Commission Study

3. Discussion of and Possible Vote to Adopt Amendment to §9.81 and §9.84.

C. Report from the Banking Department; Industry Status; Departmental Operations

1. Discussion of and Possible Vote to Publish for Comment Proposed Amendments to §4.3 and §4.6.

2. Discussion of and Possible Vote to Adopt Repeal of §§10.1-10.5 and 10.10-10.11

3. Discussion of and Possible Vote to Adopt Amendment to §§12.11 and 12.61

4. Discussion of and Possible Vote to Adopt Amendment to §15.1 and 15.2.

5. Discussion of and Possible Vote to Adopt New §§17.1, 17.2, 17.21, and 17.22.

6. Discussion of and Possible Vote to Publish for Comment Proposed New §17.23

7. Discussion of and Possible Vote to Adopt New §§19.1, 19.21, and 19.22

8. Discussion of and Vote to Adopt New §21.2

9. Discussion of and Vote to Publish for Comment Proposed New §21.4-21.8, and §21.23

D. Report from the Savings and Loan Department; Industry Status; Departmental Operations

1. Discussion of and Vote to Publish for Comment Proposed New §79.109 and §79.110.

E. Report from the Office of Consumer Credit Commissioner; Industry Status; Departmental Operations

1. Discussion of and Vote to Adopt New §§1.101-1.107

2. Discussion of and Vote to Adopt Repeal of §§1.1, 1.3, 1.5, and 1.6

3. Discussion of and Vote to Publish for Comment Proposed Repeal of §§1.31-1.34 and §1.36-1.40.

4. Discussion of and Vote to Publish for Comment Proposed New §§1.301-1.310

Executive Session

Contact: Everette D. Jobe, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1300.

Filed: February 4, 1998, 9:56 a.m.

TRD-9801568



**Office of the Governor**

Tuesday, February 17, 1998, 9:00 a.m.

Hobby Building, 333 Guadalupe, Tower II, Second Floor, Room 225 Austin

Human Resource Task Force

AGENDA:

- I. Call to Order — Introductions
- II. Update of Human Resource Task Force Activities
- III. Subcommittee Reports
- IV. Discussion
- V. Adjourn

Contact: Donna C. Reynolds, P.O. Box 12428, Austin, Texas 78711,  
 (512) 936-2196.  
 Filed: February 3, 1998, 10:20 a.m.  
 TRD-9801491



Tuesday, March 17, 1998, 9:00 a.m.  
 Hobby Building, 333 Guadalupe, Tower II, Second Floor, Room 225  
 Human Resource Task Force  
 Austin

AGENDA:

- I. Call to Order — Introductions
- II. Update of Human Resource Task Force Activities
- III. Subcommittee Reports
- IV. Discussion
- V. Adjourn

Contact: Donna C. Reynolds, P.O. Box 12428, Austin, Texas 78711,  
 (512) 936-2196.  
 Filed: February 3, 1998, 10:20 a.m.  
 TRD-9801492



Tuesday, April 21, 1998, 9:00 a.m.  
 Hobby Building, 333 Guadalupe, Tower II, Second Floor, Room 225  
 Austin  
 Human Resource Task Force

AGENDA:

- I. Call to Order — Introductions
- II. Update of Human Resource Task Force Activities
- III. Subcommittee Reports
- IV. Discussion
- V. Adjourn

Contact: Donna C. Reynolds, P.O. Box 12428, Austin, Texas 78711,  
 (512) 936-2196.  
 Filed: February 3, 1998, 10:20 a.m.  
 TRD-9801493



Tuesday, May 19, 1998, 9:00 a.m.  
 Hobby Building, 333 Guadalupe, Tower II, Second Floor, Room 225  
 Austin

Human Resource Task Force

AGENDA:

- I. Call to Order — Introductions
- II. Update of Human Resource Task Force Activities
- III. Subcommittee Reports
- IV. Discussion
- V. Adjourn

Contact: Donna C. Reynolds, P.O. Box 12428, Austin, Texas 78711,  
 (512) 936-2196.  
 Filed: February 3, 1998, 10:20 a.m.  
 TRD-9801494



Tuesday, June 16, 1998, 9:00 a.m.  
 Hobby Building, 333 Guadalupe, Tower II, Second Floor, Room 225  
 Austin  
 Human Resource Task Force

AGENDA:

- I. Call to Order — Introductions
- II. Update of Human Resource Task Force Activities
- III. Subcommittee Reports
- IV. Discussion
- V. Adjourn

Contact: Donna C. Reynolds, P.O. Box 12428, Austin, Texas 78711,  
 (512) 936-2196.  
 Filed: February 3, 1998, 10:20 a.m.  
 TRD-9801495



Tuesday, July 21, 1998, 9:00 a.m.  
 Hobby Building, 333 Guadalupe, Tower II, Second Floor, Room 225  
 Austin  
 Human Resource Task Force

AGENDA:

- I. Call to Order — Introductions
- II. Update of Human Resource Task Force Activities
- III. Subcommittee Reports
- IV. Discussion
- V. Adjourn

Contact: Donna C. Reynolds, P.O. Box 12428, Austin, Texas 78711,  
 (512) 936-2196.  
 Filed: February 3, 1998, 10:20 a.m.  
 TRD-9801496



Tuesday, August 18, 1998, 9:00 a.m.  
 Hobby Building, 333 Guadalupe, Tower II, Second Floor, Room 225  
 Austin

Human Resource Task Force

AGENDA:

- I. Call to Order — Introductions
- II. Update of Human Resource Task Force Activities
- III. Subcommittee Reports
- IV. Discussion
- V. Adjourn

Contact: Donna C. Reynolds, P.O. Box 12428, Austin, Texas 78711, (512) 936-2196.  
Filed: February 3, 1998, 10:20 a.m.  
TRD-9801497



**Texas Department of Health (TDH)**

Saturday, February 7, 1998, 10:00 a.m.

Leeward Room, Conference Center, Second Floor, San Luis Resort and Conference Center  
5222 Seawall Boulevard  
Galveston

Texas Board of Health Strategic Management Committee

AGENDA:

The committee will discuss and possibly act on: approval of the minutes of the January 15, 1998, meeting; consideration and adoption of a resolution concerning approval of the Official Statement in connection with the issuance of special revenue bonds (Texas Department of Health Laboratory Project), approving and authorizing delegation to the Commissioner of Health of necessary approvals, and approving other matters with respect thereto; approval for acceptance of a gift of a 1962 Oldsmobile ambulance; approval of an equipment lease financing resolution; Sunset update; report on the strategic planning process; strategic financial issues; and the Texas Integrated Enrollment and Services (TIES) System.

To request ADA assistance, 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 meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.  
Filed: January 29, 1998, 2:56 p.m.  
TRD-9801374



Saturday, February 7, 1998, 1:00 p.m.

Leeward Room, Conference Center, Second Floor, San Luis Resort and Conference Center  
5222 Seawall Boulevard  
Galveston

Texas Board of Health Board Briefing Meeting

AGENDA:

The board will meet to discuss and possibly act on: a briefing by the Commissioner on current activities of the Texas Department of Health; and a discussion concerning procedural and/or administrative issues of the Board of Health.

To request ADA assistance, 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 meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.  
Filed: January 29, 1998, 2:56 p.m.

TRD-9801375



Saturday, February 7, 1998, 2:00 p.m.

Leeward Room, Conference Center, Second Floor, San Luis Resort and Conference Center  
5222 Seawall Boulevard  
Galveston

Texas Board of Health Regulatory Committee

AGENDA:

The committee will discuss and possibly act on: approval of the minutes of the November 20, 1997 and the January 15, 1998, meetings; proposed rules concerning (licensing requirements for general and special hospitals; abortion facility licensing and reporting requirements; licensing fees for home and community support services agencies; notices, instruction, reports to workers, and inspection protocol by licensees or registrants subject to the Texas Radiation Control Act: fees for certificates of registration, radioactive material(s) licenses, emergency planning and implementation, and other regulatory services under the Texas Radiation Control Act; minimum standards for licensure of tattoo studios; and exemption of specific wastes under the Texas Radiation Control Act); final adoption of rules concerning (licensing of home and community support services agencies; regulation of health maintenance organizations; fish and fishery products hazard analysis critical control point regulations; and the repeal and new rules concerning Texas crab meat); a briefing concerning irradiation of food; and a progress report on the recommended protocol for coordinated child care facility inspections.

To request ADA assistance, 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 meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.  
Filed: January 29, 1998, 2:56 p.m.  
TRD-9801376



Saturday, February 7, 1998, 4:00 p.m.

Leeward Room, Conference Center, Second Floor, San Luis Resort and Conference Center  
5222 Seawall Boulevard  
Galveston

Texas Board of Health —Health and Clinical Services Committee

AGENDA:

The committee will discuss and possibly act on: approval of the minutes of the January 16, 1998, meetings; proposed rules concerning (cancer incidence reporting; and the creation of an immunization registry and for reporting requirements concerning immunizations); and final adoption of rules concerning (the control of communicable

diseases; occupational condition reporting; and laboratory fees, sale of laboratory services, and laboratory certification.

To request ADA assistance, 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 meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: January 29, 1998, 2:56 p.m.

TRD-9801377



Sunday, February 8, 1998, 8:30 a.m.

Leeward Room, Conference Center, Second Floor, San Luis Resort and Conference Center

5222 Seawall Boulevard

Galveston

Texas Board of Health

AGENDA:

The board will meet to discuss and possibly act on: approval of the minutes of the January 16, 1998, meetings; commissioner's report; update on Public Health Regions 6 and 5 South; Strategic Management Committee report (consideration and adoption of a resolution concerning approval of the Official Statement in connection with the issuance of special revenue bonds (Texas Department of Health Laboratory Project), approving and authorizing delegation to the Commissioner of Health of necessary approvals, and approving other matters with respect thereto: approval for acceptance of a gift of a 1962 Oldsmobile ambulance; and approval of an equipment lease financing resolution); Health and Clinical Services Committee report concerning (cancer incidence reporting; and the creation of an immunization registry and for reporting requirements concerning immunizations); and final adoption of rules concerning (the control of communicable diseases; occupational condition reporting; and laboratory fees, sale of laboratory services, and laboratory certification.); Human Resources Committee report; Regulatory Committee report (proposed rules concerning (licensing requirements for general and special hospitals; abortion facility licensing and reporting requirements; licensing fees for home and community support services agencies; notices, instruction, reports to workers, and inspection protocol by licensees or registrants subject to the Texas Radiation Control Act: fees for certificates of registration, radioactive materials) licenses, emergency planning and implementation, and other regulatory services under the Texas Radiation Control Act; minimum standards for licensure of tattoo studios; and exemption of specific wastes under the Texas Radiation Control Act); final adoption of rules concerning (licensing of home and community support services agencies; regulation of health maintenance organizations; fish and fishery products hazard analysis critical control point regulations; and the repeal and new rules concerning Texas crab meat); public comments; announcements and comments; and the setting of the March, 1998 meeting date for the board.

To request ADA assistance, 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 meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: January 29, 1998, 2:56 p.m.

TRD-9801378



Friday, February 13, 1998, 9:30 a.m.

Exchange Building, Room S-402, Texas Department of Health, 8407 Wall Street

Austin

Optician's Registry, Advisory Committee, Complaints Subcommittee

AGENDA:

The subcommittee will discuss and possibly act on: proposed amendments to rules relating to the complaint process (25 Texas Administrative Code, Chapter 129); staff report concerning closed complaints; and complaints OP98-003 and OP98-005.

To request ADA assistance, 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 meeting.

Contact: Stephen Mills, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6661.

Filed: January 28, 1998, 4:44 p.m.

TRD-9801325



Friday, February 13, 1998, 10:15 a.m.

Exchange Building, Room S-402, Texas Department of Health, 8407 Wall Street

Austin

Optician's Registry, Advisory Committee, Rules Subcommittee

AGENDA:

The subcommittee will discuss and possibly act on: proposed amendments to rules (25 Texas Administrative Code, Chapter 129).

To request ADA assistance, 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 meeting.

Contact: Stephen Mills, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6661.

Filed: January 28, 1998, 4:44 p.m.

TRD-9801326



Friday, February 13, 1998, 11:00 a.m.

Exchange Building, Room S-402, Texas Department of Health, 8407 Wall Street

Austin

Optician's Registry, Advisory Committee, Public and Professional Relations Subcommittee

AGENDA:

The subcommittee will discuss and possibly act on: development of public information items (newsletters, brochures, and other related material).

To request ADA assistance, 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 meeting.

Contact: Stephen Mills, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6661.

Filed: January 28, 1998, 4:44 p.m.

TRD-9801327



Friday, February 13, 1998, 11:00 a.m.

Exchange Building, Room S-402, Texas Department of Health, 8407 Wall Street

Austin

Optician's Registry, Advisory Committee

AGENDA:

The committee will introduce guests and will discuss and possibly act on: approval of the minutes of the committee meeting held November 4, 1997; chairman's report; financial report; program director's report; subcommittee reports (Complaints Subcommittee (proposed amendments to rules relating to the complaint process (25 Texas Administrative Code (TAC), Chapter 129); Rules Subcommittee (proposed amendments to rules (25 TAC, Chapter 1290; Public and Professional Relations Subcommittee (development of public information items)); impact of managed care on opticianry; public comment; and other business not requiring action.

To request ADA assistance, 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 meeting.

Contact: Stephen Mills, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6661.

Filed: January 28, 1998, 4:44 p.m.

TRD-9801328



Friday, February 20, 1998, 10:00 a.m.

Exchange Building, Room N-218, Texas Department of Health, 8407 Wall Street

Austin

Texas Radiation Advisory Board, Ad Hoc Committee on Lasers

AGENDA:

The committee will introduce guests and will discuss and possibly act on: review of rules (25 Texas Administrative Code (TAC) §289.301; Texas laser long-term regulatory policy (recommend a path for a long-term laser regulatory policy; identify and recommend a reasonable approach to regulation and compliance that will be meaningful for the laser users in their rapidly changing industry, while also ensuring a framework of adequate protection is in place for both the users and the public); items not requiring action; and public comment.

To request ADA assistance, 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 meeting.

Contact: Margaret Henderson, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6688.

Filed: February 3, 1998, 11:50 a.m.

TRD-9801507



Saturday, February 21, 1998, 9:30 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Radiation Advisory Board, Medical Committee

AGENDA:

The committee will introduce guests and will discuss and possibly act on: regulation of positron emission tomography (PET) radiopharmaceuticals; osteoporosis screening criteria; recommendation for adoption of rules on radiation machines in the healing arts and veterinary medicine (25 Texas Administrative Code (TAC) §289.226); recommendation for proposed rules on mammography accreditation requirements, certification requirements, and training requirements for technicians (25 TAC §289.230); and public comment.

To request ADA assistance, 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 meeting.

Contact: Margaret Henderson, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6688.

Filed: February 3, 1998, 11:50 a.m.

TRD-9801508



Saturday, February 21, 1998, 11:00 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Radiation Advisory Board, Waste and Industrial Committee

AGENDA:

The committee will introduce guests and will discuss and possibly act on: recommendation for proposed rules on disposal of cesium 137 incident related materials (25 Texas Administrative Code (TAC) §289.202); items not requiring action; and public comment.

To request ADA assistance, 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 meeting.

Contact: Margaret Henderson, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6688.

Filed: February 3, 1998, 11:51 a.m.

TRD-9801509



Saturday, February 21, 1998, 1:00 p.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Radiation Advisory Board

AGENDA:

The board will introduce guests and will discuss and possibly act on: approval of the minutes of the last meeting; approval and recommendation of the food irradiation report to the Board of Health; Waste and Industrial Committee (proposed rules on disposal of cesium 137 incident related materials (25 Texas Administrative Code (TAC) §289.202); Medical Committee (report on regulation of positron emission tomography (PET) radiopharmaceuticals; osteoporosis screening criteria; recommendation for adoption of rules on radiation machines in the healing arts and veterinary medicine (25 Texas Administrative Code (TAC) §289.226); recommendation for proposed rules on mam-



mography accreditation requirements, certification requirements, and training requirements for technicians (25 TAC §289.230); Laser Ad Hoc Committee (recommendation on draft rule (25 TAC §289.301); and recommendation for long-term regulatory policy); program reports (Texas Department of Health; Bureau of Radiation Control; Texas Natural Resource Conservation Commission; Railroad Commission of Texas; and the Texas Low-Level Radioactive Waste Disposal Authority); items not requiring action; public comments; and the setting of future meeting dates for the board.

To request ADA assistance, 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 meeting.

Contact: Margaret Henderson, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6688.

Filed: February 3, 1998, 11:51 a.m.

TRD-9801510



## **Texas Healthy Kids Corporation (“THKC”)**

Thursday, February 5, 1998, 3:00 p.m.

333 Guadalupe, Hobby Tower 1, Room 1264

Austin

Board of Directors

AGENDA:

I. Executive Session: The Board may meet in Executive Session in accordance with the Texas Open Meetings Act for THKC staff briefing on issues set forth in agenda, or to receive advice from legal counsel.

II. Board Agenda: Some or all of THKC Board members will appear in teleconference, because it is difficult or impossible to convene the Board at one location.

Call to order; certification of quorum. Briefings from THKC staff, deliberations, and possible approval/action/authorization of persons to executive necessary documents/execution of necessary documents regarding the following: (1) Responses to Invitation for Bid for actuarial consultant; possible presentations from bidders; final award of bid. (2) Responses to Requests for Information to marketing firms; various marketing issues; Request for Proposal for marketing services. (3) Timelines and work plan for accomplishing goal of having product ready by statutory deadline; staffing update; other administrative, procedural matters relating to organization of THKC.

Contact: Tyrette Hamilton, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-3046.

Filed: January 28, 1998, 4:17 p.m.

TRD-9801295



## **Texas Health Reinsurance System**

Tuesday, February 10, 1998, 9:00 a.m.

333 Guadalupe, Hobby Tower 1, Room 1264, Texas Department of Insurance

Austin

Board of Directors

AGENDA:

Reports from Administrator, TDI Staff, and Discussions

Report from the Actuarial Committee and Discussions-Discuss and take possible action on assessment for the System.

Report from the Operations Committee and Discussion — Review, Discuss and Take Possible Action on Approving Expenses of Board Members, Milliman and Robertson, UnitedHealthCare (Administering Carrier), and Others.

Report from the Access Committee and Discussions.

Report from the Audit Committee and Discussions- Review, Discuss, and Take Possible Action on Providing auditor(s) for the System.

Consider and take possible action on election of officers for the System.

Discuss and take possible action on the membership of the committees of the Board.

Discuss and take possible action on the Annual Meeting Items.

Consideration of Any Further Business

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: February 3, 1998, 9:42 a.m.

TRD-9801490



## **Texas Higher Education Coordinating Board**

Wednesday, February 18, 1998; 8:00 a.m.

University of Texas- El Paso, Tomas Rivera Conference Center Union Building, University Avenue

El Paso

Coordinating Board Planning Meeting

AGENDA:

Discussion of Texas higher education in a national context; and discussion of the Coordinating Board's responsibilities and procedures; What should the Board be doing and what should the Board not be doing to add the greatest value to Texas higher education?

Contact: Don Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, (512) 483-6101.

Filed: February 4, 1998, 11:42 a.m.

TRD-9801603



Thursday, February 19, 1998; 8:00 a.m.

Camino Real Hotel, Charolais Room, 101 South El Paso Street

El Paso

AGENDA:

Remarks on lifelong education; discussion of 1998 status report on higher education; and discussion of formula funding.

Contact: Don Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, (512) 483-6101.

Filed: February 4, 1998, 11:42 a.m.

TRD-9801602



## Texas Historical Commission

Saturday, February 14, 1998, 8:30 a.m.

Trinity University Campus, William Knox Holt Continuing Education and Conference Center, 106 Oakmont

San Antonio

Quarterly Board Meeting, State Board of Review

AGENDA:

- I. Call to order
- II. Announcements
- III. Approval of Minutes of the November 7–8, 1997 Meetings
- IV. Review of Nominations for the National Register of Historic Places
- V. Fort Bliss Main Post Historic District, El Paso, El Paso County
- VI. New Business
- VII. Adjournment

Contact: Judy George, P.O. Box 12276, Austin, Texas 78711, (512) 463-8452.

Filed: January 29, 1998, 8:35 a.m.

TRD-9801329



## Texas House of Representatives

Friday, February 20, 1998, 10:30 a.m.

Capitol Extension, Room E2.010, Texas State Capitol Complex

Austin

Interim Committee on Natural Resources- Subcommittee: Dam Safety

AGENDA:

- I. Call to Order
- II. State Agency Personnel Testimony on Dam Safety
- III. Invited Testimony
- IV. Public Testimony
- V. Discussion of Future Meetings
- VI. Adjournment

Contact: Jennifer Modgling, P.O. Box 2910, Austin, Texas 78703, (512) 463-0766.

Filed: February 3, 1998, 11:55 a.m.

TRD-9801511



## Texas Department of Human Services (TDHS)

Thursday, February 19, 1998, 10:00 a.m.

6161 Savoy, Suite 240

Houston

Alzheimer's Advisory Committee, Alzheimer's Association, Greater Houston Chapter

AGENDA:

Old Business: 1. Legislative. New Business: 1. Analysis of Houston Connections program and application to pilot project. Set date of next meeting. Adjournment.

Contact: Trena Barnett, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-2107.

Filed: February 4, 1998, 12:26 p.m.

TRD-9801609



## Texas Department of Insurance

Friday, February 13, 1998, 9:00 a.m.

333 Guadalupe Street, Room 102

Austin

Advisory Committee for the Interim Study of Agents and Agents' Licensing Statutes

AGENDA:

Introduction of advisory committee members and TDI staff.

Briefing from TDI staff regarding Open Meetings and Open Records.

Briefing and overview by TDI staff on the interim study mandated in Senate Bill 206, 75th Legislature, and issues to be considered, including new methods of marketing insurance, reduction in the number and types of agents' licenses, streamlining and combining licenses where feasible, consistency in the statutes' applicability to all licenses, and other problems and concerns with agent's licensing requirements such as restrictions on non-resident agents and corporation, and reciprocity with other states.

Deliberation and possible action on appointments to workgroups or subcommittees.

Deliberation and possible action regarding timelines, future meetings, other administrative or procedural matters relating to the advisory committee, its charge, and possible workgroups or subcommittees. Time for public comment.

Contact: Bill Elkjer, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-8197.

Filed: February 4, 1998, 8:48 a.m.

TRD-9801562



Monday, February 23, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100

Austin

AGENDA:

Docket Number 454-97-2050.C. To consider whether disciplinary action should be taken against SYLVESTER L. OGUNDANA, Houston, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License, a Local Recording Agent's License and a Health Maintenance Organization 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: February 4, 1998, 10:16 a.m.

TRD-9801576



Monday, February 23, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100  
Austin

AGENDA:

Docket Number 454-97-2153.C. To consider the application of STEVEN T. TILLERY, Dallas, Texas and Carrollton, Texas for a Solicitor's 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: February 4, 1998, 10:16 a.m.

TRD-9801577



Monday, February 23, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100  
Austin

AGENDA:

Docket Number 454-97-2358.C. To consider the application of TIMOTHY S. STARLING, San Marcos, Texas, for a Group II Credit Insurance Agent's 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: February 4, 1998, 10:16 a.m.

TRD-9801578



Thursday, February 26, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100  
Austin

AGENDA:

Docket Number 454-97-2296.C. To consider whether disciplinary action should be taken against KENNETH JAMES BARAN, Taylor, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License, issued by the Texas Department of Insurance; to consider the application for an Adjuster Trainee 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: February 4, 1998, 10:16 a.m.

TRD-9801579



## Board of Law Examiners

Thursday, February 12, 1998, 8:30 a.m.

Suite 500, Tom C. Clark Building, 205 West 14th Street

Austin

Panel Hearings

AGENDA:

The hearings panel will hold public hearings and conduct deliberations, on the character and fitness of the following applicants, declarants and/or probationary licensees: Francis King; Traci

Lohmann; Rene Obregon; K. Gus Vlahadamis; John W. Key III; Scott R. Farris; Forest W. Hanna III (character and fitness deliberations may be conducted in executive session, pursuant to §82.003(a), Texas Government Code.)

Contact: Rachael Martin, P.O. Box 13486, Austin, Texas 78711-3486, (512) 463-1621.

Filed: February 2, 1998, 4:07 p.m.

TRD-9801471



Friday, February 13, 1998, 8:30 a.m.

Suite 500, Tom C. Clark Building, 205 West 14th Street

Austin

AGENDA:

The Board will consider: requests for excused absences; bar examination questions (in executive session); approval of minutes, certified agendas and financial reports; reports from members and staff; ADA-related changes including adoption of an appeal process and changing the reapplication deadline for all applicants; requests for waivers and interpretations of the rules; consultations with legal counsel concerning pending litigation (in executive session); ex parte communications issues; communication from SBOT Committee on Disability Issues; amending certain forms; request to post previously used TBE essay questions on Internet website; contracting with third parties to draft and/or review bar examination questions; report from Supreme Court Liaison; and hear communications from the public.

Contact: Rachael Martin, P.O. Box 13486, Austin, Texas 78711-3486, (512) 463-1621.

Filed: February 3, 1998, 4:47 p.m.

TRD-9801554



Saturday, February 14, 1998, 8:30 a.m.

Suite 500, Tom C. Clark Building, 205 West 14th Street

Austin

Panel Hearings

AGENDA:

The hearings panel will hold public hearings and conduct deliberations, on the character and fitness of the following applicants, declarants and/or probationary licensees; Tommy F. Thomas; Mark C. Baksi; Curtis Lewis, Jr.; Lou Ann Hughes; Thomas Garrison; Elizabeth Watkins; and Robert Kershaw (character and fitness deliberations may be conducted in executive session, pursuant to §82.003(a), Texas Government Code.)

Contact: Rachael Martin, P.O. Box 13486, Austin, Texas 78711-3486, (512) 463-1621.

Filed: February 2, 1998, 4:13 p.m.

TRD-9801473



## Texas Department of Licensing and Regulation

Wednesday, February 11, 1998, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Fourth Floor Conference Room, #420

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: Marie Callendar Pie Shop; Marriott Corporation; Martinez Dry Cleaners; City of McAllen; Memorial Martinizing; Merchants Fast Motor Lines; Hugert and Mary Jean Middleton; Montana Seventh Day Adventist; Nantuckett Apartments; Nautilus Health Club; New Big Town Association; Northside Cleaners; Oak Glen Apartments; Palm Court Apartments; Supreme Cleaners; and T&M Management for failing to pay inspection/certification fees to obtain certificates of operation for the Respondents' boiler(s), a violation of Texas Health and Safety Code Annotated (the Code) chapter 755 and 16 Texas Administration Code (TAC) Chapter 65, pursuant to the Code and Texas Revised Civil Status Annotated Article 9100; Texas Government Code Chapter 2001 (APA) and 16 TAC Chapter 65.

Contact: Allyson Lednick, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: February 2, 1998, 3:39 p.m.

TRD-9801468



Wednesday, February 11, 1998, 1:00 p.m.

920 Colorado, E.O. Thompson Building, Fourth Floor Conference Room, #420

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: Palm Plaza; Parc Riviera Apartments; Pear Tree Inn; Plantation View Apartments; PMM Investment Castings; Pro Cleaners; R.E. Thomason General Hospital; Regency Apartments; Sam's Cleaners; Santa Rosa Cleaners Incorporated; Schlotzsky's; and Silver Leaves Nursing Home for failing to pay inspection/certification fee(s) to obtain certificates of operation for the above-named Respondents' boiler(s), a violation of Texas Health and Safety Code Annotated (the Code) chapter 755 and 16 Texas Administration Code (TAC) Chapter 65, pursuant to the Code and Texas Revised Civil Status Annotated Article 9100; Texas Government Code Chapter 2001 (APA) and 16 TAC Chapter 65.

Contact: Allyson Lednick, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: February 2, 1998, 3:39 p.m.

TRD-9801469



**Texas Lottery Commission**

Wednesday, February 11, 1998, 10:00 a.m.

611 East Sixth Street, Grant Building, Commission Auditorium

Austin

AGENDA:

According to the agenda summary, the Texas Lottery will call the meeting to order; report; possible discussion and/or action

on an analysis of lottery sales for FY 1998 and FY 1999 and Marketing and Advertising efforts and/or an analysis of the impact of House Bill Four; report, possible discussion and/or action on the Lottery's FY 1998-1999 advertising program; status report, possible discussion and/or action on the Prize Vehicle Package procurement; consideration of and possible action, including adoption on new rule 16 TAC §401.311, concerning a new on-line lottery game, "Texas Million"; status report, possible discussion and/or action on the Lottery Operations and Services Request for Proposals; consideration of and possible action on issues relating to the lottery operator contract; status report, possible discussion and/or action on the audit of the lottery operator; status report, possible discussion and/or action on a state audit report relating to the Texas Lottery Commission; report by the Bingo Advisory Committee Chair and possible discussion and/or action based on the Chair's report; consideration of and possible action on the Bingo Advisory Committee nomination process; consideration of and possible action, including adoption of the repeal, on bingo rules which expired by operation of law on April 1, 1995; consideration of and possible action, including proposals of amendments on 16 TAC §402.554, concerning instant bingo; consideration of and possible action, including proposal of amendments on 16 TAC §402.555, concerning cardminding devices; status report, possible discussion and/or action on legislative interim committee hearings relating to the Texas Lottery Commission; Commission may meet in Executive Session; return to open session for further deliberation and possible action on any matter discussed in Executive Session; report, possible discussion and/or action, including possible rulemaking, relating to Attorney General Opinion Number DM0466 and Amusement and Machine Operators of Texas, Inc. v. Dan Morales, In His Individual Capacity and as Attorney General for the State of Texas; Consideration of the status of possible entry of an order in any contested case if a proposal for decision has been received from the assigned administrative law judge and the time period has lapsed for the filing of exceptions and replies; report by Executive Director and possible discussion and/or action on the agency's financial status, Fy 1999-2003 Strategic Plan, budget and budget goals for FY 1998 and 1999, HUB report, FY 1997 Minority Participation Report, FTE status, interaction with vendor employees, and retailer forums; report by the Acting Charitable Bingo Operations Director and possible discussion and/or action on the Charitable Bingo Operations Director and possible discussion and/or action on the Charitable Bingo Operations Division's licensing and audit status and possible issues relating to the Bingo Advisory Committee; and, adjournment.

For ADA assistance, call Michelle Guerrero at (512) 344-5113 at least two days prior to the meeting.

Contact: Michelle Guerrero, P.O. Box 16630, Austin, Texas 78761-6630.

Filed: February 3, 1998, 4:47 p.m.

TRD-9801551



**Texas State Board of Medical Examiners**

Thursday, February 5, 1998, 9:00 a.m. and Saturday, February 7, 1998, 8:30 a.m.

333 Guadalupe Street, Tower 2, Suite 225

Austin

AGENDA:

The agenda will include speakers regarding integrative and alternative medicine; proposal for decision regarding Mao Hsung Tseng, M.D.;

reconsideration of proposal for decision regarding B.R. Ringer, D.O.; public hearing and consideration of final adoption of proposed rules published in the Texas Register; approval of orders; approval of committee reports and minutes; executive director's report; approval of committee appointments; consideration, discussion, and possible action concerning Texas Attorney General Opinion DM-443 in the practice of eletromyographic testing; approval of jurisprudence examination and approval of 1999 board meeting dates.

Executive sessions under the authority of the Open Meetings Act, §551.071 of the Government Code and the Medical Practice Act, Article 4495b, Texas Revised Civil Statutes, §§2.07(b) and 2.09(o), 3.05(d), and 9.081, and Attorney General Opinion H-484.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018; (512) 305-7016, fax: (512) 305-7008.

Filed: January 28, 1998, 4:43 p.m.

TRD-9801324



Thursday, February 5, 1998, 10:30 a.m.

333 Guadalupe Street, Tower 3, Suite 610

Austin

Disciplinary Process Review Committee

AGENDA:

Call to Order

Roll Call

Review, discussion, and possible action regarding the November, December 1997 and January 1998 Enforcement Reports

Review, discussion, and possible action concerning draft rules to define reasonable charges for a summary of medical records and to present schedule of charges that physicians may assess for copies of medical records

Review, discussion, and possible action concerning State Office of Administrative Hearings new rules of procedures

Discussion, recommendation and possible action regarding the FO-4 format and content utilized by investigators

Executive session to review selected files and cases recommended for dismissal by Informal Settlement Conferences

Adjourn

Executive sessions under the authority of the Open Meetings Act, §551.071 of the Government Code as related to Article 4495b, §§2.07(b) and 4.05(c), 5.06(s)(1), and Attorney General Opinion 1974, Number H-484.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018; (512) 305-7016, fax: (512) 305-7008.

Filed: January 28, 1998, 4:33 p.m.

TRD-9801320



Thursday, February 5, 1998, 10:30 a.m.

333 Guadalupe Street, Tower 2, Suite 225

Austin

Joint Meeting: Endorsement and Examination Committees

AGENDA:

Call to Order

Roll Call

Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, §§2.07(b) and 2.09(o), Texas Revised Civil Statutes to consult with counsel regarding pending or contemplated litigation.

Discussion/recommendation regarding falsification of applications for licensure.

Letters of eligibility, §3.04(g)(3) of the Medical Practice Act

Review of applications for licensure for a determination of eligibility referred to the committee by the Executive Director

Proposed rule changes regarding documentation for Fifth Pathway applicants and deletion of the word "foreign" from the phrase "unapproved foreign medical school(s).

Discussion/recommendation regarding possible response to an Attorney General Opinion request

Executive sessions under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, §§2.07(b) and 2.09(o), Texas Revised Civil Statutes, and the Medical Practice Act, Article 4495b, §3.081, Texas Revised Civil Statutes.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018; (512) 305-7016, fax: (512) 305-7008.

Filed: January 28, 1998, 4:33 p.m.

TRD-9801321



Thursday, February 5, 1998, 1:00 p.m.

333 Guadalupe Street, Tower 2, Suite 225

Austin

Endorsement Committee

AGENDA:

Call to Order

Roll Call

Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, §§2.07(b) and 2.09(o), Texas Revised Civil Statutes to consult with counsel regarding pending or contemplated litigation.

Review of licensure applicants referred to the Endorsement Committee by the Executive director for determinations of eligibility for licensure

Review of licensure applicants to be considered for permanent licensure by endorsement

Adjourn

Executive sessions under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, §§2.07(b) and 2.09(o), Texas Revised Civil Statutes, and the Medical Practice Act, Article 4495b, §3.081, Texas Revised Civil Statutes.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018; (512) 305-7016, fax: (512) 305-7008.

Filed: January 28, 1998, 4:33 p.m.

TRD-9801322



Thursday, February 5, 1998, 1:00 p.m.

333 Guadalupe Street, Tower 3, Suite 610

Austin

Examination Committee

AGENDA:

Call to Order

Roll Call

Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, §§2.07(b) and 2.09(o), Texas Revised Civil Statutes to consult with counsel regarding pending or contemplated litigation.

Review of licensure applicants

Executive session under the authority of Article 4495b, §3.05(d), Texas Revised Civil Statutes; and Attorney General Opinion H-484, to review the new jurisprudence examination.

Review of examination applicants complete for consideration of licensure

Adjourn

Executive sessions under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, §§2.07(b) and 2.09(o), Texas Revised Civil Statutes, and the Medical Practice Act, Article 4495b, §3.081, Texas Revised Civil Statutes.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018; (512) 305-7016, fax: (512) 305-7008.

Filed: January 28, 1998, 4:33 p.m.

TRD-9801323



Friday, February 6, 1998, 8:30 a.m.

333 Guadalupe Street, Tower 2, Suite 225

Austin

Medical School Committee

AGENDA:

Call to Order

Roll Call

Review of schedule of 1998 medical school visits. Request for board member to visit University of Texas Medical Branch on March 24, 1998

Adjourn

Executive sessions under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, §§2.07(b) and 2.09(o), Texas Revised Civil Statutes, and the Medical Practice Act, Article 4495b, §3.081, Texas Revised Civil Statutes.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018; (512) 305-7016, fax: (512) 305-7008.

Filed: January 29, 1998, 10:52 a.m.

TRD-9801352



Friday, February 6, 1998, 9:00 a.m.

333 Guadalupe Street, Tower 2, Suite 225

Austin

Ad Hoc Committee for Physicians in Training

AGENDA:

Call to Order

Roll Call

Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, §§2.07(b) and 2.09(o), Texas Revised Civil Statutes to consult with counsel regarding pending or contemplated litigation.

Discussion, recommendation and possible action for licensure of residents in training. Update on the December 10, 1997 meeting with the deans of the Texas medical schools. Scheduling of future meetings.

Discussion, recommendation and possible action on request to allow visiting physicians to participate in limited training in unapproved settings in Texas.

Discussion, recommendation and possible action on Texas fellowship training programs approved by the Board.

Adjourn

Executive sessions under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, §§2.07(b) and 2.09(o), Texas Revised Civil Statutes, and the Medical Practice Act, Article 4495b, §3.081, Texas Revised Civil Statutes.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018; (512) 305-7016, fax: (512) 305-7008.

Filed: January 29, 1998, 10:53 a.m.

TRD-9801353



Friday, February 6, 1998, 9:30 a.m.

333 Guadalupe Street, Tower 2, Suite 225

Austin

Ad Hoc Committee to Study Integrative and Complementary Medicine

AGENDA:

Call to Order

Roll Call

Discussion, recommendation and possible action regarding integrative and complementary medicine and review of related statutes and rules from other states and Canadian provinces

Adjourn

Executive sessions under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, §§2.07(b) and 2.09(o), Texas Revised Civil Statutes, and the Medical Practice Act, Article 4495b, §3.081, Texas Revised Civil Statutes.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018; (512) 305-7016, fax: (512) 305-7008.

Filed: January 29, 1998, 10:53 a.m.

TRD-9801354



Friday, February 6, 1998, 10:30 a.m.

333 Guadalupe Street, Tower 2, Suite 225

Austin

Standing Orders Committee

AGENDA:

Call to Order and Roll Call

Discussion, recommendation and possible action regarding amendments to Chapter 183 regarding an address change and change of names for the National Commission for the Certification of Acupuncturists, "NCCA" and the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine "NAC-SCAOM"

Consideration and approval of acupuncture licensure applicants recommended by the Texas State Board of Acupuncture Examiners

Consideration of denial of acupuncture licensure applicants as recommended by the Texas State Board of Acupuncture Examiners

Consideration and approval of Agreed Board Orders as recommended by the Texas State Board of Acupuncture Examiners

Proposals for Decision, consideration and approval of recommendation by the Texas State Board of Acupuncture Examiners to revoke licensure

Discussion, recommendation and possible action on proposed amendment to Chapter 175, Fees, relating to penalty fees for physician annual registration

Discussion, recommendation and possible action regarding physician supervision of advanced practice nurses

Adjourn

Executive sessions under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, §§2.07(b) and 2.09(o), Texas Revised Civil Statutes, and the Medical Practice Act, Article 4495b, §3.081, Texas Revised Civil Statutes.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018; (512) 305-7016, fax: (512) 305-7008.

Filed: January 29, 1998, 10:53 a.m.

TRD-9801355



Friday, February 6, 1998, 11:30 a.m.

333 Guadalupe Street, Tower 2, Suite 225

Austin

Public Information Committee

AGENDA:

Call to Order

Roll Call

Discussion, recommendation and possible action on articles for Spring 1998 newsletter

Adjourn

Executive sessions under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, §§2.07(b) and 2.09(o), Texas Revised Civil Statutes, and the Medical Practice Act, Article 4495b, §3.081, Texas Revised Civil Statutes.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018; (512) 305-7016, fax: (512) 305-7008.

Filed: January 29, 1998, 10:53 a.m.

TRD-9801356



Friday, February 6, 1998, 1:30 p.m.

333 Guadalupe Street, Tower 3, Suite 610

Austin

Executive Committee

AGENDA:

1. Call to Order

2. Roll Call

3. Discussion and update on agency travel expenditures and request for approval for additional travel expenditures

4. Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code to discuss personnel issues

5. Adjourn

Executive sessions under the authority of the Open Meetings Act, §551.071 of the Government Code and the Medical Practice Act, Article 4495b, §§2.07(b) and 2.09(o), for private consultation and advice of counsel concerning litigation relative to possible disciplinary action.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018; (512) 305-7016, fax: (512) 305-7008.

Filed: January 29, 1998, 10:53 a.m.

TRD-9801357



Friday, February 6, 1998, 2:00 p.m.

333 Guadalupe Street, Tower 2, Suite 225

Austin

Long Range Planning Committee

AGENDA:

Call to Order

Roll Call

Discussion, recommendation and possible action related to long range plans for the agency, including future programs and possible legislative issues.

Adjourn

Executive sessions under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, §§2.07(b) and 2.09(o), Texas Revised Civil Statutes, and the Medical Practice Act, Article 4495b, §3.081, Texas Revised Civil Statutes.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018; (512) 305-7016, fax: (512) 305-7008.

Filed: January 29, 1998, 10:53 a.m.

TRD-9801358



Friday, February 6, 1998, 2:30 p.m.

333 Guadalupe Street, Tower 2, Suite 225

Austin

Non-Profit Health Organizations Committee

AGENDA:

Call to Order

Roll Call

Consideration and possible action on applications for original certification of non-profit health organizations.

Consideration and possible action on biennial applications for recertification of non-profit health organizations.

Consideration and possible action on compliance information for continued certification of non-profit health organizations.

Consideration and possible action on requests for decertification of non-profit health organizations.

Adjourn

Executive sessions under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, §§2.07(b) and 2.09(o), to consult with counsel regarding pending or contemplated litigation. Call to order.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018; (512) 305-7016, fax: (512) 305-7008. Filed: January 29, 1998, 10:53 a.m.

TRD-9801359



Friday, February 6, 1998, 3:30 p.m.

333 Guadalupe Street, Tower 2, Suite 225

Austin

Finance Committee

AGENDA:

Call to Order

Roll Call

Discussion of the Board's January 1998 Financial Statement.

Adjourn

Executive sessions under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, §§2.07(b) and 2.09(o), Texas Revised Civil Statutes, and the Medical Practice Act, Article 4495b, §3.081, Texas Revised Civil Statutes.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018; (512) 305-7016, fax: (512) 305-7008. Filed: January 29, 1998, 10:54 a.m.

TRD-9801360



Friday, February 6, 1998, 4:00 p.m.

333 Guadalupe Street, Tower 2, Suite 225

Austin

Ad Hoc Committee to Study Pharmacist Immunizations under Protocol

AGENDA:

Call to Order

Roll Call

Discussion, recommendation and possible action regarding the development of rules relating to pharmacist immunizations under protocol.

Adjourn

Executive sessions under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, §§2.07(b) and 2.09(o), Texas Revised Civil Statutes, and the Medical Practice Act, Article 4495b, §3.081, Texas Revised Civil Statutes.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018; (512) 305-7016, fax: (512) 305-7008. Filed: January 29, 1998, 10:54 a.m.

TRD-9801361



Friday, February 6, 1998, 4:30 p.m.

333 Guadalupe Street, Tower 2, Suite 225

Austin

Telemedicine Committee

AGENDA:

Call to Order

Roll Call

Update, discussion and possible action concerning telemedicine issues, including fraud and abuse legislation update

Adjourn

Executive sessions under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, §§2.07(b) and 2.09(o), Texas Revised Civil Statutes, and the Medical Practice Act, Article 4495b, §3.081, Texas Revised Civil Statutes.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018; (512) 305-7016, fax: (512) 305-7008. Filed: January 29, 1998, 10:54 a.m.

TRD-9801362



**Texas Mental Health and Mental Retardation Board**

Wednesday, February 11, 1998, 1:30 p.m.

3600 Gaston Avenue, A. Webb Roberts Building, 17th Floor

Dallas

AGENDA:

I. Call to order; roll call; II. Citizens comments; III. Approval of the minutes of the November 21, 1997 meeting; IV Items to be considered: 1. Chairman's Report; Election of a Vice-Chairman; 2. Consideration of Approval of Adoption of New §§409.501, 409.503, 409.505, 409.507, 409.509, 409.511, 409.513, and 409.515 of Chapter 409, Subchapter L, Concerning Mental Retardation Local Authority (MRLA) Program; 3. Consideration of the Recommendation for the Approval of Texas Health and Human Services Commission's New 1 TAC §355.454 and 1 TAC §§355.456-355-458 of chapter 355, Subchapter D, Governing Reimbursement Methodology for Medicaid Intermediate Care Facilities for the Mentally Retarded Provided by the Texas Department of Mental Health and Mental Retardation; New 1 TAC §§355.722-355.723 of Chapter 355, Subchapter F, Governing Medicaid Home and Community-based Services Provided by the



Texas Department of Mental Health and Mental Retardation; and New 1 TAC §§355.771–355.773 of Chapter 355, Subchapter F, Governing Reimbursement for the Mental Retardation Local Authority Pilot Program Operated by the Texas Department of Mental Health and Mental Retardation, for adoption by the Texas Health and Human Services Commission (THHSC); 4. Review and Approval of Medicaid Reimbursement Rates for State-Operated Community-based Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) Effective January 1, 1998, through December 31, 1998; 5. Review and Approval of Medicaid Reimbursement Rates for State-Operated Campus-Based Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) Effective January 1, 1998, through December 31, 1998; 6. Briefing on the 1915b Behavioral Health Initiative.

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 205–4506, (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: February 2, 1998, 10:31 a.m.

TRD-9801444



## Midwestern State University

Friday, February 6, 1998, 3:00 p.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents

AGENDA:

The Board will consider the possible sale of property owned by the university off of Southwest Parkway. Discussion will be held in Executive Session as allowed by the Texas Government Code Chapter 551.072.

Contact: Ms. Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (940) 397–4212.

Filed: February 3, 1998, 2:03 p.m.

TRD-9801514



## Texas Natural Resource Conservation Commission

Thursday, February 5, 1998, 2:00 p.m.

Room 201S, Building E, 12100 Park 35 Circle

Austin

AGENDA:

This meeting is a work session for discussion between commissioners and staff. No public testimony or comment will be excepted except by invitation of the commission.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239–3317.

Filed: January 28, 1998, 3:53 p.m.

TRD-9801285



Wednesday, March 4, 1998, 9:30 a.m.

TNRCC Park 35 Office Complex, Building E, Room 201S, 12118 North IH35

Austin

AGENDA:

Docket Number 97–0964–DIS; Notice of Hearing on a request pursuant to Article XVI, §59; Texas Constitution; Texas Water Code Chapter 65; and 30 TAC Chapters 281 and 293 for: 1) authorization to convert H-M-W Water Supply Corporation to H-M-W Special Utility District of Harris and Montgomery Counties; and 2) contingent upon a successful confirmation election and dissolution of H-M-W Water Supply Corporation, authorization for the transfer of Certificate of Convenience and Necessity Numbers 10342 (water) and 20734 (wastewater) into the name of H-M-W Special Utility District. H-M-W Water Supply Corporation provides water service and limited wastewater service to approximately 3,162 rural water customers and approximately 53 rural wastewater customers. H-M-W Water Supply Corporation was created in 1995 to purchase the assets of Coe Utilities, Inc. The proposed District would contain a total of 11,036 acres consisting of 38 non-contiguous tracts (service areas) in northwest Harris and southwest Montgomery Counties, primarily in the general areas west and northwest of the City of Tomball. According to the engineering report, H-M-W Water Supply Corporation's purpose for conversion to a Special Utilities District is for the economic benefits associated with the political subdivision status. Specifically, it is anticipated that the cost of Texas Water Development Board's long-term financing will be reduced by over \$1,000,000 over a 20 year period as a result of conversion to a Special Utility District.

Contact: Jim Herbert, Mail Code 152, P.O. Box 13087, Austin, Texas 78711–3087; (512) 239–6161.

Filed: January 29, 1998, 1:09 p.m.

TRD-9801366



Wednesday, April 8, 1998, 9:30 a.m.

TNRCC Park 35 Office Complex, Building E, Room 201S, 12118 North IH35

Austin

AGENDA:

Docket Number 97–0788–DIS; Notice of Hearing on a petition pursuant to §49.321–49.327 and Chapter 54 of the Texas Water Code; 30 TAC §§293.131–293.136, and under the procedural rules of the Commission for dissolution of FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT Number 9, submitted by Pecan 840, Ltd., a Texas limited partnership, which then owned property within the District, and ratified, confirmed and approved by Ft. Bend/Grand River, Ltd., a Texas limited partnership, which now owns the property within the District previously owned by Pecan 840, Ltd. The District is located approximately twenty-five miles southwest of downtown Houston and three miles north of Richmond, Texas. The petition for dissolution of the District states dissolution of the District is desirable as the District has never served the purposes for which it was originally created. The District has been financially dormant for five consecutive years prior to this request for dissolution, the District has performed no functions during this time period, and has no bonded indebtedness. If the request for dissolution is approved, the District's assets, if any, will escheat to the State of Texas and will be administered by the Comptroller of Public Account of the State of Texas and shall be disposed of in the manner provided by

Chapter 74, Property Code, and according to Water Code §49.327, and Commission Rule 30 TAC §293.134.

Contact: Susan Walton, Mail Code 152, P.O. Box 13087, Austin, Texas 78711-3087; (512) 239-6161.

Filed: January 29, 1998, 2:49 p.m.

TRD-9801373



## Board of Nurse Examiners

Tuesday, February 10, 1998, 9:00 a.m.

333 Guadalupe Street, Tower 3, Suite 460

Austin

Eligibility and Disciplinary Committee

AGENDA:

The Eligibility and Disciplinary Committee will meet to consider and take action on the following: Stephen Lee Davis, Applicant for Initial Licensure; Phyllis Yvonne Estrada, Petitioner for Declaratory Order; Michael Hardage Heath, Petitioner for Declaratory Order; and Craig Lower Mayes, Petitioner for Declaratory Order.

Conditional Eligibility Orders of the following Petitioners/Applicants: Sandy F. Anderson, Applicant for Endorsement; Sally Lee Andis, TX#227254, Petitioner for Reinstatement; Evon Ingrid Fitch, TX#439668, Petitioner for Reinstatement; Cecil Patmon, TX#527582, Petitioner for Reinstatement; and Robin Ann Pollani, Applicant for Endorsement.

Agreed Orders: Tina Hindman Bayle, TX#607588; Bernadette M. Bluhm, TX#255208; Pamela Clark Brinkman, TX#606048; Edgar Farrell Burris, TX#632424, William John Clevenger, TX#558487, Jackie Pearl Collins, TX#250526; Janice Gail Corkill, TX#628251; Joann Catherine Dawson, TX#570003, Yvette Delgado, TX#558561, Delia Guanzon Espino, TX#454532; Artie Helen Galloway, TX#449583; Sara Margaret Haslag, TX#518944; Jose Joe Herrera, TX#616338; Gwen Nichols Hogan, TX#606484; Mary Esther Hudson, TX#565217; Brandie Lee Lauck, TX#585164; Marilyn Maddox-Pelt, TX#558996; Lucy Dennison Myers, TX#507769; Veronica U. Okafor, TX#628440; Paul N. Peterson, TX#610800; Marla Jean Riley, TX#542279; Teheina Kristian Schramel, TX#604456; Dianna Lynn Southerland, TX#613398; Teri Lynn Towns, TX#633823; Thomas Kiplinger Wiley, TX#570014; Amy Melinda Willson, TX#597538; and Maria Estela Zamarripa, TX#231716.

ALJ's Proposals for Decision: Margaret Avard, TX#570928; James Michael Christie, TX#512006; Tamela Dawn Compton, TX#503063; Eric Paul Duhe, TX#599699; Dennis E. Fink, TX#540222; Jason Michael Hargrave, TX#598464; Patricia C. Heffington, TX#542469; Henry Morgan Huey, TX#553343; Jesse Castro Jimenez, TX#552865; Lucas Paul LeBlanc, TX#565264; Patricia Ann Mahon, TX#456766; Agnes A.C. Martin, TX#215798; Jean Patricia Mitchell, TX#256097; Scott Neil Nelson, TX#610854; Donald R. Palmer, TX#530582; and Vicki Lynn Wallis, TX#240288.

Requests for Exceptions to Previous Board Orders: Daniel Raymond Galindo, TX #254959.

Contact: Cheryl Sepulveda, Box 430, Austin, Texas 78767-0430, (512) 305-6824.

Filed: January 30, 1998, 1:37 p.m.

TRD-9801399



## Texas Board of Physical Therapy Examiners

Friday, February 6, 1998, 9:00 a.m.

5601 Bridge Street, Suite 430, Ware and Associates

Fort Worth

AGENDA:

I. Call to order

II. Review and possible action on cases: 96165; 97053; 97097; 97127; 97163; 97190; 97198; 98007; 98010; 98016; 98031; 98034; 98035; 98036; 98037; 98038; 98039; 98040; 98041; 98043; and 98048.

III. Review of miscellaneous correspondence

IV. Adjourn

Contact: Nina Hurter, 333 Guadalupe, Suite 2-510, Austin, Texas 78701, (512) 305-6900.

Filed: January 28, 1998, 4:18 p.m.

TRD-9801296



## Public Utility Commission of Texas

Thursday, February 5, 1998, 9:30 a.m.

1701 North Congress Avenue

Austin

AGENDA:

There will be an Open Meeting for discussion, consideration, and possible action regarding: Docket Nos. 17930, 17922, 18082, 17795, 18509, 17972, 14006, 15367, 15650, 17630, 18190, 17775, 18086, 18118, 18197, 18309, 18381, 18384, 18446, 18469, 18310, 18353, 18354, 18355, 18361, 18364, 18390, 18402, and 18405; Project Number 16251; Report on Implementation of Pending InterLATA Expanded Local Calling (ELC) Petitions Involving Southwestern Bell Telephone; Project No. 18438; Project No. 16899, 16900 and 16901; Project No. 18723; Project No. 17296; Project No. 18072; Federal Telecommunications Act of 1996 and other actions taken by the Federal Communications Commission; Activities in local telephone markets including but not limited to correspondence and implementation of interconnection agreements approved by the Commission pursuant to PURA and FTA; Project No. 18000; Docket Nos. 18465, 18490, 18041, 16738, 14454, 18084, 17633, 17874, Good cause waiver of requirement to file energy efficiency plans pursuant to Substr. R. 23.22; Project No. 18703; Project No. 17555; Project No. 16536; Electric industry restructuring, electric utility reliability, sale, transfer and merger policy, and customer service; Project No. 17549; Synchronous Interconnect Committee; Project No. 17709; Project No. 18700; Project Nos. 18137, 18138, and 18139; Project No. 18491; Customer services issues, including but not limited to correspondence and complaint issues; Project assignments, correspondence, staff report, audit, agency structure and administrative procedures, budget, business plan, fiscal matters and personnel policy; Adjournment for closed session to consider litigation and personnel matters; Reconvene for discussion and decisions on matters considered in closed session.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7308.

Filed: January 28, 1998, 3:25 p.m.

TRD-9801282

◆ ◆ ◆  
Friday, February 6, 1998, 10:00 a.m.  
1701 North Congress Avenue, Hearing Room Gee  
Austin

AGENDA:

There will be an Open Meeting for discussion, consideration, and possible action regarding: Project No. 18438, implementation of number conservation measures in Texas. Specifically, the Number Conservation Implementation Team (NCIT) will meet in order to define the key issues and develop a timeline for implementing rate center consolidation Options 6 and 8 as presented in the report by the Texas Number Conservation Task Force.

Contact: Linda Hymans, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7321.

Filed: January 29, 1998, 9:18 a.m.

TRD-9801331

◆ ◆ ◆  
Saturday-Sunday, February 7-8, 1998, 11:00 a.m. and 2:00 p.m. respectively

1701 North Congress Avenue

Austin

AGENDA:

There will be an Open Meeting for discussion, consideration, and possible action regarding SEC certification pursuant to Subst. R. 23.18.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7308.

Filed: January 30, 1998, 3:36 p.m.

TRD-9801407

◆ ◆ ◆  
Wednesday, February 11, 1998, 10:00 a.m.

1701 North Congress Avenue

Austin

AGENDA:

There will be an Open Meeting for discussion, consideration, and possible action regarding SEC certification pursuant to Substr. R. 23.18.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7308.

Filed: January 30, 1998, 3:36 p.m.

TRD-9801408

◆ ◆ ◆  
Wednesday, February 11, 1998, 1:30 p.m.

1701 North Congress Avenue

Austin

AGENDA:

There will be an Open Meeting for discussion, consideration, and possible action regarding: the FCC's Cost Accounting Manual and affiliate relationships in regards to the Commission's draft affiliates rule.

Contact: Rhonda Dempsey, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7308.

Filed: February 3, 1998, 3:21 p.m.

TRD-9801526

◆ ◆ ◆  
Thursday, February 19, 1998, 9:00 a.m.

William B. Travis Building, Seventh Floor, Robert W. Gee Hearing Room, 1701 North Congress Avenue

Austin

AGENDA:

Project Number 14894: The Synchronous Interconnection Committee (SIC) will meet for discussions on market power as it relates to the investigation of the most economical, reliable, and efficient means to synchronously interconnect the alternating current electric facilities of electric utilities within the Electric Reliability Council of Texas reliability area to the alternating current electric facilities of electric utilities within the Southwest Power Pool reliability area.

Contact: Bret Slocum, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7265.

Filed: February 3, 1998, 11:04 a.m.

TRD-9801501

◆ ◆ ◆  
Thursday, February 26 1998, 10:00 a.m.

1701 North Congress Avenue, Robert W. Gee Hearing Room

Austin

AGENDA:

There will be an Open meeting for discussion, consideration, and possible action regarding: Project Number 18438, implementation of number conservation measures in Texas. Specifically, the Number Conservation Implementation Team (NCIT) will meet in order to define the key issues and develop a timeline for establishing number pooling in Texas.

Contact: Linda Hayman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7321.

Filed: January 29, 1998, 9:18 a.m.

TRD-9801332

◆ ◆ ◆  
**Railroad Commission of Texas**

Tuesday, February 10, 1998, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

According to the complete agenda, the Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments at the time specified on the agenda. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The Commission may meet in Executive Session on any items listed above as authorized by the Open Meetings Act.

Contact: Lindil C. Fowler, Jr., P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7033.  
Filed: January 30, 1998, 4:14 p.m.

TRD-9801415



### **Texas Rehabilitation Commission**

Thursday, February 26, 1998, 9:30 a.m.

4900 North Lamar Boulevard, Brown-Heatly Building, Public Hearing Room, First Floor

Austin

Regular Board Meeting

AGENDA:

Roll Call, introduction of guests, invocation, approval of minutes; board meetings of September 25, 1997 and December 11-12, 1997, commissioner's comments, HHS Enterprise Strategic Plan, TRC five-year strategic plan update, Legislative appropriations Request, approval for exceeding FTE Cap, public comments.

Executive Session: Review of potential litigation, personnel practices, and staff presentations involving the Texas Rehabilitation Commission, Disability Determination Services and Management Audit. These subjects will be discussed in Executive Session pursuant to the Open Meetings Act, §§551.071, 551.074, 551.075 (Texas Government Code Annotated §551).

Adjournment: If all agenda items have been completed, the board will adjourn. If not, the board will recess until 9:30, Friday, February 27, 1998 to reconvene in the public hearing room, First floor, Brown-Heatly Building, 4900 North Lamar Boulevard, Austin, Texas.

Contact: Roger Darley, 4900 North Lamar Boulevard, Austin, Texas 78751-2399, (512) 424-4050.

Filed: January 29, 1998, 2:48 p.m.

TRD-9801371



Friday, February 27, 1998, 9:30 a.m.

4900 North Lamar Boulevard, Brown-Heatly Building, Public Hearing Room, First Floor

Austin

Regular Board Meeting

AGENDA:

Roll Call, introduction of guests, continuation of board agenda from February 26, 1998.

Executive Session: Review of potential litigation, personnel practices, and staff presentations involving the Texas Rehabilitation Commission, Disability Determination Services and Management Audit. These subjects will be discussed in Executive Session pursuant to the Open Meetings Act, §§551.071, 551.074, 551.075 (Texas Government Code Annotated §551).

Adjournment

Contact: Roger Darley, 4900 North Lamar Boulevard, Austin, Texas 78751-2399, (512) 424-4050.

Filed: January 29, 1998, 2:48 p.m.

TRD-9801372



### **Texas Savings and Loan Department**

Tuesday, March 3, 1998, 9:00 a.m.

2601 North Lamar Boulevard, Third Floor, Finance Commission Building

Austin

AGENDA:

The purpose of this meeting (hearing) is to accumulate a record of evidence in regard to the application from Franklin Bank, S.S.B., Austin, Texas presently known as Bowie State Bank, Bowie, Texas to sell a branch office located at 200 West Walnut, Bowie, Montague County, Texas to The Jacksboro National Bank, Jacksboro, Jack County, Texas, from which record the Commissioner will determine whether to grant or deny the application.

Contact: W. Clark Johnson, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 475-1350.

Filed: February 2, 1998, 10:20 a.m.

TRD-9801442



### **Texas Certified Self-Insurer Guaranty Association**

Thursday, February 5, 1998, 9:00 a.m.

4000 South IH35

Austin

Board

AGENDA:

I. Call to Order

II. Approval of Minutes for the Public Meeting of November 6, 1997.

III. Executive Session: Pursuant to §551.075, Government Code, to Receive Information from Employees and to Question Employees Regarding Administration of the Guaranty Association.

IV. Election of Chairperson and Vice Chairperson.

V. Discussion, Consideration, and Possible Action on the Following Initial Applicant:

A. Central and Southwest Corporation

VI. Discussion, Consideration, and Possible Action on the Following Renewal Applications: A) Texoma HealthCare System; B) Emerson Electric Co.; C) Tyco International (US) Inc.; D) Guardian Industries Corporation; E) Union Pacific Resources Company; F) Willamette Industries Inc.; G) The Sherwin-Williams Company; H) AT&T Corporation; I) Waffle House, Incorporated; J) J.C. Penney Company, Inc.; K) Watkins Associated Industries; L) Ultramar Diamond Shamrock Corporation; M) Cooper Industries, Inc.; N) Louisiana-Pacific Corporation; O) The Procter and Gamble Company; P) Textron, Inc.; Q) Tyson Foods, Inc.; R) Weyerhaeuser Company.

VII. Discussion, Consideration and Possible Action on the Following Withdrawal Applications: A) W.R. Grace and Company; B) J.B. Hunt Transport, Inc.; C) Johnson Controls, Inc.; D) Ruby Tuesday, Inc.; E) Campbell Soup Company; F) Browning-Ferris Industries, Inc.

VIII. Other Business

IX. Adjournment

Contact: Judy Roach, 1600 San Jacinto Center, 98 San Jacinto Boulevard, Austin, Texas 78701, (512) 322-2514.  
Filed: January 28, 1998, 3:34 p.m.

TRD-9801283



## Texas Strategic Military Planning Commission

Monday, February 9, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Room 300

Austin

Commission

AGENDA:

10:00 a.m. Call to Order; Recess into Executive Session to Discuss Personnel Issues; Reconvene in Open Meeting; Approval of Minutes; Update from the Office of Defense Affairs; Report from Retention Contact Review Committee; Discussion of Phase One Community Assessment Project; Development of Media Plan, Lunch break; Develop Schedule and Itinerary for Regional commission Meeting; Public Comments; Adjourn.

Contact: Susan Wilson, 1700 North Congress Avenue, Austin, Texas 78701, (512) 936-0158.

Filed: January 30, 1998, 3:39 p.m.

TRD-9801409



## Telecommunications Infrastructure Fund Board

Friday, February 13, 1998, 9:00 a.m.

Fabens ISD, 821 N.E. "G" Avenue, Administration Building Board Room

Fabens

Finance and Audit Committee

AGENDA:

The Finance and Audit Committee of the Telecommunications Infrastructure Fund Board will convene in open session to deliberate and possibly take formal action on the following items:

I. Call Committee Meeting to Order Open Meeting/Quorum Call — Gwen Stafford, Committee Member

II. Minutes from Prior Meetings

III. Financial Report

IV. Future Agenda Items

V. Adjourn Committee Meeting

Contact: Terry Rodriguez, 1000 Red River, Suite E208, Austin, Texas 78701, (512) 344-4305.

Filed: February 3, 1998, 3:16 p.m.

TRD-9801522



Friday, February 13, 1998, 9:30 a.m.

Fabens ISD, 821 N.E. "G" Avenue, Administration Building Board Room

Fabens

Libraries and Telemedicine Committee

AGENDA:

The Libraries and Telemedicine of the of the Telecommunications Infrastructure Fund Board will convene in open session to deliberate and possibly take formal action on the following items:

I. Call Committee Meetings to Order Open Meeting/Quorum Call — Chairman John Collins

II. Minutes from Prior Meetings

III. Reports from Advisory Committees

IV. Future Agenda Items

V. Adjourn Committee Meeting

Contact: Terry Rodriguez, 1000 Red River, Suite E208, Austin, Texas 78701, (512) 344-4305.

Filed: February 3, 1998, 3:16 p.m.

TRD-9801523



Friday, February 13, 1998, 10:00 a.m.

Fabens ISD, 821 N.E. "G" Avenue, Administration Building Board Room

Fabens

AGENDA:

The Telecommunications Infrastructure Fund Board will convene in open session to deliberate and possibly take formal action on the following items:

I. Call to Order Open Meeting / Quorum Call — Chairman Bill Mitchell

II. Minutes from Prior Meetings

III. Donations of Software from MicroSoft

IV. Telehealth: Clinical Applications in Rural Areas

Presentation by the Office of Telehealth- Texas Tech University Health Sciences Center (TTUHSC)

V. Agency Working Group Updates

- State Agencies Working Group — Arnold Viramontes, Executive Director

- Education Working Group — Gary Grogan, Director of Programs, Hal Guthrie, Board Member, Kay Karr, Board Member

- Training Working Group — Gary Grogan, Director of Program, Joe Randolph, Board Member

VI. Board Committee Reports

- Finance and Audit Committee — Gwen Stafford, Committee Member

- Libraries and Telemedicine Committee — John Collins, Chair

- Curriculum, Training and Evaluation Committee — Joe Randolph, Chair

VII. Executive Director's Report

- Administration

- Programs

VIII. Chairman of the Board Report

IX. Correspondence from and to the Texas Civil Rights Project

X. Personnel Matters

XI. Future Agenda Items

XII. Adjourn Open Meeting

Contact: Terry Rodriguez, 1000 Red River, Suite E208, Austin, Texas 78701, (512) 344-4305.

Filed: February 3, 1998, 3:16 p.m.

TRD-9801524



## **Board of Regents The Texas A&M University System**

Wednesday, February 4, 1998, 9:55 a.m.

Bachman II, Embassy Suites/Dallas Love Field, 3880 West Northwest Highway

Dallas

Board of Regents

EMERGENCY AGENDA:

The purpose of this special emergency meeting is for the Board to hear a report from its attorneys concerning potential litigation regarding the disbursement of the proceeds owed to the State of Texas from the settlement in the case of *The State of Texas vs. The American Tobacco Company, et al.*; Civil Action No. 5:96CV-0091, in the U.S. District Court for the Eastern District of Texas, Texarkana Division, and to grant authority to the Chancellor to proceed with any necessary legal action to protect the interests of the Texas A&M University System and the people of the State of Texas. (Consultation w/attorneys will be in Closed Session.)

REASON FOR EMERGENCY: An emergency exists because the Attorney General of Texas has begun and is continuing to carry out a plan to distribute funds belonging to the State of Texas in violation of the Texas Constitution and in derogation of the rights of state institutions of higher education and the people of the state, and that unless legal action is taken the funds may be disbursed permanently within the next few days.

Contact: Vicki Burt, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: February 3, 1998, 4:47 a.m.

TRD-9801550



Wednesday, February 4, 1998, 10:00 a.m.

Bachman II, Embassy Suites/Dallas Love Field, 3880 West Northwest Highway

Dallas

Ad Hoc Evaluation Criteria Committee

AGENDA:

The purpose of the is to continue the Committee's work in developing criteria for evaluating System expansion opportunities.

Contact: Vicki Burt, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: January 30, 1998, 12:00 p.m.

TRD-9801392



## **Texas Tech University**

Friday, February 6, 1998, 11:30 a.m.

17th Street and University Avenue, Texas Tech University

Lubbock

Finance Committee- Special Called Meeting

AGENDA:

11:30 a.m.; Call to Order; Consideration of the following resolution: Resolution Authorizing the Execution of the Liquidity Agreement, the Dealer Agreement, and the Paying Agent Agreement, pursuant to the authority granted by the Fifth Supplemental Resolution; and taking additional actions relating thereto.

Contact: James L. Crowson, Box 42013, Lubbock, Texas 79409-2013 (806) 742-0012.

Filed: February 3, 1998, 8:00 a.m.

TRD-9801483



## **Texas Department of Transportation**

Tuesday, February 10, 1998, 9:30 a.m.

125 East 11th Street, First Floor

Austin

Board of Directors of the Texas Turnpike Authority Division

AGENDA:

Approval of Minutes. Reports and Discussion: City of Austin Mayor's Mobility Task Force report on transportation; Wilbur Smith and Associates, Traffic and Revenue Projections; Legislative Affairs, pending federal transportation reauthorization legislation. Proposal for the development, design and construction of S.H. 130, Road and Bridge Builders, Inc. Consider resolution in support of the Byrd-Gramm Amendment to S.1173. Authorize director to provide funding for a S.H. 130 special project office. Executive Session for legal counsel consultation, land acquisition matters, management personnel evaluations, designation, assignments and duties. Rulemaking 43 TAC Ch. 52. Approve selection procedure for outside legal counsel. Open comment period.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463-8630.

Filed: January 30, 1998, 11:51 a.m.

TRD-9801391



## **University Interscholastic League**

Monday, February 2, 1998, 1:00 p.m.

Club Hotel, IH35 at Martin Luther King Boulevard

Austin

Waiver Review Board

AGENDA:

AA. Request for a wavier of the Parent Residence Rule by Kreig Jason Gilcrease representing Centerville High School in Centerville, Texas.

BB. Request for a waiver of the Four Year Rule by Ivis Reyes representing Westfield High School in Houston, Texas.

Contact: Sam Harper, 23001 Lake Austin Boulevard, Austin, Texas  
78713, (512) 471-5883.  
Filed: January 29, 1998, 2:56 p.m.  
TRD-9801379

◆ ◆ ◆  
Wednesday, February 4, 1998, 9:00 a.m.  
Holiday Inn Town Lake Hotel, 20 North IH35  
Austin  
State Executive Committee  
AGENDA:

AA. Milano ISD Appeal of District 56 A Executive Committee's Finding a Student Athlete Ineligible due to Moving for Athletic Purposes.

BB. Request of District 5 AAAAAA Executive Committee to Issue Penalty to Keller High School Personnel Archie Myers for Violating Basketball Scrimmage Rules.

CC. Alleged Physical Contact with Game Official in Violation of the Athletic Code, Parent/Fan Brownsville Lopez High School.

DD. Parent appeal of District AAAAAA Executive Committee's Finding a Lubbock Monterey High School Student Athlete Ineligible due to Moving for Athletic Purposes.

Contact: C. Ray Daniel, 3001 Lake Austin Boulevard, Austin, Texas  
78711, (512) 471-5883.  
Filed: January 30, 1998, 3:01 p.m.  
TRD-9801405

◆ ◆ ◆  
**The University of Texas System**

Wednesday-Thursday, February 11-12, 1998, 9:30 a.m. and 8:30 a.m. respectively.

February 11- Second Floor Conference Room, Ashbel Smith Hall, 201 West Seventh Street, February 12- Regents' Meeting Room, Ninth Floor, Ashbel Smith Hall, 201 West Seventh Street

Austin  
Board of Regents and Standing Committees

AGENDA:  
To consider Chancellor's Docket (submitted by System Administration); Amendments to Regents' Rules and Regulations; Proposed Guidelines for Management and Marketing of Copywrited Works; Matters Related to the University of Texas Investment Management Company (UTIMCO); 1999 Budget Policies and Limitations; Partial Cost Recovery Procedures for Information Technology Initiatives; Request to Exceed Full-Time Equivalent Limitation on Employees; Proposed common application form for undergraduate admissions; Guidelines for Visiting Students Program; Agreements; degree programs; Premium Charges for U.T. System Plan for Professional Medical Liability Self-Insurance and Changes to Plan; buildings and grounds matters including approval of design development plans; appropriation; building name and building plaque; potential litigation; and real estate matters as detained on the complete agenda.

Contact: Arthur H. Dilly, 201 West Seventh Street, Austin, Texas  
78701-2981, (512) 499-4402.  
Filed: February 3, 1998, 2:17 p.m.  
TRD-9801516

◆ ◆ ◆  
**Texas On-Site Wastewater Treatment Research Council**

Thursday, February 12, 1998, 10:00 a.m.

Harris County Engineering Department/Permit Division, 9900 Northwest Freeway, Suite 103

Houston

Council Meeting

REVISED AGENDA:

Newly appointed Council members will be introduced. The Council will act on the minutes of the previous meeting. An election of officers will precede the chairman's and Executive Secretary's reports. A discussion and possible action on FY 1998 budget issues will follow. The floor will then be open for public comments. Other items on the agenda will include: discussion and possible action on the Request for Proposals for (1) facilitation of a Focus Group of cluster systems; (2) a study to advise the Council on effects of combining absorbic and evaporative disposal methods on drain field sizing; (3) a study to determine long term infiltration rate of effluent to level of pretreatment for different soils and disposal systems; (4) a quantitative evaluation of caliche soil as a treatment media for on-site sewage facility systems; and (5) an evaluation of effectiveness of existing subsurface drip irrigation systems in swelling soils. Representatives of the Guadalupe Wastewater companies will provide an interim report on the Council funded comparative cost study of the old on-site sewage facility rules versus the new rules. The scheduling of future meetings will end the meeting.

Contact: Annette Maddern, TNRCC, MC178, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-5304.  
Filed: February 3, 1998, 3:22 p.m.

TRD-9801527

◆ ◆ ◆  
**Texas Workers' Compensation Commission**

Thursday, February 5, 1998, 10:00 a.m.

4000 South IH35, Room 910-911, Southfield Building

Austin

Public Meeting

AGENDA:

1. Call to Order
2. Recognition of TWCC Employees of the Year
3. Approval of Minutes for the Public Hearing of January 7, 1998 and Public Meeting of January 8, 1998
4. Discussion, and Possible Action on New Applications for Certification of Authority to Self-Insure
5. Discussion, and Possible Action on Requests for Renewal of Certificate of Authority to Self-Insure
6. Discussion, and Possible Action on Withdrawal of Certified Self-Insurer from Self-Insurance
7. Discussion, and Possible Action on Report Regarding Venture Stores, Inc.

8. Discussion, and Possible Action on Proposal of Amendments to Rule 133.101
9. Discussion, and Possible Action on Proposal of Amendments Rule 134.1002.
10. Discussion, and Possible Action on Proposal of Amendments to Rules and New Rules: 130.101, 130.102, 130.103, 130.104, 130.105, 130.106, 130.108, 130.110, 130.111 (new) 130.112 (new)
11. Executive Session
12. Action on Matters Considered in Executive Session
13. General Reports, Discussion and Possible Action on Issues Relating to Commission Activities
14. Confirmation of Future Public Meeting Dates
15. Adjourn

Contact: Bob Marquette, 4000 South IH35, Austin, Texas 78704, (512) 440-5690.

Filed: January 30, 1998, 3:39 p.m.

TRD-9801410



## Texas Workforce Commission

Tuesday, February 10, 1998, 8:30 a.m.

Ramada Plaza Hotel

Fort Worth

Texas Commission on Volunteerism and Community Service

AGENDA:

Reading and approval of minutes of November meeting; Executive Director's report, Executive Committee report; Reports of task forces; Reports of standing committees; Volunteerism Committee; Learn and serve; Other business and announcements.

Contact: Robert Hickerson, 310 S.F. Austin Building, Austin, Texas 78711, (512) 475-1727.

Filed: February 2, 1998, 8:09 a.m.

TRD-9801439



Tuesday, February 10, 1998, 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 H.B. 2777; (2) potential and pending applications for certification of local workforce development boards; (3) recommendations to TCWEC of operational plans of local workforce development boards; (4) approval of local workforce board or private industry council nominees; (5) acceptance of donations of child care matching funds; (6) publication in the Texas Register of proposed new Chapter 827 Communities in Schools rules; (7) approving Rule Review plan as required by House Bill No. 1, Art. IX, §167, General Appropriations Act, 75th Legislative Session; (8) adoption of rule regarding Interagency Matters (Chapter 800 Subchapter D) and adoption of repeal of Chapter 819 (Interagency Matters); (9) adoption of Child Care Rule relating to Parent Fees (40 TAC §809) and related matters; (10) adoption

of Child Care rule relating to Parent Responsibilities and Possible Sanctions and related matters; (1) adoption of rule concerning Senate Bill 213 which provides for a pilot project to train Texas Aid to Needy Families (TANF) recipients; and (12) development of rule relating to Chapter 809 Child Care for People diverted from TANF; an advisory committee pursuant to S.B. 1490; and Work and Family Clearinghouse distribution of child care appropriations to school districts pursuant to S.B. 503. Discussion concerning: (1) UI benefit payment trends and analysis; (2) the Employment Service and Related Functions at the TWC; and (3) publication in the Texas Register of Proposed Apprenticeship Rules Pursuant to Education Code Chapter 133. EXECUTIVE SESSION pursuant to Government Code §551.074 to discuss the duties and responsibilities of the Executive Staff and other personnel; §551.071(1) concerning the pending or contemplated litigation of the Texas AFL/CIO v. TWC; TSEU/CWA Local 6184, AFL/CIO v. TWC; Guitierrez v. TEC; and Gene E. Merchant et al. vs TWC; 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. Consideration and action on tax liability cases and higher level unemployment compensation cases on Docket 6; and set date of next meeting. Hearing on Payday Rules immediately following Commission meeting.

Contact: J. Randel (Jerry) Hill, 101 East 15th Street, Austin, Texas 78778, (512) 463-8812.

Filed: February 2, 1998, 3:35 p.m.

TRD-9801467



## Regional Meetings

Meetings filed January 28, 1998

Brazos Valley Council of Governments, Criminal Justice Advisory Committee, met at 1706 East 29th Street, Bryan, February 3, 1998 at 9:30 a.m. Information may be obtained from Tom Wilkinson, Jr., P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9801278.

Dallas Central Appraisal District, Board of Directors Regular Meeting, was held at 2949 North Stemmons Freeway, Second Floor Community Room, Dallas, February 4, 1998 at 7:30 a.m. Information may be obtained from Rick Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9801276.

East Texas Council of Governments, Welfare-to Work Committee of the Workforce Development Board, met at 611 South Fleishel, Tyler, February 3, 1998 at 9:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9801284.

Hood County Appraisal District, Board of Directors, met at 1902 West Pearl Street, District Office, Granbury, February 3, 1998 at 7:30 p.m. Information may be obtained from Harold Chesnut, P.O. Box 819, Granbury, Texas 76048, (817) 573-2471. TRD-9801273.

West Central Texas Council of Governments, Regional Solid Waste Task Force, will meet at 1025 E.N. 10th Street, Abilene, February 26, 1998 at 1:30 p.m. Information may be obtained from Brad Helbert, 1025 EN 10th Street, Abilene, Texas 79601, (915) 672-8544. TRD-9801281.



Meetings Filed January 29, 1998

Aqua Water Supply Corporation, Board of Directors, met at 305 Eskew, Bastrop, February 2, 1998 at 7:30 p.m. Information may be obtained from Carol Ducloux, P.O. Drawer P, Bastrop, Texas 78602, (512) 303-3943. TRD-9801370.

Bexar Appraisal District, Board of Directors, met at 535 South Main Street, San Antonio, February 3, 1998 at 8:00 a.m. Information may be obtained from Sally Kronenthal, P.O. box 830248, San Antonio, Texas 78284-0248. TRD-9801367.

Brazos Valley Council of Governments, Regional Advisory Committee on Aging, met at 1706 East 29th Street, Bryan, February 3, 1998 at 2:30 p.m. Information may be obtained from A.D. Rychlik, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9801330.

Comal Appraisal District, Appraisal Review Board, met at 178 East Mill Street, #102, New Braunfels, February 26, 1998 at 9:00 a.m. Information may be obtained from Lynn E. Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, (830) 625-8597. TRD-9801384.

East Texas Council of Governments, CEO Board of Directors, met at 1306 Houston Street, Kilgore, February 4, 1998 at 11:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-9641. TRD-9801351.

East Texas Council of Governments, Executive Committee, met at 2843 WNW Loop 323, Tyler, February 5, 1998 at 1:30 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9801380.

East Texas Council of Governments, Workforce Center Committee, met at 412 South High Street, Longview, February 5, 1998 at 9:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-9641. TRD-9801368.

Edwards Aquifer Authority, Legal Committee, at 1615 North St. Mary's Street, San Antonio, February 2, 1998 at 9:00 a.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9801385.

Edwards Aquifer Authority, Executive Committee, met at 1615 North St. Mary's Street, San Antonio, February 3, 1998 at Noon. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9801386.

Edwards Aquifer Authority, Executive Committee, met with revised agenda, at 1615 North St. Mary's Street, San Antonio, February 3, 1998 at Noon. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9801387.

Falls County Central Appraisal District, Agricultural Advisory Board, met at Falls County Courthouse, Intersections of Highways Six and Seven, Marlin, February 10, 1998 at 5:30 p.m. Information may be obtained from Joyce Collier, P.O. Box 430, Marlin, Texas 76661, (254) 883-2543, TRD-9801365.

Nolan County Central Appraisal District, Board of Directors, met at Nolan County Courthouse, Third Floor, 100 East Third, Sweetwater, February 10, 1998 at 7:00 a.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9801333.

Tyler County Appraisal District, Board of Directors, met at 806 West Bluff, Woodville, February 10, 1998 at 10:00 a.m. Information may

be obtained from Eddie Chalmers, P.O. Box 9, Woodville, Texas 75979, (409) 283-3736. TRD-9801369.

Meetings Filed January 30, 1998

Bell-Milam-Falls Water Supply Corporation, Board, met at Corporation Office, FM 485 West, Cameron, February 5, 1998 at 8:30 a.m. Information may be obtained from Dwayne Jekel, P.O. Drawer 150, Cameron, Texas 76520-0150, (254) 697-4016. TRD-9801400.

Bosque County Central Appraisal District, Board of Directors, met at 202 South Highway Six, Meridian, February 3, 1998, 7:00 p.m. Information may be obtained from John D. Smith, P.O. Box 393, Meridian, Texas 76665-0393, (254) 435-2304. TRD-9801390.

Deep East Texas Local Workforce Development Board, Planning/Budget/Education Advisory, met at 300 East Shepherd, Lufkin City Hall, Room 202, Lufkin, February 10, 1998 at 1:00 p.m. Information may be obtained from Charlene Meadows, P.O. Box 1423, Lufkin, Texas 75902, (409) 634-2247. TRD-9801413.

Deep East Texas Local Workforce Development Board, met at 300 East Shepherd, Lufkin City Hall, Room 202, Lufkin, February 10, 1998 at 2:30 p.m. Information may be obtained from Charlene Meadows, P.O. Box 1423, Lufkin, Texas 75902, (409) 634-2247. TRD-9801412.

Kempner Water Supply Corporation, Monthly Meeting of Board of Directors, met at Highway 190, Kempner Water Supply Corporation, Kempner, February 5, 1998 at 6:30 p.m. Information may be obtained from Donald W. Guthrie, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701. TRD-9801393.

North Texas Regional Library System, Board of Directors, met with revised agenda, February 11, 1998 at 1:30 p.m. Information may be obtained from Marlin Anglin, 1111 Foch Street, Suite 100, Fort Worth, Texas 76107, (817) 335-6076. TRD-9801419.

Riceland Regional Mental Health Authority, Board of Trustees, met at 3007 North Richmond Road, Wharton, February 5, 1998 at 9:00 a.m. Information may be obtained from Marjorie Dornak, P.O. Box 869, Wharton, Texas 77488, (409) 532-2098. TRD-9801411.

San Antonio-Bexar County Metropolitan Planning Organization, Bicycle Mobility Task Force, met at 114 West Commerce, "B" Room, Municipal Plaza Building, San Antonio, February 4, 1998 at 1:30 p.m. Information may be obtained from Charlotte A. Roszelle, 603 Navarro, Suite 904, San Antonio, Texas 78205, (210) 227-8651. TRD-9801389.

San Antonio-Bexar County Metropolitan Planning Organization, Technical Advisory Committee, met at 233 North Pecos (Vista Verde), Fourth Floor conference room- Bexar County Public Works, San Antonio, February 6, 1998 at 1:30 p.m. Information may be obtained from Charlotte A. Roszelle, 603 Navarro, Suite 904, San Antonio, Texas 78205, (210) 227-8651. TRD-9801388.

Texas Underground Facility Notification Corporation, Board, met at 1400 North Congress Avenue, Capitol Extension, Room E2.026, Austin, February 5, 1998 at Noon. Information may be obtained from Donald M. Ward, P.O. Box 684562, Austin, Texas 78768-4562. TRD-9801402.

Meetings Filed February 2, 1998

Capital Area Planning Council, Executive Committee, met at 2520 IH35 South, Suite 100, Austin, February 11, 1998 at 10:00 a.m. Information may be obtained from Betty Voights, 2512 South IH35, Suite 220, Austin, Texas 78704, (512) 433-7653. TRD-9801462.

Central Texas Council of Governments, Criminal Justice Advisory Board, met at 402 South Live Oak Street, Lampasas, February 6, 1998, at 10:00 a.m. Information may be obtained from Beth Stokes, P.O. Box 729, Belton, Texas 76513, (254) 933-7075, extension 202; fax: (254) 939-0885. TRD-9801445.

Central Texas Council of Governments, Criminal Justice Advisory Board, will meet at 302 East Central Avenue, Belton, February 20 1998, at 10:00 a.m. Information may be obtained from Beth Stokes, P.O. Box 729, Belton, Texas 76513, (254) 933-7075, extension 202; fax: (254) 939-0885. TRD-9801466.

District Judges Meeting, 36th, 156th and 343rd District Courts, met at 400 West Sinton, Room 207, Sinton, February 6, 1998 at 8:30 a.m. Information may be obtained from Ronald M. Yeager, 400 West Sinton Street, Room 207, Sinton, Texas 78387, (512) 364-6200. TRD-9801475.

Permian Basin Regional Planning Commission, Board of Directors, met at 2910 LaForce Boulevard, Midland, February 11, 1998 at 1:30 p.m. Information may be obtained from Terri Moore, P.O. Box 60660, Midland, Texas 79711, (915) 563-1061. TRD-9801453.

Nueces River Authority, Audit Committee, met at Omni Marina Hotel, 707 North Shoreline Boulevard, Corpus Christi, February 6, 1998 at 9:30 a.m. Information may be obtained from Con Mims, P.O. Box 349, Uvalde, Texas 78802, (830) 278-6810. TRD-9801463.

Nueces River Authority, Board of Directors, met at Omni Marina Hotel, 707 North Shoreline Boulevard, Corpus Christi, February 6, 1998 at 10:00 a.m. Information may be obtained from Con Mims, P.O. Box 349, Uvalde, Texas 78802, (830) 278-6810. TRD-9801464.

San Patricio Appraisal District, Board of Directors, met at 1146 East Market, Sinton, February 12, 1998 at 10:00 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387. TRD-9801440.

Stephens County Rural WSC, Regular Monthly Board Meeting, was held at 206 FM 2099, Breckenridge, February 5, 1998 at 6:00 p.m. Information may be obtained from Mary Barton, P.O. Box 1621, Breckenridge, Texas 76424, (254) 559-6180. TRD-9801452.

Tyler County Appraisal District, Board of Directors, met at 806 West bluff, Woodville, February 10, 1998 at 10:00 a.m. Information may be obtained from Eddie Chalmers, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9801454.

Upper Rio Grande Workforce Development Board, met at 5919 Brook Hollow, El Paso, February 6, 1998 at 2:00 p.m. Information may be obtained from Norman R. Haley, 5919 Brook Hollow, El Paso, Texas 79925, (915) 772-5627, extension 406. TRD-9801465.

Meetings filed February 3, 1998

Atascosa County Appraisal District, Appraisal Review Board, met at 4th and Avenue J, Poteet, February 10, 1998, at 9:00 a.m. Information may be obtained from Curtis Stewart, P.O. Box 139, Poteet, Texas, 78065-0139, (830) 742-3591. TRD-9801559.

Austin Transportation Study, Policy Advisory Committee, met at Joe C. Thompson Conference Center, Room 2.102, 26th and Red River Streets, Austin, February 9, 1998 at 6:00 p.m. Information may be obtained from Michael R. Aulick, P.O. Box 1088-Annex, Austin, Texas 78767, (512) 499-2275. TRD-9801531.

Bexar Appraisal District, Appraisal Review Board, will meet on the following February dates, at 535 South Main Street, San Antonio, February 2, 3, 4, 5, 6, 9, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 1998, at 8:30 a.m. Information may be obtained from Stella

Thatcher, P.O. Box 830248, San Antonio, Texas 78283-0248, (210) 224-8511. TRD-9801525.

Canyon Regional Water Authority, met at Guadalupe County Fire School Facility One, 320 Fire Field Road, New Braunfels, February 9, 1998 at 7:00 p.m. Information may be obtained from Gloria Kaufman, 850 Lakeside Pass, New Braunfels, Texas 78130-8233, (830) 609-0543. TRD-9801517.

Colorado County Appraisal District, Board of Directors, will meet at 400 Spring, (Grand Jury Room), Columbus, February 10, 1998 at 1:30 p.m. Information may be obtained from Billy Youens, P.O. Box 10, Columbus, Texas 78934, (409) 732-8222. TRD-9801529.

Colorado County Appraisal District, Board of Directors, will meet at 400 Spring, (Grand Jury Room), Columbus, February 13, 1998 at 10:00 a.m. Information may be obtained from Billy Youens, P.O. Box 10, Columbus, Texas 78934, (409) 732-8222. TRD-9801528.

Dallas Housing Authority, Board of Commissioners, met at the Melrose Hotel, 3015 Oaklawn, Dallas, February 12, 1998 at 8:00 a.m. Information may be obtained from Betsy Horn, 3939 North Hampton Road, Dallas, Texas 75212, (214) 951-8302. TRD-9801515.

Education Service Center, Region 18, Board of Directors, met at 2811 LaForce Boulevard, Midland, February 10, 1998 at 6:00 p.m. Information may be obtained from Bryan LaBeff, P.O. Box 60580, Midland, Texas 79711, (915) 563-2380. TRD-9801549.

Elm Creek WSC, Board, met at 508 Avenue "E", Moody, February 9, 1998 at 7:00 p.m. Information may be obtained from Rita Foster, P.O. Box 538, Moody, Texas 76557, (254) 853-3838. TRD-9801513.

Gregg Appraisal District, Board of Directors, met at 1333 East Harrison Road, Longview, February 10, 1998 at 11:00 a.m. Information may be obtained from Marvin F. Hahn, Jr., 1333 East Harrison Road, Longview, Texas 75604, (903) 238-8823. TRD-9801530.

Permian Basin Regional Planning Commission, Local Workforce Development Board, met at 2910 LaForce Boulevard, Midland, February 11, 1998 at 10:00 a.m. Information may be obtained from Terri Moore, P.O. Box 60660, Midland, Texas 79711, (915) 563-1061. TRD-9801487

Red Bluff Water Power Control District, Board of Directors, met at 111 West Second Street, Pecos, February 9, 1998, at 1:00 p.m. Information may be obtained from Jim Ed Miller, 111 West Second Street, Pecos, Texas 79772, (915) 445-2037. TRD-9801500.

Sabine Valley Center, Personnel Committee, will meet at 401 North Grove Moore, Marshall, February, 13, 1998, 9:00 a.m. Information may be obtained from Inman White or Ann Reed, P.O. Box 6800, Longview, Texas 75608, (903) 237-2362. TRD-9801498.

South Plains Association of Governments, Executive Committee, met at 1323 58th Street, Lubbock, February 10, 1998 at 9:00 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Freedom Station, Lubbock, Texas 79452-3730, (806) 762-8721. TRD-9801553.

South Plains Association of Governments, Board of Directors, met at 1323 58th Street, Lubbock, February 10, 1998 at 10:00 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Freedom Station, Lubbock, Texas 79452-3730, (806) 762-8721. TRD-9801532.

Meetings filed February 4, 1998

Archer County Appraisal District, Board of Directors, met at 101 South Center, Archer City, February 11, 1998 at 5:00 p.m.

Information may be obtained from Edward H. Trigg, III, P.O. Box 1141, Archer City, Texas 76531, (940) 574-2172. TRD-9801583.

Bexar-Medina-Atascosa Counties Water Control and Improvement District #1, Board of Directors, met at 226 Highway 132, Natalia, February 9, 1998 at 8:30 a.m. Information may be obtained from John W. Ward, III, 226 Highway 132, Natalia, Texas 78059, (830) 665-2132. TRD-9801563.

Brown County Appraisal District, Board of Directors, met at 403 Fisk Avenue, Brownwood, February 9, 1998 at Noon. Information may be obtained from Doran E. Lemke, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643-5676. TRD-9801584.

Dallas Housing Authority, Board of Commissioners, met at Melrose Hotel, 3015 Oaklawn, Dallas, February 12, 1998 at 8:00 a.m. Information may be obtained from Betsy Horn, 3939 North Hampton Road, Dallas, Texas 75212, (214) 951-8302. TRD-9801607.

Education Service Center Region 10, Board of Directors, met at 400 East Spring Valley Road, Richardson, February 11, 1998, at 12:30 p.m. Information may be obtained from Joe Farmer, 400 East Spring

Valley Road, Richardson, Texas 75081, (972) 231-6301. TRD-9801561.

Erath County Appraisal District, Board of Directors, met at 1390 Harbin Drive, Stephenville, February 10, 1998 at 8:00 a.m. Information may be obtained from Nicolle Boyd, 1390 Harbin Drive, Stephenville, Texas 76401, (254) 965-5434. TRD-9801564.

High Plains Underground Water Conservation District No. 1, Board, met at 2930 Avenue Q, Board Room, Lubbock, February 10, 1998 at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9801606.

Manville Water Supply Corporation, Annual Meeting of Members, met at S.P.J.S.T. Hall, Highway 95, Elgin, February 10, 1998 at 7:00 p.m. Information may be obtained from Tony Graf, P.O. Box 48, Coupland, Texas 78615, (512) 272-4044. TRD-9801604.

Tri County Special Utility District (SUD), Board of Directors, met at Highway 7 East, Marlin, February 9, 1998 at 7:00 p.m. Information may be obtained from Patsy Booher, P.O. Box 976, Marlin, Texas 76661, (254) 803-3553. TRD-9801565.

# IN ADDITION

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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.

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## Office of the Attorney General

### Clean Air Act Enforcement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air Act. Section 382.096 of the Clean Air Act (since repealed and now found at §7.110 of the Texas Water Code) provides that before the State may settle a judicial enforcement action under the Clean Air 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 or a rule adopted or an order or a permit issued under such statute.

Case Title and Court: Harris County, Texas, and the State of Texas v. Timco Industrial Supply Company and Charles Caldwell, Jr., Cause Number 97-21305; in the 127th Judicial District Court, Harris County, Texas.

Nature of Defendants' Operations: Timco Industrial Supply Company, Inc. ("Timco"), operates a scrap yard located at 15922 Bear Bayou, Channelview, Texas. In July of 1996 Harris County Pollution Control Department investigated reports of numerous trees that were damaged in the area of the scrap yard. Based on that investigation Harris County filed suit against Timco and one of its employees for burning insulated copper wire at the scrap yard. Harris County alleged that such burning resulted in the production of hydrochloric acid and chlorine gas, which can kill or injure vegetation, and that such burning was in violation of the Texas Clean Air Act and rules of the Texas Natural Resource Conservation Commission ("TNRCC"). The State of Texas was joined in the suit as a necessary and indispensable party.

Proposed Agreed Judgment: The Agreed Final Judgment contains provisions for injunctive relief and civil penalties. The injunction prohibits Timco, its officers, employees, agents, servants, successors and assigns and Defendant Charles Caldwell, Jr., from engaging in outdoor burning in violation of 30 Texas Administrative Code §111.201 or §101.4. The judgment provides for \$2,000 in civil penalties, \$1,000 in attorneys' fees, and that Defendants pay all costs of court.

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 judgment should be directed to Liz Bills, 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.

TRD-9801403  
Sarah Shirley  
Assistant Attorney General  
Office of the Attorney General  
Filed: January 30, 1998



### Hazardous Waste Enforcement 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 and the Texas Water Code. Section 7.110 of the Texas Water Code provides that before the State may settle a judicial enforcement action under those Acts, 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 those Acts or a rule adopted or an order or a permit issued under such statutes.

Case Title and Court: State of Texas v. B & W Foundry and Manufacturing Co., Ura Lee Beard, Gene E. Beard, and Robert A. Beard, Cause Number. 94-04155; in the 331st Judicial District Court, Travis County, Texas.

Nature of Defendant's Operations: B & W Foundry and Manufacturing Co. owns and previously operated a foundry located at 512 Upton Street, San Angelo, Texas, where the company manufactured certain agricultural machine parts until 1991, when the foundry ceased operations. The property upon which the facility is located is adjacent to a residential neighborhood. The State filed suit against the foundry and its officers alleging that operations at the facility's scrubber sludge

handling area had resulted in discharges of cadmium and lead onto the ground and into or adjacent to waters of the State.

The State and the Defendants previously entered into an agreement under which Defendants agreed to remediate the site in accordance with a Remediation Work Plan approved, as modified, by the Texas Natural Resource Conservation Agreement ("TNRCC"). Under the Work Plan, the site was to be remediated to meet the TNRCC's Risk Reduction Standard Number 2. The agreement provided that if 1) the site was remediated according to the Work Plan as modified on a timely basis; 2) proof of deed certification pursuant to 30 Tex. Admin. Code §335.560 was submitted to the TNRCC; and 3) Defendants paid \$800 in penalties to the State of Texas, the State of Texas and the TNRCC would dismiss their claims against the Defendants for those violations alleged in their suit. The site has been remediated, proof of deed certification has been provided, and the Defendants are prepared to pay the penalties set forth above. Accordingly, the parties propose to enter into an Agreed Final Judgment dismissing the claims in this matter.

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 judgment should be directed to Liz Bills, 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.

TRD-9801590  
Sarah Shirley  
Assistant Attorney General  
Office of the Attorney General  
Filed: February 4, 1998



#### Sexual Assault Prevention and Crisis Services Funding Notice

The Office of the Attorney General is accepting letters of intent to apply for sexual assault crisis intervention and education funding under the Preventive Health and Health Services block grant and State Funds. Funds will be available October 1, 1998. Letters of intent to apply for funds should be sent by March 31, 1998 to Cecelia McKenzie, Division Director, Sexual Assault Prevention and Crisis Services, Office of the Attorney General, P.O. Box 12548, Mail Code 011-1, Austin, Texas 78711-2548 Applications will be due on or before June 3, 1998 at 5:00 p.m.

Eligible entities who send letters of intent will receive application kits consisting of materials pertinent to submitting an application. An eligible entity is a sexual assault program which has been providing service on or before January 1, 1998. The program must provide a 24-hour hotline, advocacy and accompaniment, liaison, professional training and public education. For more information, contact Pam Rodgers, Grants Program Director, (512) 936-1423 or Lynda Edmonson, Office Manager (512) 936-1270.

TRD-9801404  
Sarah Shirley  
Assistant Attorney General  
Office of the Attorney General  
Filed: January 30, 1998



#### Coastal Coordination Council

#### Notice and Opportunity to Comment on Requests for Consistency Agreement

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 January 26, 1998, through February 2, 1998:

#### FEDERAL AGENCY ACTIONS:

Applicant: Harris County Engineering Department; Location: At the end of Space Center Boulevard and the intersection of Jana Lane and Genoa-Red Bluff Road, Clear Lake City, Harris County, Texas; Project Number: 98-0027-F1; Description of Proposed Action: The applicant proposes to extend the existing Space Center Boulevard. The extension will consist of a 100-foot right-of-way, with a center median. The project will impact 4.5 acres of wetlands. The applicant has proposed to provide compensatory mitigation within the Greens Bayou Wetlands Mitigation Bank; Type of Application: U.S.C.O.E. permit application #21155 §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Neumin Production Company; Location: Approximately 2,000 feet north of Morgan Bluff, in wetlands adjacent to the Sabine River, in Orange County, Texas; Project Number: 98-0028-F1; Description of Proposed Action: The applicant proposes to repair an existing access road and construct a ring levee and drill pad for the purpose of oil and gas exploration and production. The access road repair would consist of laying boards over the top of the road. The construction of the ring levee would require the excavation of approximately 302 cubic yards of material. Approximately 0.7 acre of wetlands would be impacted. Type of Application: .S.C.O.E. permit application #21166 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: Bois d'Arc Operating Corporation; Location: In State Tracts 136, N/2 137, N/2 141, 143, 144 and N/2 160, in Matagorda Bay, in Calhoun and Matagorda Counties, approximately four miles northeast from Port O'Connor, Calhoun County, Texas; Project Number: 98-0030-F1; Description of Proposed Action: The applicant proposes to erect and maintain structures and appurtenances, and flowlines in connection with the drilling of wells for the production of oil and/or natural gas. The structures may be constructed of steel or timber and will include typical marine barges and keyway, derrick platforms, production platforms, gravel or shell pads, protective structures and foundations. Approximately 1,330 cubic yards of shell or gravel will be used to construct drilling pads, if needed, to stabilize rig structures; Type of Application: U.S.C.O.E. permit application #21190 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).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.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.

TRD-9801585

Garry Mauro  
Chairman, Coastal Coordination Council  
Coastal Coordination Council  
Filed: February 4, 1998



## Comptroller of Public Accounts

### Request for Information for Unified Automated Information Processing System

Notice of Request for Information: The Comptroller of Public Accounts (Comptroller) announces its Request for Information (RFI) to solicit information from the private and public sectors in determining whether and how to solicit proposals for assistance in the design, development and implementation of a unified automated information processing system for the Property Tax Division (PTD). The new system will replace all or portions of an existing system that includes applications programs in a variety of programming languages on a Hitachi mainframe, an IBM AS/400 minicomputer and various configurations of Pentium processor based personal computers (PC). A client/server environment is desired. The hardware and software included in the new system will be required to be compliant with platforms the Comptroller has designated it will support in long range strategic information resource plans. Before determining whether and how to contract for the development of a system, the Comptroller requests information on client/server systems successfully designed and implemented by respondents.

The PTD is responsible for conducting an annual ratio study to estimate the total taxable value of all property within each school district in the state of Texas. The PTD is also responsible for determining the annual level and uniformity of property tax appraisals in each county appraisal district. The school and appraisal district studies are jointly referred to as the Property Value Study (PVS).

The PTD is also responsible for yearly publications that summarize PVS and appraisal district data: School & Appraisal Districts' Property Value Study (preliminary and final reports), the Annual Property Tax Report, and the Appraisal District Operations Report. In addition, the PTD responds to numerous information requests from the legislature and taxpayers that require ad hoc analyses of current and prior years' data.

The Comptroller seeks information on an integrated system that will combine current AS/400 and PC systems to produce the annual PVS and division publications. The ideal respondent would be able to provide information on client/server systems successfully designed and implemented by respondent and suggest potential hardware and software solutions within the architecture described in RFI. Respondents should address potential solutions to mainframe data conversion. The Comptroller may enter into separate contracts for various project phases such as requirements definition, design specification, application development, AS/400 data conversion and programming services.

The complete RFI and related appendices are available on the internet at <http://www.window.state.tx.us/comptrol/rfi/rfiptd.html> or may be obtained from David R. Brown, Legal Services, Comptroller of Public Accounts, L.B.J. State Office Building, Room #G-24, 111 East 17th Street, Austin, Texas, 78774, (512) 305-8673.

Contact: parties interested in submitting a response to the RFI should contact the Comptroller of Public Accounts, Legal Counsel's Office, 111 E. 17th Street, Room #G-24, Austin, Texas 78774, (512) 305-8673. A hard copy of the RFI is available for pick-up at the previously-referenced address on Friday, February 13, 1998, between

4:00 p.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter.

The anticipated schedule of events is as follows: Issuance of RFI - February 13, 1998, at 4:00 p.m. (CZT); Written RFI Responses Due - March 16, 1998, 4:00 noon (CZT).

TRD-9801570  
Walter Muse  
Legal Counsel  
Comptroller of Public Accounts  
Filed: February 4, 1998



## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Articles 1D.003 and 1D.009, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003 and 1D.009, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 02/09/98 - 02/15/98 is 18% for Consumer <sup>1</sup>/Agricultural/Commercial <sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 02/09/98 - 02/15/98 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-9801504  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: February 3, 1998



## Texas Department of Criminal Justice

### Request for Proposals

The Texas Department of Criminal Justice - Texas Correctional Industries (TCI) hereby provides notice of Solicitation 696-CI-8-P-006 for business consulting services to examine TCI business practices and provide consultation toward the design, development, and implementation of a business accounting system in accordance with Generally Accepted Accounting Principles (GAAP). This procurement will be conducted in accordance with requirements in Chapter 2254, Texas Government Code. Award will be made on the basis of demonstrated competence and qualifications to perform the services for a fair and reasonable price.

TCI anticipates award of a firm fixed price contract on or about April 10, 1998, with a completion date 12 months after contract award.

Proposals will be accepted at the following address until 3:00 p.m., March 27, 1998.

Agency contact is Kristen West, Contract Administrator, TDCJ Purchasing and Leases, Contracts Branch, P.O. Box 4014, Huntsville, Texas 77342-4014, Phone (409) 294-8668, Fax (409) 294-6986. All requests for a copy of the solicitation must be in writing. Fax requests are acceptable.

A Pre-Proposal Conference is scheduled for 10:00 a.m., Tuesday, March 3, 1998, in the conference room at the TDCJ Industry building in Huntsville, Texas. Two factory tours (in the Huntsville area) will be held following the conference. Information on the Pre-Proposal Conference and subsequent factory tours may be obtained through the agency contact previously listed.

TRD-9801484  
Carl Reynolds  
General Counsel  
Texas Department of Criminal Justice  
Filed: February 3, 1998

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## Texas Education Agency

### Request for Proposals Concerning Investigating the Feasibility and Cost-Effectiveness of Producing Electronic Textbooks for Students Who are Blind or Have Other Disabilities

**Eligible Proposers.** The Texas Education Agency (TEA) is requesting proposals under Request for Proposals (RFP) #701-98-008 from nonprofit organizations (i.e., exempt under §501(C)(3) of the Internal Revenue Code) and institutions of higher education for the development and implementation of a project to investigate the feasibility and cost-effectiveness of producing electronic textbooks for Texas public-school students who are blind or who have other disabilities. For-profit businesses are not eligible to submit a proposal but are eligible to participate in the project as subcontractors as necessary to carry out the objectives of the project.

**Description.** The selected contractor will carry out the following four main tasks:

- (1) develop accessibility demonstration projects by: (a) producing two directly accessible CD-ROM textbooks for use by students who are blind or who have visual or other disabilities; and (b) producing two fully accessible computer network-based textbooks for use on an internal Texas Intranet or on the World Wide Web.
- (2) update, expand, and refine the January 1997 Report to the Texas Legislature: Accessibility of Information in Electronic Textbooks for Students Who are Blind or Visually Impaired and assist the Computer Network Study Advisory Committee in integrating the updated accessibility report into the main report on the Computer Network Study Project due to the Texas Legislature by February 1999;
- (3) coordinate and administer two meetings of the accessibility subcommittee of the Computer Network Study Project Advisory Committee that include reimbursement of travel expenses to subcommittee members; and
- (4) prepare an interim and a final "Lessons Learned" report on the feasibility and cost-effectiveness of producing electronic textbooks for students who are blind or who have other disabilities.

**Dates of Project.** All services and activities related to this proposal will be conducted within specified dates. Proposers should plan for a starting date of no earlier than May 4, 1998, and an ending date of no later than August 1, 2000.

**Project Amount.** One contractor will be selected to receive a maximum of \$200,000 during the contract period. This project is funded 100% from Individuals with Disabilities Education Act (IDEA) federal funds.

**Selection Criteria.** Proposals will be selected based on the ability of each proposer to carry out all requirements contained in this RFP. The TEA will base its selection on, among other things, the

demonstrated competence and qualifications of the proposer and upon the reasonableness of the proposed fee. The TEA reserves the right to select from the highest-ranking proposals those that address all requirements in this RFP and that are most advantageous to the project.

The TEA is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit TEA to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate TEA to award a contract or pay any costs incurred in preparing a response.

**Requesting the Proposal.** A complete copy of RFP #701-98-008 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFP number in your request.

**Further Information.** For clarifying information about this RFP, contact Robert Leos or Charles Mayo, Division of Textbook Administration, Texas Education Agency, (512) 463-9601.

**Deadline for Receipt of Proposals.** Proposals must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Time), Tuesday, April 7, 1998, to be considered.

TRD-9801571  
Criss Cloudt  
Associate Commissioner for Policy Planning and Research  
Texas Education Agency  
Filed: February 4, 1998

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## General Land Office

### Notice of Public Hearing

The Texas General Land Office (GLO) will hold public hearings regarding a proposed rule amendment to 31 TAC §19.61 for OSPRA vessels which was published in the January 2, 1998 edition of the *Texas Register*. The proposed amendment applies to all vessels that carry 10,000 gallons or more of oil as fuel or cargo and that operate in coastal waters, and that are not currently required to have an OPA or IMO vessel-specific discharge prevention and response plan.

A schedule of these public hearings is as follows:

- (1) 6:00 p.m., Tuesday, February 17, 1998, at the Port Arthur Civic Center, Meeting Room F, 3401 Cultural Center Drive, Port Arthur, Texas, 77642; and
- (2) 6:00 p.m., Wednesday, February 18, 1998, at the University of Houston - Clear Lake, 2700 Bay Area Boulevard, Clear Lake, Texas, 77058.

Persons fluent in Spanish and Vietnamese will be available to assist with questions.

For further information regarding the hearings, please contact Kate McAfee at (512) 463- 8530 or Ronald Bounds at (512) 463-8188.

TRD-9801486  
Garry Maro  
Commissioner  
General Land Office  
Filed: February 3, 1998

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## Request for Qualifications



The Texas General Land Office (GLO) has received a grant under the National Coastal Wetlands Grant Program from the United States Department of Interior, Fish and Wildlife Service, for a project to protect and restore certain wetlands and habitat areas of Shamrock Island in Nueces County, Texas. Shamrock Island is the remainder of a recurved barrier spit, separated from Mustang Island by the action of Hurricane Celia in 1970. It serves as a protective barrier for landward habitats on Mustang Island that are subject to erosion and deterioration due to the action of wave, tidal and wind energies. This project is intended to protect and restore wetland habitats that are integral to the Corpus Christi Bay estuarine ecosystem, serve as the nursery grounds for over 95% of the recreational and commercial fish species found in the Gulf of Mexico and provide breeding, nesting, and feeding grounds for many threatened and endangered animal and plant species.

Pursuant to Texas Government Code, §2254.001 et seq., the GLO is requesting statements of qualifications from professional engineers or engineering firms, licensed in the State of Texas, to serve as GLO's manager for this project. The chosen manager will be responsible for the following tasks:

- (1) review of available relevant information concerning coastal processes which affect the causes or the rates of erosion and accretion on the shorelines of Shamrock Island;
- (2) site visits to Shamrock Island to acquire field information necessary to developing a design for the contemplated project to stabilize the shoreline of the island;
- (3) meetings with an established advisor group to review the erosion problem and possible solutions;
- (4) identify and develop detailed design/build specifications, including significant permitting requirements, for three alternative solutions chosen by the advisory group to address the erosion problem;
- (5) develop criteria to evaluate and select the most responsive design/build proposal submitted by a contractor who will both design and build the erosion response structure;
- (6) review, evaluate and rank proposals based on the approved criteria;
- (7) advise and assist the GLO during the process for the selection of and negotiation of a design/build contract with the contractor submitting the chosen proposal;
- (8) assist with acquisition of necessary permits for the project and oversee the project as the representative of the GLO.

Proposals for providing these services will be evaluated on the basis of (i) knowledge and demonstrated experience in performing such services; (ii) ability to perform the required services within the required time constraints; and (iii) demonstrated and projected use of HUB vendors. The award of a contract for these services is contingent upon availability of funding a design/build contract for the Shamrock Island protection and restoration project. The project is estimated to cost between \$500,000 and \$1,000,000. The recipient of a contract for these management services is ineligible to submit a proposal for the design/build project.

The requested services will require the capability of entering into a contract within ten days after completion of the selection process and initiation of work on the project within ten days after the contract award. It is expected that the project will require approximately ten months to complete both the analysis and design/build phases.

The provider selected must demonstrate extensive knowledge of the Texas coast and have knowledge and experience working with

contractors, as well as other federal and state agencies. GLO reserves the right to evaluate qualifications and experience of all responders, to interview any or all responders, to reject any and/or all responses and to negotiate specific terms of an agreement that is in the best interest of the agency and the state.

An informational packet and further information may be obtained by contacting Tom Calnan, by phone at (512) 463-5100 or by FAX to (512) 475-0680. The deadline for the receipt of responses to this request for qualifications of persons interested in providing these services is Friday, February 20, 1998, 10:30 a.m. Responses must be submitted to Mr. Calnan at the GLO Resource Management Division, 1700 North Congress Avenue, Room 617, Austin, Texas, 78701.

TRD-9801485  
Garry Mauro  
Commissioner  
General Land Office  
Filed: February 3, 1998

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## General Services Commission

Notice of Opportunity to Comment on the Texas Energy Performance Contracting Guidelines for Institutions of Higher Education and State Agencies

**DESCRIPTION:** House Bill 3530 (75th Texas Legislature) directs the State Energy Conservation Office (SECO) and the Texas Energy Coordination Council (TECC) to assist the Texas Higher Education Coordinating Board in establishing guidelines and an approval process for institutions of higher education proposing to enter into energy performance-based contracts. In addition, the bill directs SECO and TECC to provide cost-benefit analyses of the projects and guaranteed savings projections included in energy performance contracting proposals selected by higher education institutions. The bill also requires SECO and TECC to provide cost-benefit analyses of the projects and guaranteed cost savings stipulated in energy performance proposals selected by state agencies. SECO has the added responsibility of providing final review and approval for state agency contracts governing performance contracting relationships.

To respond to these directives, SECO and TECC formed a Texas Energy Performance Guideline Committee to provide guidance in identifying and addressing critical steps in the approval process. Committee members are comprised of key stakeholders in the performance contracting process, including representatives of state agencies, institutions of higher education, the Higher Education Coordinating Board, the performance contracting industry, consulting engineers, financing institutions, local governments, TECC, and SECO.

The Committee created four subcommittees to develop documents critical to the guideline process: (1) a model Request for Qualifications and Request for Proposals, (2) an energy assessment report format to provide technical documentation for proposed projects and their anticipated cost savings, (3) contract provisions which protect the interest of the client while recognizing the unique aspects of performance contracting, and (4) measurement and verification standards to document the energy savings achieved by projects financed through a "guaranteed savings" arrangement.

**CONTACT:** SECO and TECC now invite public comment on the guidelines produced by the Energy Performance Contracting Committee. A hard copy of the guidelines may be obtained by contacting Tracy Bryson at (512) 463-9768 or Pam Groce at (512) 463-1889 or by writing Ms. Bryson at the General Services Commis-

sion State Energy Conservation Office, P. O. Box 13047, Austin, Texas 78711-3047. The guidelines are also available electronically through the following web sites: <http://tbei.ces.utexas.edu/> or <http://www.gsc.state.tx.us/energy/energy.html>.

To be considered by the committee, comments must be submitted in writing to Mel Roberts at the previously listed address or by fax (512/475-2569) by March 13, 1998.

TRD-9801435

Judy Ponder

General Counsel

General Services Commission

Filed: February 2, 1998



## Texas Department of Health

### Designation of Site Serving Medically Underserved Populations

The Texas Department of Health (department) is required under Texas Civil Statutes, Article 4495b, §3.06, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of its designations in the Texas Register and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as a site serving medically underserved populations: John T. Montford Psychiatric/Medical Unit, 8602 Peach Street, Lubbock, Texas, 79404. Designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on this designation may be directed to Dora A. McDonald, Chief, Bureau of State Health Data and Policy Analysis, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-9801580

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: February 4, 1998



### Notice of Request for Proposals for Survey on Knowledge, Attitudes, and Practices Concerning Breast and Cervical Cancer

Purpose. The Texas Department of Health (department) receives funding from the Centers for Disease Control and Prevention to develop, implement and evaluate a breast and cervical cancer screening program. The screening program began in July 1991. Known as the Breast and Cervical Cancer Control Program (BCCCP), the objectives of the program are to: increase the availability and use of high quality breast and cervical cancer screening services among eligible women; identify and reduce financial, educational, and cultural barriers to screening; inform health care providers about the availability and importance of cervical and breast cancer screening, and train them on improved practices; track and follow-up each woman participating in the program; collect information on incidence, mortality, and behavioral risks; develop a comprehensive cancer control plan; and evaluate each component listed in this paragraph.

This request for proposal invites applications from governmental, public, or private nonprofit entities that can demonstrate the expertise necessary to carry out the described services to conduct household surveys in four designated counties in Texas. The surveys will be of knowledge, attitudes, and practices of breast and cervical cancer screening among women age 50-64 with low incomes, particularly among African American and Hispanic women. The surveys will assess the following topics: health behaviors related to the frequency of Pap tests, clinical breast examinations, breast self-examinations, and mammography; beliefs, knowledge, and attitudes about breast and cervical cancer; health service use, insurance coverage, usual sources of care, satisfaction, and barriers to care; and sources of health information.

The department will award one contract of up to \$153,817 to begin on or about April 1, 1998. The contractor will be required to complete at least 1,100 face-to-face interviews among a random sample of women age 50-64 in specified low income areas in four designated counties in Texas as follows: one survey of at least 200 African American women in Harris County; one survey of at least 300 African American women in Gregg County; one survey of at least 300 women randomly selected among all race/ethnic groups in Tarrant County; and one survey of at least 300 women randomly selected among all race/ethnic groups in Lubbock County. Households must be sampled using a representative list such as 1990 census tract or utility hookups. Applicants must describe a method for determining the sample. The department, in collaboration with the contractor, will select the designated areas for conducting the survey and will develop the survey instrument. Data analyses are not required. An electronic data record for each of at least 1100 women interviewed must be delivered to the BCCCP by August 31, 1998. The budget must allow for payment of a fee to respondents for completed interviews. It is expected that each interview will last no less than 30 minutes and no longer than one hour.

**Proposal Format.** Interested parties must submit proposals with the following information: description of experience in conducting household surveys, including surveys with African Americans, people with low incomes and people who speak Spanish as a primary language; description of quality control measures you would use during the survey process and the entering and editing of collected data; description of how you would assure valid data and a high response rate; written goals and objectives, description of tasks to meet these goals and objectives (including pilot testing of the instrument, selection and training of interviewers, household selection process, including pre-screening techniques), and identification of who will complete the tasks and completion dates; list all key personnel for this project including a description of their qualifications, experience, and function.(which may include: knowledge of survey methodologies and techniques; experience in designing, implementing, and conducting household surveys in communities with diverse populations, including racial and ethnic minorities and people with low incomes; curricula vitae of key personnel; and reports representing previous experience may be submitted); and budget and accompanying justification consistent with the objectives and the amount of funds requested. Applicants should provide assurances that the confidentiality of all women interviewed will be preserved by the survey team members.

**Selection Criteria.** A committee composed of department staff and external reviewers will evaluate proposals and make recommendations to the Breast and Cervical Cancer Control Program which will select one for funding. Evaluation and funding will be based on the following criteria (weighted values are in parentheses): evaluation of the applicant's knowledge and experience in conducting surveys (20%); evidence of quality control procedures for the survey process

and the entering and editing of the data collected (20%); evidence of ability and capacity to provide a survey with valid data and a high response rate (40%); the submission of a realistic work plan and time line (20%); the submission of a budget that is appropriate for the scope and quality needed for the successful completion of the survey.

**Closing Date.** To request a Request for Proposals Application Packet, contact Mr. Stephen Wright, Public Information Coordinator, Breast and Cervical Cancer Control Program at (800) 452-1955 or (512) 458-7644. The original plus six copies of the proposal must be submitted to Mr. Wright's attention at: Texas Department of Health, Breast and Cervical Cancer Control Program, 1100 West 49th Street, Austin, Texas 78756. Proposals must have a legible postmark dated no later than Friday, March 20, 1998. Hand-delivered packets must be delivered by 5:00 p.m., Central Standard Time, on Friday, March 20, 1998 to the Texas Department of Health, Breast and Cervical Cancer Control Program, Building G, Room 407, 1100 West 49th Street, Austin, Texas 78756. Proposals postmarked later than March

20, 1998, or incomplete proposals will not be evaluated. Faxed copies of proposals will not be accepted.

TRD-9801591  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: February 4, 1998



## Health and Human Services Commission

### Final Adoption of Medicaid Provider Payment Rates

As single state agency for the state Medicaid program, the Health and Human Services Commission announces final adoption of Medicaid provider payment rates for the nursing facilities program operated by the Texas Department of Human Services. Payment rates effective January 1, 1998, are as follows:

#### NURSING FACILITY

##### Rates By TILE (Texas Index for Level of Effort) Class

201	\$123.82
202	\$110.89
203	\$105.13
204	\$88.53
205	\$82.49
206	\$83.38
207	\$76.10
208	\$73.64
209	\$68.96
210	\$60.58
211	\$58.53

**Supplemental Payments for  
Ventilator-Dependent Residents**

Continuous	\$65.19
Less than Continuous	\$26.08

**Methodology and justification.** The final adopted rates were determined in compliance with the rate setting methodology codified at 1 T.A.C. Chapter 355, Subchapter C (relating to Reimbursement Methodology for Nursing Facilities), §355.307.

TRD-9801572

Marina Henderson  
Executive Deputy Commissioner  
Health and Human Services Commission  
Filed: February 4, 1998



**Notice of Public Hearing**

The Health and Human Services Commission, the Texas Department of Human Services, the Texas Department of Health and the Texas Department of Mental Health and Mental Retardation will conduct a public hearing to receive public comment for use in developing the State Plan for the Children's Health Insurance Program (CHIP) pursuant to Title XXI of the Social Security Act. The topics discussed will include: Scope of benefits package, outreach and health promotion activities, quality assurance and program performance goals and measures; and maximizing parental participation.

Information gathered in this hearing process will be used to formulate a draft plan for implementation of CHIP. Final policy decisions on the Children's Health Insurance Program will be made by the Legislature and Governor.

In order to facilitate participation by working parents, the hearing will be held on February 24, 1998 beginning at 4:00 p.m. in the Capitol Auditorium, State Capitol Extension, 15th and Congress Streets, Austin, Texas. Written comments may be submitted to the Health and Human Services Commission until 5:00 p.m. of the day of the

hearing. Please address written comments to the attention of Holly Williams at 4900 North Lamar, 4th Floor, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Holly Williams (512) 424-6502 by February 15, 1998, so that appropriate arrangements can be made.

TRD-9801569

Marina Henderson  
Executive Deputy Commissioner  
Health and Human Services Commission  
Filed: February 4, 1998



**Texas Department of Housing and Community  
Affairs**

**Announcement of Texas Department of Housing and Community Affairs Board Public Hearing for the 1998 State of Texas Low Income Housing Plan and Annual Report - Draft For Public Comment**

In compliance with the Texas Government Code, §2306.0721, the Board of Directors of the Texas Department of Housing and Community Affairs (TDHCA) shall hold a public hearing on the 1998 State Low Income Housing Plan and Annual Report *Draft for Public Comment* before the Board submits the report and the plan to the governor, lieutenant governor, speaker of the house of representatives and members of the legislature.

The Board public hearing concerning the 1998 State Low Income Housing Plan and Annual Report *Draft for Public Comment* will take place in Laredo at the La Posada Hotel Suites, 1000 Zaragoza Street, (956) 722-1701, on February 22nd, 1998, at 4:00 p.m.

The Plan is one of three comprehensive planning documents the Texas Department of Housing and Community Affairs is required to submit annually. It is the first document of its kind among the states and is a comprehensive and integrated plan concerning statewide housing needs, housing resources and patterns of funding allocation. The Plan serves in the following capacities: provides an overview of statewide housing needs; reports on the approximately 25 programs administered by TDHCA; provides the TDHCA's housing programs funding levels; and reports on the Department's activities during the preceding year.

The public comment period for the 1998 State Low Income Housing Plan and Annual Report *Draft for Public Comment* which began on January 25th, 1998 continues until February 25th, 1998. The Plan is free to nonprofit corporations, but there will be a \$10.00 charge for for-profit corporations. To order, please contact the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin TX, 78711-3941, Phone: (512) 475-4595, Fax: (512) 475-3746, or email at [clandry@genesis.tdhca.state.tx.us](mailto:clandry@genesis.tdhca.state.tx.us).

Individuals who require auxiliary aids or services should contact Margaret Donaldson, ADA Responsible Employee, at (512) 475-3100, or Relay Texas at 1-800-735-2989, at least two days before the public hearing so that appropriate arrangements can be made.

Written comment is encouraged and should be sent to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin TX 78711-3941 or email at [clandry@tdhca.state.tx.us](mailto:clandry@tdhca.state.tx.us). For more information, please contact the Housing Resource Center at (512) 475-4595.

TRD-9801558

Larry Paul Manley  
Executive Director

Texas Department of Housing and Community Affairs  
Filed: February 3, 1998



#### Notice of Funding Availability

#### LOW INCOME HOUSING TAX CREDIT PROGRAM

#### NOTICE OF 1998 APPLICATION AVAILABILITY AND WORKSHOP SCHEDULE

#### APPLICATION AVAILABILITY

The Texas Department of Housing and Community Affairs (the Department) announces the availability of application packages for the Low Income Housing Tax Credit Program's 1998 allocation round. The Department has approximately \$21 million of tax credit authority available for allocation. A completed application must be submitted to the Department within the Application Acceptance Period. Applications are only accepted during this established period. The application acceptance period for the 1998 allocation round has been tentatively scheduled for:

March 16 - Application Acceptance Period Opens

March 27 - Application 2 PT. Bonus Period Ends

April 30 - Application Acceptance Period Closes

These dates are subject to change. The final dates will be formally announced in the Texas Register.

Tax credit allocation recipients are prioritized through a competitive process. Applications receiving the highest priority are then subject to feasibility and viability studies, after which the Board of Directors considers staff's allocation recommendations.

#### APPLICATION WORKSHOPS

Each year the LIHTC Program holds training workshops to facilitate the completion of the Application. Because the Application is a lengthy document which requires a large amount of supplemental information, it is critical that the Applicant understands what information is being requested and what documentation is required to satisfy the various exhibits. Because some sections of the Application have a "cliff effect" (automatic exclusion of the Application from consideration), attendance of the workshop is strongly encouraged.

#### REQUESTING AN APPLICATION AND REGISTERING FOR A WORKSHOP

If you are interested in receiving a copy of the 1998 tax credit application package and/or attending an application workshop you may contact our office at (512) 475-3340.

TRD-9801560

Larry Paul Manley  
Executive Director

Texas Department of Housing and Community Affairs

Filed: February 4, 1998



#### Notice of Public Hearing for the Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Pebble Brook Apartments Project) Series 1998

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs ("the Department") at 507 Sabine Street, Room 437, Austin, Texas at 12:00 p.m. on Thursday, February 26, 1998, with respect to the issuance by the Texas Department of Housing and Community Affairs of its multifamily housing revenue bonds (Pebble Brook Apartments Project) Series 1998 (the "Bonds"), in one or more series in an aggregate principal amount not to exceed \$10,900,000. The proceeds of the Bonds will be loaned to One Pebble Brook, Ltd., which will be the initial owner, operator and manager of the Project (defined as follows), to finance the acquisition, construction and equipping of one multifamily residential rental project, described as follows: 250-unit multifamily residential rental development to be constructed at the intersection of McKinney Street and Loop 288, Denton, Texas, 76201; (the "Project")

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or requests for additional information may be directed to Robert Onion at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-3872.

Persons who intend to appear at the hearing and express their views are invited to contact Robert Onion in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robert Onion prior to the date scheduled for the hearing.

This notice is published and the previously-described hearing is to be held in satisfaction of the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended, regarding the public approval prerequisite to the exemption from federal income taxation of the interest of the Bonds.

Individuals who require auxiliary aids in order to attend this meeting should contact Margaret Donaldson, ADA Responsible Employee, at (512) 475-3100 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals who require child care to be provided at this meeting should contact Dina Gonzalez at (512) 475-3757 at least five days before the meeting so that appropriate arrangements can be made.

TRD-9801581

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

Filed: February 4, 1998



Notice of Public Hearing for the Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Residence at the Oaks Apartments Project ) Series 1998

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs ("the Department") at 507 Sabine Street, Room 437, Austin, Texas at 12:00 p.m. on Thursday, March 5, 1998, with respect to the issuance by the Texas Department of Housing and Community Affairs of its Multifamily Housing Revenue Bonds (Residence at the Oaks Apartment Project) Series 1998 (the "Bonds"), in one or more series in an aggregate principal amount not to exceed \$8,100,000. The proceeds of the Bonds will be loaned to Comunidad Corporation which will be the initial owner, operator and manager of the project (defined as follows), to finance the acquisition, construction and equipping of one multifamily residential rental project, described as follows: 212 unit multifamily residential rental development to be constructed at 2700 Duncanville Road, Dallas, Texas 75211 (the "Project").

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or requests for additional information may be directed to Robert Onion at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-3872.

Persons who intend to appear at the hearing and express their views are invited to contact Robert Onion in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robert Onion prior to the date scheduled for the hearing.

This notice is published and the previously-described hearing is to be held in satisfaction of the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended, regarding the public approval prerequisite to the exemption from federal income taxation of the interest of the Bonds.

Individuals who require auxiliary aids in order to attend this meeting should contact Margaret Donaldson, ADA Responsible Employee, at (512) 475-3100 or Relay Texas at 1 800 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals who require child care to be provided at this meeting should contact Dina Gonzalez at (512) 475-3757 at least five days before the meeting so that appropriate arrangements can be made.

TRD-9801582

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

Filed: February 4, 1998



**Texas Department of Human Services**

Request for Proposal

**Request for Proposal (RFP):** The Texas Department of Human Services (DHS) is requesting proposals (RFP) from providers for the delivery of Medicaid home and community-based services provided through the Community Living Assistance and Support Services (CLASS) program. To be eligible to contract with the department, a direct services agency must be licensed by the Texas Department of Health as a home and community support services (HCSS) agency under the categories of licensed home health and personal assistance services, be selected in the RFP process, be enrolled and certified as a CLASS provider, and complete mandatory CLASS provider agency training.

**Texas Register Publication Date:** This announcement should appear in the *Texas Register* on February 13, 1998.

**Purpose:** The purpose of this RFP is to meet the department's requirements for periodic re-procurement of CLASS providers and to offer participants a choice of providers.

**Description of Services:** The direct services agency is responsible for delivering the following services in accordance with the individual service plan: personal care and habilitation services, nursing services, physical therapy, occupational therapy and speech pathology services, respite, psychological services, adaptive aids and minor home modifications. CLASS participants are also eligible for the full range of Medicaid benefits. Direct services agency representatives participate in the assessment and care planning functions of the interdisciplinary team and work in a cooperative relationship with the case management agencies.

**Geographic Area:** The department intends to contract for the delivery of CLASS services to the following number of individuals in the following service areas/counties: 62 individuals in the Lubbock area (Lubbock/Crosby/Floyd/Hale/Hockley/Lamb counties).

**Closing Date and Time:** Proposals must be received by the department by 5:00 p.m. on Friday, April 3, 1998.

**Contact Person for RFP:** To obtain a Request for Proposal packet, please write Jessie Hood, Administrative Technician, CLASS Program, Texas Department of Human Services, 701 West 51st Street (Mail Code W-521, Austin, Texas 78751), P.O. Box 149030, Mail Code W- 521, Austin, Texas 78714-9030. You may call Jessie Hood at (512) 438-5658 or fax a request to (512) 438-5133. The RFP packet will be available on Monday, February 16, 1998.

**Bidders' Questions/Inquiries:** Bidders must submit questions pertaining to the RFP and/or the CLASS program, in writing, to DHS to the attention of Jessie Hood at the address or fax number above. All questions must be received by DHS by 5:00 p.m. on Friday, February 27, 1998.

Historically underutilized businesses, public or private profit, with demonstrated knowledge, competence and qualifications in performing these services are encouraged to apply.

TRD-9801556

Glenn Scott

Agency Liaison

Texas Department of Human Services

Filed: February 3, 1998



**Request for Proposal (RFP):** The Texas Department of Human Services (TDHS) is requesting proposals from providers for the delivery of case management services provided through the Community Living Assistance and Support Services (CLASS) program. To be eligible

to contract with the department, a case management agency must be selected in the RFP process, be enrolled as a CLASS provider, and attend and complete mandatory CLASS provider agency training.

**Texas Register Publication Date:** This announcement should appear in the Texas Register on February 13, 1998.

**Purpose:** The purpose of this RFP is to meet the department's requirements for periodic re-procurement of CLASS providers and to offer participants a choice of providers.

**Description of Services:** A case management agency enrolls participants in the CLASS program and is the focal point for developing service plans, coordinating services, and tracking participant progress. The case manager convenes the interdisciplinary team (IDT) that is responsible for developing the plan of care and assures that services are consistent with the needs and preferences of the individual participant. Case managers further assist in the identification and development of appropriate community resources, crisis intervention, advocacy, and safeguarding individual rights. The case manager works in a cooperative relationship with the direct services agency which delivers home and community-based services.

**Geographic Area:** The department intends to contract for the delivery of CLASS services to the following number of individuals in the following service areas/counties: 62 individuals in the Lubbock area (Lubbock/Crosby/Floyd/Hale/Hockley/Lamb counties).

**Closing Date and Time:** Proposals must be received by the department by 5:00 p.m. on Friday, April 3, 1998.

**Contact Person for RFP:** To obtain a Request for Proposal packet, please write Jessie Hood, Administrative Technician, CLASS Program, Texas Department of Human Services, 701 W. 51st Street (Mail Code W-521, Austin, TX 78751), P.O. Box 149030, Mail Code W-521, Austin, Texas 78714-9030. You may call Jessie Hood at (512) 438-5658 or fax a request to (512) 438-5133. The RFP packet will be available on Monday, February 16, 1998.

**Bidder's Questions/Inquiries:** Bidders must submit questions pertaining to the RFP and/or the CLASS program, in writing, to DHS to the attention of Jessie Hood at the address or fax number above. All questions must be received by DHS by 5:00 p.m. on Friday, February 27, 1998.

Historically underutilized businesses, public or private profit, with demonstrated knowledge, competence and qualifications in performing these services are encouraged to apply.

TRD-9801557

Glenn Scott

Agency Liaison

Texas Department of Human Services

Filed: February 3, 1998



## Texas Department of Insurance

### Notices of Public Hearings

The Commissioner of Insurance will hold a public hearing under Docket Number 2338 on March 25, 1998, at 9:00 a.m., in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, to consider a petition by the staff of the Texas Department of Insurance proposing amendments to the Texas Private Passenger Automobile Statistical Plan. The amendment in the staff petition which adds a field to gather statistical experience on the use of the youth group member discount is necessary to implement Article 5.03-5 of the Texas Insurance Code, enacted through House Bill

1498 passed by the 75th Legislature, which provides that an insurer may grant a discount for certain automobile insurance premiums for members of certain youth groups if necessary qualifications are met. Amendments are also proposed to an existing field to distinguish between youth driver training commercially provided and parent or guardian provided training. This proposal is the result of comments heard at a January 29, 1998 hearing in which a premium discount was approved for parent or guardian provided youth driver training. Staff's petition (Reference A-0298-02-I) was filed on February 3, 1998.

The petition proposes amendments to the Texas Private Passenger Automobile Statistical Plan to add a field to gather statistical experience on the use of the "youth group member" discount and to add additional codes to an existing field, "driver training discount", to distinguish between data concerning commercially provided and parent or guardian provided youth driver training. These amendments will only affect the Quarterly Detailed Experience module of the Texas Private Passenger Automobile Statistical Plan.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.96 and 21.69.

Copies of the full text of the staff petition and the proposed amendments are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the petition and proposed amendments, please contact Sylvia Gutierrez at (512) 463-6326 (refer to Reference Number A-0298-02-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, P.O. Box 149104, MC113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to C.H. Mah, Associate Commissioner for Technical Analysis, P.O. Box 149104, MC105-5G, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001).

TRD-9801593

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: February 4, 1998



The Commissioner of Insurance will hold a public hearing under Docket Number 2339 on March 25, 1998, at 9:00 a.m., in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, to consider a petition by the staff of the Texas Department of Insurance proposing amendments to the Texas Statistical Plan for Residential Risks. The proposed changes are necessary in order to comply newly adopted discounts for wind and hail resistant roofing materials and to include the ability to capture greater levels of detail as to the cause of loss for claims. Staff's petition (Reference P-0298-03-I) was filed on February 3, 1998.

The petition proposes amendments to the Texas Statistical Plan for Residential Risks to add fields for roof construction, hail resistant roof premium discounts, and cause of losses.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.96 and 21.69.

Copies of the full text of the staff petition and the proposed amendments are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the petition and proposed amendments, please contact Sylvia Gutierrez at (512) 463-6326 (refer to Reference Number P-0298-03-1).

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, P.O. Box 149104, MC113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to C.H. Mah, Associate Commissioner for Technical Analysis, P.O. Box 149104, MC105-5G, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001).

TRD-9801594

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: February 4, 1998



The Commissioner of Insurance at a hearing scheduled under Docket Number 2337 on March 25, 1998 at 9:00 a.m. in Room 100 of the William P. Hobby Jr., State Office Building, 333 Guadalupe Street in Austin, Texas, will consider the petition of Gary L. Wickert of Hughes, Watters & Askanase, L. L. P. The petition seeks the adoption of amendments to Endorsement WC 42 03 04-Texas Waiver of Our Right to Recover From Others Endorsement as contained in the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance. The proposed changes to the endorsement specify that the existence of a waiver of subrogation endorsement waives only the claim for past benefits paid, not its right to a statutory credit.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Article 5.56, 5.57, and 5.96.

A copy of the petition containing the full text of the proposed changes to the Texas Waiver of Our Right to Recover From Others Endorsement is available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 322-4147, (refer to Reference No. W-1297-42).

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001).

TRD-9801592

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: February 4, 1998



Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of Life of the South Insurance Company, a foreign third party administrator. The home office is Nashville, Georgia.

Application for admission to Texas of Risk Enterprise Management Limited, a foreign third party administrator. The home office is Dover, Delaware.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-9801555

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: February 3, 1998



## Texas State Library and Archives Commission

### Quarterly Report of Consultant Contract Reports

By law (V.T.C.A., Government Code 2254, Subchapter B), state agencies and regional councils of governments are required to file with the Office of the Secretary of State invitations to bid and details on bidding on private consultant contracts expected to exceed \$10,000. Within 10 days of the award of the contract, the agency must file with the Secretary of State a description of the study to be conducted, the name of the consultant, the amount of the contract, and the due dates of the reports. Additionally, §2254.036, directs the contracting agencies to file copies of all documents, films, recordings, or reports developed by the private consultants with the Texas State Library. The Library is required to compile a list of the materials received and submit the list quarterly for publication in the Texas Register.

Below is a list of materials received for the fourth quarter of 1997. These materials may be examined in Room 300, Texas State Library, 1201 Brazos Street, Austin, Texas.

Agency: Office of Attorney General Consultant: David M. Griffith and Associates, Ltd. Title: State of Texas Office of the Attorney General legal billing rates, actual FY 1996; [and] Cost allocation plan for the State of Texas Office of the Attorney General legal billing rates for FY 1998

Agency: Comptroller of Public Accounts Consultant: Deloitte & Touche LLP Title: Management and performance review of the Texas State Treasury

Agency: Department of Economic Development/Department of Commerce Consultant: David M. Griffith & Associated, LTD Title: (1) Cost allocation plan for Texas Department of Commerce: indirect cost proposal for FY 1996, based on actual expenditures for the fiscal year ending August 31, 1994; (2) Cost allocation plan for Texas Department of Commerce : indirect cost proposal for FY 1997, based on actual expenditures for the fiscal year ending August 31, 1995; (3) Cost allocation plan for Texas Department of Commerce : indirect cost proposal for FY 1997, based on actual expenditures for the fiscal year ending February 28, 1996;

Agency: Employees Retirement System Consultant: Wolcott & Associates, Inc. Title: Report on the audit of insurance carrier operations regarding the Texas Employees Uniform Group Insurance



Program, contract number 38000, 38000-A and 38000-B, for the period of September 1, 1995 through August 31, 1996

Agency: Employees Retirement System Consultant: Wolcott & Associates, Inc. Title: Report on the audit of health maintenance organizations for the period of September 1, 1995 through August 31, 1996

Agency: Department of Health Consultant: Texas Medical Foundation Title: External quality review for the Texas Department of Health : Medicaid Managed-Care Demonstration project in Travis County (HMO model) : final report

Agency: Department of Health Consultant: The Lewin Group, Inc. Title: Texas Medicaid managed care rollout projections for state fiscal years 1997 through 2002

Agency: Department of Information Resources Consultant: IBM Corporation Government Consulting Group Title: Final report : Texas Department of Criminal Justice reengineering phase I

Agency: Department of Information Resources Consultant: Spectrum Consulting Group Title: Year 2000 Project Office plan development deliverables

Agency: Natural Resource Conservation Commission Consultant: Gelb Consulting Group Title: Texas Consolidated Reporting Project : Stakeholder Needs Assessment

TRD-9801277

Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

Filed: January 28, 1998



## Texas Natural Resource Conservation Commission

### Comment Period Extension

The Texas Natural Resource Conservation Commission has extended the deadline for the receipt of written comments regarding proposed amendments to 30 TAC Chapter 37, concerning Financial Assurance, and Chapter 330, concerning Management of Used or Scrap Tires. The proposed rules were published in the January 2, 1998 issue of the *Texas Register* (23 TexReg 54).

The deadline for receipt of written comments was initially published as February 2, 1998. That deadline has now been extended to 5:00 p.m. February 17, 1998. Any additional comments on this proposal should be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. For further information please contact Paige Buechley, Waste Tire Program at (512) 239-6704.

TRD-9801521

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: February 3, 1998



### Consultant Contract Amended Notice

**Notice. The deadline for submitting proposals is extended until 3:00 p.m., central standard time on February 27, 1998,** at the mail room of the Texas Natural Resource Conservation Commission

(TNRCC), Technical Park Center, 12100 Park 35 Circle, Building A, Room 122, Austin, Texas 78753. ANY ADDITIONAL NOTICES OF EXTENSION OR OTHER MATTERS REGARDING THIS CONTRACT WILL BE SENT TO PERSONS WHO REQUEST COPIES OF THE RFP. Original Notice of the RFP was published on February 6, 1998.

**Summary of Previous Notice of Request for Proposals .** The TNRCC is seeking Proposals to contract for employment consulting services.

The work consists of a combination of services, including advising the agency on recruiting, screening, and referring qualified candidates to fill a variety of employee positions statewide within the TNRCC.

A more detailed description of the work is provided in the Contract Documents.

Proposals will include a statement of qualifications and experience, a proposed fee, and other material. Objective criteria stated in Request for Proposals (RFP) will be utilized to evaluate and score each proposal. The proposals will be ranked on the basis of the evaluation scores. TNRCC will negotiate contract terms with the highest ranking proposer until agreement or impasse, continuing down the ranking as necessary.

Note: change for contact to obtain Request for Proposals: Sylvia Martinez, Human Resources Division, 12100 Park 35 Circle, Building A, Austin, Texas 78758, (512) 239-0160 (voice) or (512) 239-0168 (facsimile).

Written paper requests for the Contract Documents may be sent via regular mail or United States Postal Service Express Mail to: Sylvia Martinez, Human Resources Division, MC 116, P.O. Box 13087, Austin, Texas 78711-3087.

Packages will be mailed to the Proposer by regular mail if requested by Proposer in writing either by facsimile transmission or on paper medium delivered in person or by mail or courier. Proposers who wish to have packages sent by express mail should include in their request the account number of their preferred express mail delivery service.

The Contract Documents include, but are not limited to, the Notice of Request for Proposals, Instructions for Proposers, Additional Deliverables and Certifications, Agreement, General Conditions, and Scope of Services. A complete list of Contract Documents is provided in the Agreement.

TRD-9801605

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: February 4, 1998



### Enforcement Orders

An agreed order was entered regarding HOUGH, ROBERT S. DBA TIRE DISPOSAL OF EL PASO, Docket Number 96-0790-MSW-E (SWR Numbers 26000, 44137, 79026) on January 27, 1998 assessing \$89,680 in administrative penalties with \$79,680 deferred.

Information concerning any aspect of this order may be obtained by contacting Mary Risner, Staff Attorney at (512) 239-6224 or John Mead, Enforcement Coordinator at (512) 239-6010, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AMERICAN ECOLOGY ENVIRONMENTAL SERVICES CORP., Docket Number 96-1533-MLM-E (Account Number SK-0057-E; SWR No. 32123) on January 27, 1998 assessing \$71,700 in administrative penalties with \$71,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Bill Ballard, Staff Attorney at (512) 239-3420 or Mohammed Moheeth, Enforcement Coordinator at (512) 239-2262 or Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding PATEL NIRANJIN S. DBA CARABAN MOTOR MOTEL, Docket Number. 96-1605-MWD-E, SOAH Docket Number 582-97-0711 (Permit No. 11403-001) on January 27, 1998 assessing \$19,420 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Guy Henry, Staff Attorney at (512) 239-0600 or Bill Main, Enforcement Coordinator at (512) 239-4481, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding ALLPHAZ COATINGS, INC., Docket Number 96-1291-AIR-E, SOAH Docket Number 582-97-1204 (Account Number OC-0322-V) on January 27, 1998 assessing \$9,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Booker Harrison, Staff Attorney at (512) 239-4113 or Larry King, Enforcement Coordinator at (512) 239-1405, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RANGER EXCAVATING, INCORPORATED, Docket Number 97-0226-AIR-E (Account Number TH-0646-D) on January 27, 1998 assessing \$6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kara Salmanson, Staff Attorney at (512) 239-1738 or Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SMITH SYSTEM MANUFACTURING COMPANY, Docket Number 97-0789-AIR-E (Account Number CP-0005-U) on January 27, 1998 assessing \$4,250 in administrative penalties with \$850 deferred.

Information concerning any aspect of this order may be obtained by contacting David Edge, Enforcement Coordinator at (512) 239-1779, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRIBY AUTO SALES, Docket Number 97-0742-AIR-E (Account Number EE-1561-O) on January 27, 1998 assessing \$500 in administrative penalties with \$100 deferred.

Information concerning any aspect of this order may be obtained by contacting Stacy Young, Enforcement Coordinator at (512) 239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding IBP, INCORPORATED, Docket Number 97-0578-IWD-E (Permit Number 01958) on January 27, 1998 assessing \$64,000 in administrative penalties with \$12,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Paul Sarahan, Staff Attorney at (512) 239-3422, or Sabelyn Pussman, Enforcement Coordinator at (512) 239-6061, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HECTOR GARCIA, Docket Number 97-0521-OSI-E (Certification Number 1079) on January 27, 1998 assessing \$1,250 in administrative penalties with \$250 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Mears, Enforcement Coordinator at (512) 239-4490, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LOOP 1604 GROUP, Docket Number 97-0413-EAQ-E (No Permit Number) on January 27, 1998 assessing \$18,160 in administrative penalties with \$3,632 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JOINT CITIES AND CRESTMORE, INCORPORATED, Docket Number 97-0522-MSW-E (MSW NO 505) on January 27, 1998 assessing \$10,560 in administrative penalties with \$2,112 deferred.

Information concerning any aspect of this order may be obtained by contacting Tim Haase, Enforcement Coordinator at (512) 239-6007, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRI-STATE CHEMICALS, INCORPORATED, Docket Number. 97-0665-IHW-E (TNRCC F Number F0094) on January 27, 1998 assessing \$3920 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ravi Rao, Enforcement Coordinator at (512) 239-2559, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NORTH EAST INDEPENDENT SCHOOL DISTRICT, Docket Number 97-0199-MSW-E (Unauthorized Site Number 455130033) on January 27, 1998 assessing \$8,580 in administrative penalties with \$1,716 deferred.

Information concerning any aspect of this order may be obtained by contacting Eric Adidas, Enforcement Coordinator at (512) 239-6736, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding D-S-M DAIRY FARMS, INCORPORATED, Docket Number 97-0735-AGR-E (No Permit No.) on January 27, 1998 assessing \$1,860 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WEBB, COUNTY OF, Docket Number 97-0490-MWD-E (Permit Number 13577-001) on January 27, 1998 assessing \$6,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-

4492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MARLIN, CITY OF, Docket Number 97-0335-MWD-E (Permit Number 10110-002) on January 27, 1998 assessing \$11,360 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lin Zhang, Enforcement Coordinator at (512) 239-4497, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EDNA, CITY OF, Docket Number 97-0167-MWD-E (Permit Number 10164-001) on January 27, 1998 assessing \$11,520 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Greg Warmink, Staff Attorney at (512) 239-0612 Mary Smith, Enforcement Coordinator at (512) 239-4484, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KINGSVILLE, CITY OF, Docket Number 97-0414-MWD-E (Permit Number 10696-002) on January 27, 1998 assessing \$14,240 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Merrilee Mears, Enforcement Coordinator at (512) 239-4490 Greg Warmink, Staff Attorney at (512) 239-0612, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GRAFORD, CITY OF, Docket Number 97-0848-MWD-E (Permit Number 10722-001) on January 27, 1998.

Information concerning any aspect of this order may be obtained by contacting Lin Zhang, Enforcement Coordinator at (512) 239-4497, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHRISTIAN TABERNACLE, Docket Number 97-0461-MWD-E (Permit Number 13581-001) on January 27, 1998 assessing \$3,120 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Bill Main, Enforcement Coordinator at (512) 239-4481, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MARTIN REALTY AND LAND, INCORPORATED, Docket Number 97-0462-MWD-E (Permit Number 12621-001) on January 27, 1998 assessing \$2,160 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Bill Main, Enforcement Coordinator at (512) 239-4481, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NEW SUMMERFIELD, CITY OF, Docket Number 97-0336-MWD-E (Permit Number 13585-001) on January 27, 1998 assessing \$2,918 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Bill Main, Enforcement Coordinator at (512) 239-4481, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HUGHES SPRINGS, CITY OF, Docket Number 97-0488-MWD-E (Permit Number 10415-001) on January 27, 1998 assessing \$1,440 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Bill Main, Enforcement Coordinator at (512) 239-4481, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NORTHEAST TEXAS COMMUNITY COLLEGE, Docket Number 97-0628-MWD-E (No TNRCC Permit) on January 27, 1998 assessing \$600 in administrative penalties with \$120 deferred.

Information concerning any aspect of this order may be obtained by contacting Gilbert Angelle, Enforcement Coordinator at (512) 239-4489, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SUNBELT FRESH WATER SUPPLY DISTRICT, Docket Number 97-0463-MWD-E (Permit Number 11670-001) on January 27, 1998 assessing \$1,920 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Bill Main, Enforcement Coordinator at (512) 239-4481, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ROBERT LEE, CITY OF, Docket Number 97-0360-MWD-E (Permit Number 10603-002) on January 27, 1998 assessing \$2,880 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gilbert Angelle, Enforcement Coordinator at (512) 239-4489 Greg Warmink, Staff Attorney at (512) 239-0612, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHARYLAND INDEPENDENT SCHOOL DISTRICT, Docket Number. 97-0638-MWD-E (No TNRCC Permit) on January 27, 1998 assessing \$1,680 in administrative penalties with \$336 deferred.

Information concerning any aspect of this order may be obtained by contacting Gilbert Angelle, Enforcement Coordinator at (512) 239-4489, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WILLOW RUN PUBLIC SERVICE, INCORPORATED, Docket Number. 97-0491-MWD-E (Permit Number 10699-001) on January 27, 1998 assessing \$18,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gilbert Angelle, Enforcement Coordinator at (512) 239-4489, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CADDO PARK WATER SYSTEM, INCORPORATED, Docket Number 97-0659-PWS-E (PWS Number 0430072) on January 27, 1998 assessing \$630 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katharine Wheatley, Enforcement Coordinator at (512) 239-4757, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BRIEN AND PRISCILLA HICKMAN DBA HILLTOP MHP, Docket Number 97-0634-PWS-

E (PWS Number 0130019) on January 27, 1998 assessing \$480 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katharine Wheatley, Enforcement Coordinator at (512) 239-4497, or Lin Zhang, Enforcement Coordinator at (512) 239-4497, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LATIN AMERICAN BIBLE INSTITUTE, Docket Number 97-0641-PWS-E (PWS Number 0150379) on January 27, 1998 assessing \$630 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JUAN HERNANDEZ DBA DIANE'S MOBILE HOME PARK, Docket Number 97-0640-PWS-E (PWS No. 0200424) on January 27, 1998 assessing \$480 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ROBERT MOORE DBA MOORE'S MOBILE HOME PARK, Docket Number 97-0633-PWS-E (PWS Number 0150243) on January 27, 1998 assessing \$480 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding PRODUCERS GRAIN AND SUPPLY OF ROCHESTER, INC., Docket Number 97-0712-PST-E (Facility ID Number 37226, Enforcement ID Number 11449) on January 27, 1998 assessing \$36,6650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Newcombe, Staff Attorney at (512) 239-2269, or Craig Carson Enforcement Coordinator at (512) 239-2175, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding HIGHNESS, INCORPORATED, Docket Number 97-0187-PST-E (Enforcement ID Number 5663) on January 27, 1998 assessing \$5,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy L. Harrison, Staff Attorney at (512) 239-1736, or Srinu Kusumanchi, Enforcement Coordinator at (512) 239-5874, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. BHASKAR PATEL, MS. SHETAL GADKARI, S. LAM, Docket Number 96-1162-PST-E (Facility Number. 59274, Enforcement ID Number 5322) on January 27, 1998 assessing \$6,600 in administrative penalties with \$1,320 deferred.

Information concerning any aspect of this order may be obtained by contacting Walter Ehresman, Staff Attorney at (512) 239-0600, or Sushil Modak, Enforcement Coordinator at (512) 239-1045, Texas

Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-9801601

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: February 4, 1998



### Notice of Opportunity to Comment on Settlement Agreements

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 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 March 15, 1998. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code or the Health and Safety Code, the Texas Clean Air Act (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 C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator 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 March 15, 1998. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in writing.

(1)COMPANY: Buster Paving Company, Incorporated; DOCKET NUMBER: 97-0569-AIR-E; IDENTIFIER: Account Number TF-0008-R; LOCATION: Mount Pleasant, Titus County, Texas; TYPE OF FACILITY: asphaltic concrete plant and concrete batch plant; RULE VIOLATED: 30 TAC §116.115(a), §106.201, Permit Number 9578, Agreed Order Number 95-0006-AIR-E, and the Act, §382.085(b), by exceeding the permitted production rate of 250 tons per hour, by emitting, from the asphaltic concrete plant's baghouse, particulate matter exceeding 5.0% opacity averaged over a six-minute period, by emitting excessive dust emissions from the cement silo baghouse, by using 100% recycled asphalt product (RAP) in violation of permitted allowable of 35%, by adding the RAP mixture to the drum mixer in the combustion zone that was not shielded by a veil of raw aggregate, and by emitting excessive dust emissions from the asphaltic concrete plant's baghouse stack; and 30 TAC §101.6(a), §101.7(a), Agreed Order Number 95-0006-AIR-E, and the Act, §382.085(b), by failing to notify the TNRCC of an upset condition and by failing to maintain pollution abatement equipment in good working order; PENALTY: \$13,000; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(2)COMPANY: The City of Bloomburg; DOCKET NUMBER: 97-1020-MWD-E; IDENTIFIER: Enforcement Identification Number 8309; LOCATION: Bloomburg, Cass County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: The Code, §26.121, by discharging wastewater without a permit; PENALTY: \$0; ENFORCEMENT COORDINATOR: Mike Meyer, (512) 239-4492; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(3)COMPANY: The City of Dublin; DOCKET NUMBER: 97-1054-MWD-E; IDENTIFIER: Permit Number 10405-001; LOCATION: Dublin, Erath County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 10405-001 and the Code, §26.121, by failing to comply with the daily average five-day biochemical oxygen demand limitation of 63 pounds per day; PENALTY: \$0; ENFORCEMENT COORDINATOR: Mary Smith, (512) 239-4484; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(4)COMPANY: The City of Milford; DOCKET NUMBER: 97-0985-MWD-E; IDENTIFIER: Permit Number 10730-001 (expired); LOCATION: Milford, Ellis County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: The Code, §26.121, by operating without a permit and continuing to discharge without authorization; PENALTY: \$3,360; ENFORCEMENT COORDINATOR: Lin Zhang, (512) 239-4497; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(5)COMPANY: Laurence Clowdus; DOCKET NUMBER: 97-0607-AGR-E; IDENTIFIER: Enforcement Identification Number 11484; LOCATION: Alvarado, Johnson County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.31 and the Code, §26.121, for unauthorized discharges of wastewater; and 30 TAC §321.35(a), for failure to provide adequate facilities; PENALTY: \$12,240; ENFORCEMENT COORDINATOR: Merrilee Mears, (512) 239-4490; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(6)COMPANY: First Motor Sales; DOCKET NUMBER: 97-1032-AIR-E; IDENTIFIER: Account Number DB-3394-W; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: used car sales; RULE VIOLATED: 30 TAC §114.1(c)(2) and the Act, §382.085(b), by offering for sale a vehicle with required emission control systems and/or devices not in good operable condition; PENALTY: \$400; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(7)COMPANY: Caleb Brett, USA, Inc. DOING BUSINESS AS Intertek Testing Services; Mr. G. J. Lees; DOCKET NUMBER: 95-0880-IHW-E; IDENTIFIER: Solid Waste Registration Number 75026 and nited States Environmental Protection Agency Identification Number TXD982563686; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: chemical testing laboratory; RULE VIOLATED: 30 TAC §335.69(a)(2)-(4), by failing to mark hazardous waste containers with the words "hazardous waste" and with the date upon which accumulation began and by failing to provide documentation demonstrating the facility had a personnel training program; 30 TAC §335.112(a)(3), by failing to keep a copy of a contingency plan on file at the facility; 30 TAC §335.511(a)(1)-(4) and §335.513(c), by failing to provide documentation in support of the use of process knowledge used to classify their wastes; 30 TAC §335.431, by failing to maintain documentation used to determine that certain hazardous wastes shipped from the facility were restricted from land disposal; 30 TAC §335.9(a)(1)(A)-(C) and (E)-(G), by failing to have records regarding management of hazardous waste;

the Code, §26.121, by failing to prevent unauthorized discharges of contaminants to the ground in the area of a 500-gallon above ground storage tank; 30 TAC §335.112(a)(8), by failing to conduct weekly inspections of hazardous waste containers, by failing to store containers holding hazardous waste at least 50 feet from the facility's property line, and by failing to segregate containers holding incompatible waste by physical separation or barrier; and 30 TAC §335.69(d), by failing to label containers holding hazardous waste in a satellite accumulation area with the words "hazardous waste" or with words identifying its contents; PENALTY: \$8,000; ENFORCEMENT COORDINATOR: Thomas C. Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8)COMPANY: Jo Ann Davis dba Jo Ann's Day Camp; DOCKET NUMBER: 97-0551-PWS-E; IDENTIFIER: Public Water Supply Number 1012907; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public drinking water; RULE VIOLATED: 30 TAC §290.120(b)(1) and (c)(5) and the Texas Health and Safety Code (THSC), §341.031, by failing to submit a site selection form for copper and lead sampling and by failing to submit a water sample from the facility for copper and lead analysis; and the THSC, §341.041, by failing to pay the public health service fee; PENALTY: \$630; ENFORCEMENT COORDINATOR: Bhasker Reddi, (512) 239-6646; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9)COMPANY: Kwik Industries, Incorporated; DOCKET NUMBER: 97-1122-EAQ-E; IDENTIFIER: Enforcement Identification Number 11894; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: oil change; RULE VIOLATED: 30 TAC §213.4(a) and the Code, §26.121, by failing to receive approval from the executive director of the TNRCC prior to commencing construction in the Edwards Aquifer Zone; PENALTY: \$200; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 1921 Cedar Bend, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(10)COMPANY: Ruben Garansuay dba Lakeview Subdivision aka Lakeside Subdivision; DOCKET NUMBER: 96-1029-PWS-E; IDENTIFIER: Public Water Supply Number 1330150; LOCATION: San Antonio, Kerr County, Texas; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.106(a), by failing to collect and submit for analysis at least one sample of water from the distribution system; 30 TAC §290.42(e)(4), by failing to provide continuous mechanical chlorination equipment; 30 TAC §290.46(f)(2), by failing to provide a chlorine test kit; 30 TAC §290.46(f)(2)(B), by failing to collect weekly chlorine residual tests; 30 TAC §290.46(e), by failing to have the water system under the direct supervision of a competent water works operator holding a valid certificate of competency; 30 TAC §290.106(a)(1), by failing to provide a sample siting plan; 30 TAC §290.46(n), by failing to provide a map of the distribution system; 30 TAC §290.46(w), by failing to provide a legible sign at each production, treatment and storage facility with the name of the water supply and an emergency phone number; 30 TAC §290.43(c)(2), by failing to have the ground storage tank roof hatch locked; 30 TAC §290.46(p), by failing to inspect ground storage tanks and pressure tank annually; 30 TAC §290.46(j), by failing to have an agreement with each water customer to allow inspection of individual water facilities; 30 TAC §290.45(b)(1)(B)(iii), by failing to provide a service pump capacity of two gallons per minute per connection; 30 TAC §290.45(b)(1)(B)(iv), by failing to provide pressure tank capacity of 20 gallons per connection with a maximum of 30,000 gallons; 30 TAC §290.41(c)(1)(F), by failing to secure a sanitary easement covering all property within 150 feet of the well location; 30 TAC §290.41(c)(3)(K), by failing to seal the

wellhead and by failing to provide the well with a screened casing vent; 30 TAC §290.30(d), by failing to submit plans by a registered professional engineer for review; and 30 TAC §290.41(c)(3)(A), by failing to submit well completion data; PENALTY: \$2,309; ENFORCEMENT COORDINATOR: Tom Napier, (512) 239-6063; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(11)COMPANY: Leon Springs Business and Office Park; DOCKET NUMBER: 97-0552-PWS-E; IDENTIFIER: Public Water Supply Number 0150441; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: public drinking water; RULE VIOLATED: 30 TAC §290.120(b)(1) and (c)(5) and the THSC, §341.031, by failing to submit a site selection form for lead and copper sampling and by failing to submit water samples for copper and lead analysis; PENALTY: \$630; ENFORCEMENT COORDINATOR: Bhasker Reddi, (512) 239-6646; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(12)COMPANY: Jeff Cummings doing business as Mid-Lake Septic Service; DOCKET NUMBER: 97-0716-SLG-E; IDENTIFIER: Enforcement Identification Number 8676; LOCATION: Hemphill, San Augustine County, Texas; TYPE OF FACILITY: beneficial land use; RULE VIOLATED: 30 TAC §312.4(c) and the Code, §26.121, by transporting and disposing of at least one load of septage on an unregistered beneficial land use site; PENALTY: \$0; ENFORCEMENT COORDINATOR: Pam Campbell, (512) 239-4493; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(13)COMPANY: Par Products; DOCKET NUMBER: 97-0882-AIR-E; IDENTIFIER: Account Number CP-0356-L; LOCATION: Wylie, Collin County, Texas; TYPE OF FACILITY: tire plug manufacturing plant; RULE VIOLATED: 30 TAC §116.115, Permit Number 32609, and the Act, §382.085(b), by failing to switch to the inactive carbon bed once breakthrough was reached and by failing to comply with the hourly volatile organic compound (VOC) emission rate limit of 6.31 pounds per hour; and 30 TAC §115.426(a)(2)(A)(iii) and the Act, §382.085(b), by failing to install and maintain a monitor to accurately and continuously measure and record the concentration of VOCs in the gas stream exiting the carbon adsorption system; PENALTY: \$9,000; ENFORCEMENT COORDINATOR: David Edge, (512) 239-1779; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(14)COMPANY: Pine Trails Utility Company Incorporated; DOCKET NUMBER: 97-0783-PWS-E; IDENTIFIER: Public Water Supply Number 1010535; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public drinking water; RULE VIOLATED: 30 TAC §290.105, by exceeding the maximum contaminant level for coliform bacteria; PENALTY: \$780; ENFORCEMENT COORDINATOR: Sabelyn Pussman, (512) 239-6061; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15)COMPANY: Henry Harris dba Plaza Water Utility; DOCKET NUMBER: 97-0875-PWS-E; IDENTIFIER: Public Water Supply Number 0140167; LOCATION: Nolanville, Bell County, Texas; TYPE OF FACILITY: public drinking water; RULE VIOLATED: 30 TAC §290.106 and the THSC, §341.003(d), by failing to submit water samples for bacteriological analysis; and 30 TAC §290.51 and the THSC, §341.041, by failing to pay the public health service fee; PENALTY: \$1,030; ENFORCEMENT COORDINATOR: Gilbert Angelle, (512) 239-4489; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7807, (254) 751-0335.

(16)COMPANY: Clay Price and Tate Price dba Ridgeway Dairy; DOCKET NUMBER: 97-0984-AGR-E; IDENTIFIER: Enforcement Identification Number 11665; LOCATION: Sulphur Springs, Hopkins County, Texas; TYPE OF FACILITY: animal feeding operation; RULE VIOLATED: 30 TAC §321.33(d) and the Code, §26.121, by operating a confined animal feeding operation with more than 250 head of cattle without a permit; PENALTY: \$3,240; ENFORCEMENT COORDINATOR: Mary Smith, (512) 239-4484; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(17)COMPANY: Juan Antonio Rodriguez; DOCKET NUMBER: 97-0470-OSI-E; IDENTIFIER: Enforcement Identification Number 11987; LOCATION: Uvalde, Uvalde County, Texas; TYPE OF FACILITY: on-site sewage installer; RULE VIOLATED: The THSC, §366.004, by installing an on-site sewage facility without an installer's certificate of registration; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(18)COMPANY: Bob Schouten dba Schouten Golden Star Dairy; DOCKET NUMBER: 97-1005-AGR-E; IDENTIFIER: Permit Number 03656; LOCATION: near Hico, Bosque County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.31, Permit Number 03656, and the Code, §26.121, by having tail water runoff from irrigation running off-site and into a road side ditch; PENALTY: \$3,320; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7807, (254) 751-0335 and 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(19)COMPANY: Southwestern Electric Power Company; DOCKET NUMBER: 97-0987-IWD-E; IDENTIFIER: Permit Number 01811; LOCATION: Cason, Titus County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 01811 and the Code, §26.121, by exceeding the permit limit for the daily average aluminum concentration; PENALTY: \$1,920; ENFORCEMENT COORDINATOR: Lin Zhang, (512) 239-4497; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(20)COMPANY: The University of Texas at El Paso; DOCKET NUMBER: 97-1022-MWD-E; IDENTIFIER: Enforcement Identification Number 11874; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: arena and athletic complex; RULE VIOLATED: The Code, §26.121, by having an unauthorized discharge of water runoff containing detergent soap and acrylic paint residue; PENALTY: \$600; ENFORCEMENT COORDINATOR: Bill Main, (512) 239-4481; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

TRD-9801499

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: February 3, 1998



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 and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPR.

Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to the Texas Water Code, §7.075, this notice of the proposed 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 March 4, 1998. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Default Order if a comment discloses facts or consideration that indicate that the consent to the proposed Default Order is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Default Order is not required to be published if those changes are made in response to written comments.

A copy of the proposed Default Order is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, Third Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the Default Order should be sent to the attorney designated for the Default Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 4, 1998**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC 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: Ali Aftab doing business as Super Dooper Food Mart; DOCKET NUMBER: 97-0265-PWS-E; ACCOUNT NUMBER: PWS ID Number 1012943; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public drinking water system; RULES VIOLATED: 30 TAC §341.033(d) and Texas Health and Safety Code, §290.106 by failing to submit commission water samples for six separate months; PENALTY: \$880; STAFF ATTORNEY: Kara Salmanson, Litigation Support Division, MC 175, (512) 239-1738; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-9801506

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: February 3, 1998



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 Texas Water Code (TWC), §7.075. Section 7.075 requires that before the TNRCC may approve these AOs, the TNRCC shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the Texas Register not later than the 30th day before the date on which the public comment period closes, which in this case is March 4, 1998. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withdraw or hold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's Orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO

is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, Third 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 attorney designated for each AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on March 4, 1998. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, Section 7.075 provides that comments on the AOs should be submitted to the TNRCC in writing.

(1)COMPANY: Apache Shores Utility; DOCKET NUMBER: 95-0819-PWS-E; ACCOUNT NUMBER: PWS Number 2270031, CCN Number 10309; LOCATION: Travis County, Texas; TYPE OF FACILITY: community public water system; RULES VIOLATED: 30 TAC §290.45(b)(1)(D)(i) by failing to provide a water well capacity of 0.6 gallon per minute per connection; 30 TAC §290.45(b)(1)(D)(i) by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.44(d)(1) by failing to maintain a minimum pressure of 35 pounds per square inch at all points in the distribution system; 30 TAC §290.113 by failing to provide water which complies with sulfate, fluoride, and total dissolved solids maximum contaminant limits; PENALTY: \$110,000; STAFF ATTORNEY: Guy Henry, Litigation Support Division, MC 175, (512) 239-6259; REGIONAL OFFICE: 1921 Cedar Bend, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(2)COMPANY: Billie E. Newsom; DOCKET NUMBER: 97-0362-AGR-E; ACCOUNT NUMBER: Permit Number 03801; LOCATION: Godley, Johnson County, Texas; TYPE OF FACILITY: dairy; RULES VIOLATED: TWC, §26.121, and Permit Number 03801 by allowing an unauthorized discharge; TNRCC Permit Number 03801 by failing to construct the facilities and failing to maintain adequate waste disposal records; PENALTY: \$7,440; 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.

(3)COMPANY: Chavez Trucking; DOCKET NUMBER: 97-0744-AIR-E; ACCOUNT NUMBER: EE-0461-D; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: trucking company; RULES VIOLATED: 30 TAC §111.143(3)(B) and Texas Health and Safety Code (THSC), §382.085(b) by transporting particulate material in open-bodied trucks or trailers without a complete cover on five separate occasions on the public streets in the City of El Paso; PENALTY: \$3,000; STAFF ATTORNEY: Thomas Corwin, Litigation Support Division, MC 175, (512) 239-5915; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(4)COMPANY: City of Dallas; DOCKET NUMBER: 97-0196-MSW-E; ACCOUNT NUMBER: MSW Permit Number 62; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: municipal solid waste disposal facility; RULES VIOLATED: 30 TAC §330.133(a) and TNRCC MSW Permit Number 62 by failing to maintain adequate daily cover for waste at the active disposal area; 30 TAC §330.132 and TNRCC MSW Permit Number 62 by failing to maintain adequate compaction for waste at the active disposal area; 30 TAC §330.111 and TNRCC MSW Permit Number 62 by depositing waste such that the actual landfill elevations were higher than permitted final contours; 30 TAC §330.111 and TNRCC MSW Permit Number 62

by failing to deposit waste in the filling sequence and direction in Cell 1, and by failing to construct a waste containment berm around the initial working face in Cell 1, as required by its Site Development Plan; PENALTY: \$84,840; STAFF ATTORNEY: Lisa Uselton Dyar, Litigation Support Division, MC 175, (512) 239-5692; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(5)COMPANY: Craig Penfold dba Village Oaks Mobile Home Community; DOCKET NUMBER: 97-0637-MWD-E; ACCOUNT NUMBER: TNRCC ID Number 12667-001; ENF ID 11433; LOCATION: Dallas, Denton-Tarrant County, Texas; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: Permit Number 12667-001 and TWC, §26.121 by discharging sludge from the facility, by failing to meet the permitted grab sample limit for BOD5, by failing to meet the permitted grab sample limit for total suspended solids, and by failing to meet the permitted minimum chlorine residual; PENALTY: \$23,760; STAFF ATTORNEY: Cecily Small Gooch, Litigation Support Division, MC 175, (512) 239-2940; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(6)COMPANY: John Daniel Workman; DOCKET NUMBER: 97-0525-WOC-E; ACCOUNT NUMBER: Wastewater Certificate of Competency Number 205-44-8576; LOCATION: Chambers County, Texas; TYPE OF FACILITY: certified wastewater operator for the Woodland Acres Wastewater Treatment Plant; RULES VIOLATED: 30 TAC §319.1, TWC, §26.121, and TNRCC Wastewater Certificate of Competency Number 205-44-8576 by falsifying the May 1995, June 1995, July 1995, December 1995, March 1996, and April 1996 monthly effluent reports and laboratory test results submitted to the commission; PENALTY: Wastewater Certificate of Competency Number 97-0525-WOC-E issued to John Daniel Workman shall be revoked for a period of not less than three years; STAFF ATTORNEY: Booker Harrison, Litigation Support Division, MC 175, (512) 239-4113; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7)COMPANY: First Company; DOCKET NUMBER: 97-0653-IHW-E; ACCOUNT NUMBER: Enforcement ID Number 1560; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: heating and air conditioning manufacturing facility; RULES VIOLATED: 30 TAC §335.69 and 40 Code of Federal Regulations (CFR) §262.34(b) by accumulating hazardous waste for longer than 90 days; 30 TAC §335.9(a)(1) and 40 CFR §264.74 by failing to keep records of all hazardous waste and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed of at the facility; 30 TAC §335.62 and §335.504 and 40 CFR §262.11 by failing to complete a hazardous waste determination for waste and other materials; 30 TAC §335.6 by failing to notify the TNRCC of its activities relating to the generation and storage of industrial solid waste; 30 TAC §335.431 and 40 CFR §268.7 by failing to include the land disposal restriction notice on the manifest for a shipment of mineral spirits of disposal; 30 TAC §335.63 and 40 CFR §262.12 by failing to obtain a United States Environmental Protection Agency Identification Number; 30 TAC §335.4 and TWC, §26.121(a)(2) by causing, suffering, allowing, or permitting the disposal of hazardous waste in such a manner as to cause an imminent threat of discharge of hazardous waste into or adjacent to the water in the State without obtaining specification authorization; 30 TAC §335.10 and 40 CFR §262.20 by failing to designate an authorized treatment, storage, and/or disposal facility to receive the mineral spirits; PENALTY: \$22,920; STAFF ATTORNEY: Mary Risner, Litigation Support Division, MC 175, (512) 239-6224; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(8)COMPANY: Frank's Custom Center; DOCKET NUMBER: 97-0547-AIR; ACCOUNT NUMBER: EE -0503-M; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: operates a vehicle repair and refinishing operation; RULES VIOLATED: 30 TAC §115.422(1)(A) and THSC, §382.085(b) by failing to meet the control requirements for cleaning operations, 30 TAC §115.422(2) and THSC, §382.085(b) by failing to use high-volume, low-pressure spray guns; 30 TAC §115.426(a)(1)(A) and THSC, §382.085(b) by failing to maintain material safety data sheets on-site; 30 TAC §115.426(a)(1)(B) and THSC, §382.085(b) by failing to maintain coating and solvent usage records on-site; PENALTY: \$500; STAFF ATTORNEY: Hodgson Eckel, Litigation Support Division, MC 175, (512) 239-2195; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(9)COMPANY: Jimmy Lenamond doing business as Big Creek West Subdivision Water System; DOCKET NUMBER: 97-0672-PWS; ACCOUNT NUMBER: 1470032 and Enforcement Number 6779; LOCATION: Limestone County, Texas; TYPE OF FACILITY: public drinking water system; RULES VIOLATED: 30 TAC §290.120(c)(5) and THSC, §341.031 by failing to submit water samples from said public water system for copper and lead analysis; THSC, §341.041 by failing to pay the Public Health Service fee for account number 91470032 for 1994, 1995, 1996, and 1997, resulting in an outstanding balance of \$504.24; PENALTY: \$630; STAFF ATTORNEY: Kara Salmanson, Litigation Support Division, MC 175, (512) 239-1738; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7807, (254) 751-0335.

(10)COMPANY: Quantum Tech, Incorporated aka R Cube S, Incorporated and Quantum Tech, L.L.C.; DOCKET NUMBER: 95-1672-MSW-E; ACCOUNT NUMBER: Municipal Solid Waste Registration Numbers 44105 and 79511A; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: waste tire storage facility; RULES VIOLATED: 30 TAC §330.835(b)(2)(A) by having stored tires in piles greater than 8,000 square feet in size; 30 TAC §330.835(b)(3) by failing to maintain the setback line free of high grass and weeds; 30 TAC §330.835(b)(4) by failing to control vectors at the facility; 30 TAC §330.835(b)(5) by failing to maintain all-weather roads and unobstructed fire lanes between tire piles; 30 TAC §330.835(b)(6) by failing to maintain the perimeter fence at the facility; 30 TAC §330.835(b)(8) by failing to have the required number of fully charged fire extinguishers at the facility; 30 TAC §330.835(b)(12) by failing to comply with City of Houston building, fire, and health codes; 30 TAC §330.835(d)(1)(B) by failing to maintain a copy of the commission's current rules at the facility; 30 TAC §330.835(d)(1)(B) by failing to maintain a copy of the facility's registration at the facility; THSC, §361.486(d) by failing to submit recycling information; PENALTY: \$62,600; 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.

(11)COMPANY: Tejas Alternative Energy Systems, Incorporated doing business as Truck Shack; DOCKET NUMBER: 96-1896-AIR-E; ACCOUNT NUMBER: HX-0981-V; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: truck and RV repair and refinishing shop; RULES VIOLATED: 30 TAC §116.110(a), THSC, §382.0518(a) and §382.085(b) by conducting a painting operation without first obtaining a permit or satisfying the conditions of an exemption from permitting; 30 TAC §115.422(1)(A) and THSC, §382.085(b) by failing to have an operational enclosed cleaner to clean equipment; 30 TAC §115.422(1)(B) and THSC, §382.085(b) by failing to keep all wash solvent in an enclosed reservoir; 30 TAC §115.422(1)(C) and THSC, §382.085(b) by failing to keep all waste solvent in an enclosed container; 30 TAC §115.422(2) and THSC,



§382.085(b) by failing to use a high-volume low-pressure spray gun for vehicle refinishing operations; PENALTY: \$2,750; STAFF ATTORNEY: Tracy L. Harrison, Litigation Support Division, MC 175, (512) 239-1736; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-9801505  
Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission  
Filed: February 3, 1998



### Provisionally-Issued Temporary Permits to Appropriate State Water

Listed below are permits issued during the period of February 4, 1998

Application Number TA-7913 by Woerner Turf Group, Inc. for diversion of ten acre-feet in a one year period for irrigation (turf farm) use. Water may be diverted from the Red River, Red River Basin, approximately 18 miles northwest of Paris, Lamar County, Texas and approximately seven miles upstream in a northwest direction from the crossing of U.S. Hwy 271 and the Red River.

Application Number 7914 by Lonnell Timmons Construction for diversion of one acre-foot in a one year period for industrial (roadway construction) use. Water may be diverted from Cibolo Creek, San Antonio River Basin, approximately two miles northwest of Boerne, Kendall County, Texas at the crossing of I.H. 10 and Cibolo Creek.

Application Number TA-7915 by Duinink Bros., Inc. for diversion of ten acre-feet in a one year period for industrial (roadway construction) use. Water may be diverted from Henrietta Creek, Trinity River Basin, approximately 15 miles southwest of Denton, Denton County, Texas at the crossing of State Hwy 114 and Henrietta Creek.

Application Number TA-7916 by AGS Partners for diversion of ten acre-feet in a one year period for mining (gas well drilling) use. Water may be diverted from a stock tank on a unnamed tributary of Arroyo Burro, Rio Grande Basin, approximately ten miles north of Zapata, Texas.

Application Number TA-7920 by Smith & Co. for diversion of two acre-feet in a one year period for industrial (roadway construction) use. Water may be diverted from a reservoir on Cat Creek, Brazos River Basin, approximately 12.5 miles north of Anderson, Grimes County, Texas and immediately southwest of State Hwy. 34.

Application Number TA-7922 by CITGO Pipeline Company for diversion of one acre-foot in a six month period for industrial (hydrostatic testing) use. Water may be diverted from Little Cypress Bayou, Sabine River Basin, approximately four miles northeast of Orange, Orange County, Texas in the vicinity of the crossing of F.M. 736 and Little Cypress Bayou.

The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permits listed above and who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether

there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be canceled without notice and hearing. No further diversions may be made pending a full hearing as provided in §295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-4433. Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-3300.

TRD-9801600  
Eugenia K. Brumm, Ph.D.  
Chief Clerk  
Texas Natural Resource Conservation Commission  
Filed: February 4, 1998



## Texas Parks and Wildlife Department

### Notification of Consultant Contract Award

Pursuant to provisions of Texas Government Code, Article 10, §2254.030, the Texas Parks and Wildlife Department furnishes this notice of an interagency consultant contract award. After issuing a request for proposals on November 7, 1997, issue of the *Texas Register* (22 TexReg 11020), one proposal was approved for funding.

The interagency contract was awarded to accomplish a park, recreation, and natural resource study for the Texas Parks and Wildlife Department. The interagency contract was awarded to the Texas Agricultural Experiment Station, Texas A&M University System, College Station, Texas 77840 in the amount of \$236,724.00.

The beginning date for this project is January 27, 1998 and the approximate ending date is October 21, 1998, or until completion of services, which ever occurs first.

For further information, please call (512) 389-4530.

TRD-9801414  
Bill Harvey  
Regulatory Coordinator  
Texas Parks and Wildlife Department  
Filed: January 30, 1998



## Texas Department of Protective and Regulatory Services

### Meeting Open to the Public

The staff of the Texas Department of Protective and Regulatory Services (PRS) will conduct a meeting open to the public to receive input in the development of rules governing Chapter 42, Human Resources Code, §42.078, Administrative Penalties. The meeting is not a meeting by the Board, but is a meeting held by PRS staff to aid in the development of rules required by Senate Bill 359 of the 75th Legislature, prior to presenting them to the Board for publication for comment. The meeting will be held on Tuesday, February 24, 1998, in the Board Room on the first floor of the East Tower of the John H. Winters Center, 701 W. 51st Street, Austin, Texas 78757. The meeting will begin at 1:30 pm and close at 4:30 pm.

If you are unable to attend this meeting, but wish to provide input into the rule development for the enforcement of monetary administrative penalties, written comments will be accepted if received by March 10, 1998. Please address written comments to the attention of Mary E. Panella. Written comments may be mailed to MC E-550, P. O. Box 149030, Austin, Texas 78714-9030, delivered to the receptionist in the lobby of the John H. Winters Center, or faxed to (512) 438-3848.

Persons with disabilities planning to attend this hearing who may need auxiliary aids or services are asked to contact Sasha Rasco, (512) 438-3249 by February 20, 1998, so that appropriate arrangements can be made.

TRD-9801401

C. Ed Davis

Deputy Commissioner for Legal Services

Texas Department of Protective and Regulatory Services

Filed: January 30, 1998



## Public Utility Commission of Texas

### Notice of Complaint of MCI Telecommunications Corporation Regarding the Unreasonableness and Anticompetitive Effect of the Access Charges of GTE Southwest, Inc.

On September 4, 1997, MCI Telecommunications Corporation ("MCI") filed a complaint against GTE Southwest, Inc. ("GTE-SW") alleging that GTE-SW's access charges violate provisions of the Public Utility Regulatory Act ("PURA"), Texas Utilities Code Annotated, §§11.001 - 63.063 and the federal Telecommunications Act of 1996, Public Law Number 104- 104, 110 Statute 56 (codified as amended in scattered sections of 15 and 47 U.S.C.) ("FTA") and are unreasonably discriminatory and anticompetitive. MCI seeks relief in the form of a reduction in the access rates charged by GTE-SW. The Public Utility Commission has determined that the following issues are to be addressed in this docket:

1. Are the switched access charges of GTE-SW unreasonably preferential, prejudicial, and/or discriminatory as applied?
2. Are GTE-SW and GTE Long Distance ("GTE-LD"), a division of GTE Communications Corporation engaging in anticompetitive and discriminatory behavior?
3. Is GTE-LD paying tariffed rates for switched access?
4. What is the organizational relationship between GTE-SW, GTE-LD and their parent company?
5. Does the relationship between GTE-SW and GTE-LD give GTE-LD an unfair competitive advantage in the long distance market?
6. If GTE-LD has competitive advantages in the long distance market, are such competitive advantages prohibited by PURA or the FTA?
7. Does the insertion of a third party, such as Worldcom, in the relationship between GTE-SW and GTE-LD ameliorate potentially anticompetitive behavior in the purchase of switched access?

The deadline for intervention is February 27, 1998. Motions to intervene should be mailed or delivered to the Public Utility Commission of Texas, P.O. Box 13326, 1701 North Congress Avenue, Austin, Texas 78711-3326 and should reference Docket Number 17930. Further information may be obtained by calling the Public Utility Commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9801502

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: February 3, 1998



### Notices of Customer-Specific Pricing Contract for Billing and Collection Services Pursuant to PURA §58.103

Notice is given to the public of the filing with the Public Utility Commission of Texas on December 31, 1997, Southwestern Bell Telephone Company's Notification of a Customer-Specific Pricing Contract for Billing and Collection Services pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated, (Vernon 1998) §58.103 (PURA).

Docket Number and Title. Notification of Southwestern Bell Telephone Company's Customer-Specific Pricing Contract for Billing and Collection Services with VarTec Telecom, Inc. Pursuant to PURA §58.103. Docket Number 18496.

The Application. Southwestern Bell Telephone Company filed revised tariff sheets with the General Billing and Collection Contract which reflect a range of rates for certain common customer-specific billing and collection service elements. Under PURA, Chapter 58, Subchapter D, Billing and Collection Services are classified as a discretionary service, and as such are subject to pricing flexibility, which includes customer-specific contracts.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before February 19, 1998. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9801535

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: February 3, 1998



Notice is given to the public of the filing with the Public Utility Commission of Texas on December 31, 1997, of Southwestern Bell Telephone Company's Notification of a Customer-Specific Pricing Contract for Billing and Collection Services pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated, (Vernon 1998) §58.103 (PURA).

Docket Number and Title. Notification of Southwestern Bell Telephone Company's Customer-Specific Pricing Contract for Billing and Collection Services with USP&C, Inc. Pursuant to PURA §58.103. Docket Number 18497.

The Application. Southwestern Bell Telephone Company filed revised tariff sheets with the General Billing and Collection Contract which reflect a range of rates for certain common customer-specific billing and collection service elements. Under PURA, Chapter 58, Subchapter D, Billing and Collection Services are classified as a discretionary service, and as such are subject to pricing flexibility, which includes customer-specific contracts.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before February 19, 1998. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9801536  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 3, 1998



Notice is given to the public of the filing with the Public Utility Commission of Texas on December 31, 1997, of Southwestern Bell Telephone Company's Notification of a Customer- Specific Pricing Contract for Billing and Collection Services pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated, (Vernon 1998) §58.103 (PURA).

Docket Number and Title. Notification of Southwestern Bell Telephone Company's Customer-Specific Pricing Contract for Billing and Collection Services with Teleplus, Inc. Pursuant to PURA §58.103. Docket Number 18498.

The Application. Southwestern Bell Telephone Company filed revised tariff sheets with the General Billing and Collection Contract which reflect a range of rates for certain common customer-specific billing and collection service elements. Under PURA, Chapter 58, Subchapter D, Billing and Collection Services are classified as a discretionary service, and as such are subject to pricing flexibility, which includes customer-specific contracts.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before February 19, 1998. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9801537  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 3, 1998



Notice is given to the public of the filing with the Public Utility Commission of Texas on December 31, 1997, of Southwestern Bell Telephone Company's Notification of a Customer- Specific Pricing Contract for Billing and Collection Services pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated, (Vernon 1998) §58.103 (PURA).

Docket Number and Title. Notification of Southwestern Bell Telephone Company's Customer-Specific Pricing Contract for Billing and Collection Services with Telephone Billing Services, Inc. pursuant to PURA §58.103. Docket Number 18499.

The Application. Southwestern Bell Telephone Company filed revised tariff sheets with the General Billing and Collection Contract which reflect a range of rates for certain common customer-specific billing and collection service elements. Under PURA, Chapter 58, Subchapter D, Billing and Collection Services are classified as a discretionary service, and as such are subject to pricing flexibility, which includes customer-specific contracts.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before February 19, 1998. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9801538  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 3, 1998



Notice is given to the public of the filing with the Public Utility Commission of Texas on December 31, 1997, of Southwestern Bell Telephone Company's Notification of a Customer- Specific Pricing Contract for Billing and Collection Services pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated, (Vernon 1998) §58.103 (PURA).

Docket Number and Title. Notification of Southwestern Bell Telephone Company's Customer-Specific Pricing Contract for Billing and Collection Services with Talton Telecommunications Corporation Pursuant to PURA § 58.103. Docket Number 18500.

The Application. Southwestern Bell Telephone Company filed revised tariff sheets with the General Billing and Collection Contract which reflect a range of rates for certain common customer-specific billing and collection service elements. Under PURA, Chapter 58, Subchapter D, Billing and Collection Services are classified as a discretionary service, and as such are subject to pricing flexibility, which includes customer-specific contracts.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before February 19, 1998. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9801539  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 3, 1998



Notice is given to the public of the filing with the Public Utility Commission of Texas on December 31, 1997, of Southwestern Bell Telephone Company's Notification of a Customer- Specific Pricing Contract for Billing and Collection Services pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated, (Vernon 1998) §58.103 (PURA).

Docket Number and Title. Notification of Southwestern Bell Telephone Company's Customer-Specific Pricing Contract for Billing and Collection Services with Axces, Inc. Pursuant to PURA §58.103. Docket Number 18501.

The Application. Southwestern Bell Telephone Company filed revised tariff sheets with the General Billing and Collection Contract which reflect a range of rates for certain common customer-specific billing and collection service elements. Under PURA, Chapter 58, Subchapter D, Billing and Collection Services are classified as a

discretionary service, and as such are subject to pricing flexibility, which includes customer-specific contracts.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before February 19, 1998. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9801540  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 3, 1998

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Notice is given to the public of the filing with the Public Utility Commission of Texas on December 31, 1997, of Southwestern Bell Telephone Company's Notification of a Customer-Specific Pricing Contract for Billing and Collection Services pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated, (Vernon 1998) §58.103 (PURA).

Docket Number and Title. Notification of Southwestern Bell Telephone Company's Customer-Specific Pricing Contract for Billing and Collection Services with ILD Teleservices Pursuant to PURA §58.103. Docket Number 18505.

The Application. Southwestern Bell Telephone Company filed revised tariff sheets with the General Billing and Collection Contract which reflect a range of rates for certain common customer-specific billing and collection service elements. Under PURA, Chapter 58, Subchapter D, Billing and Collection Services are classified as a discretionary service, and as such are subject to pricing flexibility, which includes customer-specific contracts.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before February 19, 1998. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9801544  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission  
Filed: February 3, 1998

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Notice is given to the public of the filing with the Public Utility Commission of Texas on December 31, 1997, of Southwestern Bell Telephone Company's Notification of a Customer-Specific Pricing Contract for Billing and Collection Services pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated, (Vernon 1998) §58.103 (PURA).

Docket Number and Title. Notification of Southwestern Bell Telephone Company's Customer-Specific Pricing Contract for Billing and Collection Services with International Telecommunications Corporation Pursuant to PURA §58.103. Docket Number 18502.

The Application. Southwestern Bell Telephone Company filed revised tariff sheets with the General Billing and Collection Contract which reflect a range of rates for certain common customer-specific

billing and collection service elements. Under PURA, Chapter 58, Subchapter D, Billing and Collection Services are classified as a discretionary service, and as such are subject to pricing flexibility, which includes customer-specific contracts.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before February 19, 1998. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9801541  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission  
Filed: February 3, 1998

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Notice is given to the public of the filing with the Public Utility Commission of Texas on December 31, 1997, of Southwestern Bell Telephone Company's Notification of a Customer-Specific Pricing Contract for Billing and Collection Services pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated, (Vernon 1998) §58.103 (PURA).

Docket Number and Title. Notification of Southwestern Bell Telephone Company's Customer-Specific Pricing Contract for Billing and Collection Services with Operator Communications, Inc. Pursuant to PURA §58.103. Docket Number 18503.

The Application. Southwestern Bell Telephone Company filed revised tariff sheets with the General Billing and Collection Contract which reflect a range of rates for certain common customer-specific billing and collection service elements. Under PURA, Chapter 58, Subchapter D, Billing and Collection Services are classified as a discretionary service, and as such are subject to pricing flexibility, which includes customer-specific contracts.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before February 19, 1998. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9801542  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission  
Filed: February 3, 1998

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Notice is given to the public of the filing with the Public Utility Commission of Texas on December 31, 1997, of Southwestern Bell Telephone Company's Notification of a Customer-Specific Pricing Contract for Billing and Collection Services pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated, (Vernon 1998) (PURA).

Docket Number and Title. Notification of Southwestern Bell Telephone Company's Customer-Specific Pricing Contract for Billing and Collection Services with Lifeline/Hebron/ACI, Inc. Pursuant to PURA §58.103. Docket Number 18504.

The Application. Southwestern Bell Telephone Company filed revised tariff sheets with the General Billing and Collection Contract which reflect a range of rates for certain common customer-specific billing and collection service elements. Under PURA, Chapter 58, Subchapter D, Billing and Collection Services are classified as a discretionary service, and as such are subject to pricing flexibility, which includes customer-specific contracts.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before February 19, 1998. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9801543  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission  
Filed: February 3, 1998

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Notice is given to the public of the filing with the Public Utility Commission of Texas on December 31, 1997, of Southwestern Bell Telephone Company's Notification of a Customer-Specific Pricing Contract for Billing and Collection Services pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated, (Vernon 1998) §58.103 (PURA).

Docket Number and Title. Notification of Southwestern Bell Telephone Company's Customer-Specific Pricing Contract for Billing and Collection Services with Coastal Telephone Services Limited Company Pursuant to PURA §58.103. Docket Number 18506.

The Application. Southwestern Bell Telephone Company filed revised tariff sheets with the General Billing and Collection Contract which reflect a range of rates for certain common customer-specific billing and collection service elements. Under PURA, Chapter 58, Subchapter D, Billing and Collection Services are classified as a discretionary service, and as such are subject to pricing flexibility, which includes customer-specific contracts.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before February 19, 1998. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9801545  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission  
Filed: February 3, 1998

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Notice is given to the public of the filing with the Public Utility Commission of Texas on December 31, 1997, of Southwestern Bell Telephone Company's Notification of a Customer-Specific Pricing Contract for Billing and Collection Services pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated, (Vernon 1998) §58.103 (PURA).

Docket Number and Title. Notification of Southwestern Bell Telephone Company's Customer-Specific Pricing Contract for Billing

and Collection Services with Business Discount Plan, Inc. Pursuant to PURA §58.103. Docket Number 18507.

The Application. Southwestern Bell Telephone Company filed revised tariff sheets with the General Billing and Collection Contract which reflect a range of rates for certain common customer-specific billing and collection service elements. Under PURA, Chapter 58, Subchapter D, Billing and Collection Services are classified as a discretionary service, and as such are subject to pricing flexibility, which includes customer-specific contracts.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before February 19, 1998. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9801546  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission  
Filed: February 3, 1998

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Notice is given to the public of the filing with the Public Utility Commission of Texas on December 31, 1997, of Southwestern Bell Telephone Company's Notification of a Customer-Specific Pricing Contract for Billing and Collection Services pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated, (Vernon 1998) §58.103 (PURA).

Docket Number and Title. Notification of Southwestern Bell Telephone Company's Customer-Specific Pricing Contract for Billing and Collection Services with CommuniGroup of K.C., Inc. d/b/a CGI Pursuant to PURA §58.103. Docket Number 18510.

The Application. Southwestern Bell Telephone Company filed revised tariff sheets with the General Billing and Collection Contract which reflect a range of rates for certain common customer-specific billing and collection service elements. Under PURA, Chapter 58, Subchapter D, Billing and Collection Services are classified as a discretionary service, and as such are subject to pricing flexibility, which includes customer-specific contracts.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before February 19, 1998. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9801547  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission  
Filed: February 3, 1998

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Notice is given to the public of the filing with the Public Utility Commission of Texas on December 31, 1997, of Southwestern Bell Telephone Company's Notification of a Customer-Specific Pricing Contract for Billing and Collection Services pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated, (Vernon 1998) §58.103 (PURA).

Docket Number and Title. Notification of Southwestern Bell Telephone Company's Customer-Specific Pricing Contract for Billing and Collection Services with Billing Information Concepts, Inc. d/ b/a Zero Plus Dialing Pursuant to PURA §58.103. Docket Number 18512.

The Application. Southwestern Bell Telephone Company filed revised tariff sheets with the General Billing and Collection Contract which reflect a range of rates for certain common customer-specific billing and collection service elements. Under PURA, Chapter 58, Subchapter D, Billing and Collection Services are classified as a discretionary service, and as such are subject to pricing flexibility, which includes customer-specific contracts.

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 Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before February 19, 1998. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9801548  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission  
Filed: February 3, 1998



#### Notice of Initiation of Proceeding to Designate as Eligible Telecommunications Providers, Local Exchange Carriers that are CCN Holders Seeking Support Under the Texas High Cost Universal Service Plan

Notice is given to the public of the initiation of the initial proceeding to designate, as eligible telecommunications providers (ETPs), those local exchange carriers that are certificate of convenience and necessity (CCN) holders seeking support under the Texas High Cost Universal Service Plan (THCUSP).

Project Title and Number: Initial Proceeding to Designate as Eligible Telecommunications Providers (ETPs), Local Exchange Carriers that are CCN Holders Seeking Support Under P.U.C. Substantive Rule 23.133, relating to the Texas High Cost Universal Service Plan (THCUSP), Pursuant to P.U.C. Substantive Rule 23.147. Project Number 18769.

The Proceeding: Pursuant to P.U.C. Substantive Rule 23.147(f)(1), the Public Utility Commission of Texas (commission) initiates this initial proceeding to designate as eligible telecommunications providers (ETPs), those local exchange carriers (LECs) that are holders of certificates of convenience and necessity (CCN holders) seeking support under P.U.C. Substantive Rule 23.133, relating to the Texas High Cost Universal Service Plan (THCUSP), and that meet the criteria established by P.U.C. Substantive Rule 23.147(d)(2).

Since these LECs are subject to additional eligibility requirements under P.U.C. Substantive Rule 23.147(d)(2), the commission has, in the interests of administrative efficiency, initiated a separate proceeding, Project Number 18768, to designate as ETPs those LECs that are (1) holders of certificates of operating authority (COA holders) seeking support under P.U.C. Substantive Rule 23.133, relating to the Texas High Cost Universal Service Plan (THCUSP); or (2) CCN or COA holders seeking support under P.U.C. Substantive Rule 23.134, relating to the Small and Rural Incumbent Local Exchange Carrier (ILEC) Universal Service Plan, and meet the criteria established by P.U.C. Substantive Rule 23.147(d)(1).

Application Filing Period: To aid the commission in conducting this proceeding efficiently and timely, said LECs shall file their applications not earlier than Tuesday, February 17, 1998, but not later than Monday, March 2, 1998 (filing period). Before the filing period, the commission will issue a procedural order addressing the contents of the application, including the nature of supporting evidence, and establishing a procedural schedule for this proceeding.

TRD-9801574  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission  
Filed: February 4, 1998



#### Notice of Initiation of Proceeding to Designate as Eligible Telecommunications Providers, Local Exchange Carriers that are COA Holders Seeking Support under the Texas High Cost Universal Service Plan, and Local Exchange Carriers that are COA or CCN Holders Seeking Support Under the Small and Rural Incumbent Local Exchange Carrier Universal Service Plan

Notice is given to the public of the initiation of the initial proceeding to designate as eligible telecommunications providers (ETPs), those local exchange carriers that are certificate of operating authority (COA) holders seeking support under the Texas High Cost Universal Service Plan (THCUSP), and those local exchange carriers that are COA holders or certificate of convenience and necessity (CCN) holders seeking support under the Small and Rural Incumbent Local Exchange Carrier Universal Service Plan.

Project Title and Number: Initial Proceeding to Designate As Eligible Telecommunications Providers (ETPs), Local Exchange Carriers that are COA Holders Seeking Support Under P.U.C. Substantive Rule 23.133, relating to the Texas High Cost Universal Service Plan (THCUSP), and Local Exchange Carriers that are COA or CCN Holders Seeking Support Under P.U.C. Substantive Rule 23.134, relating to the Small and Rural Incumbent Local Exchange Carrier (ILEC) Universal Service Plan, Pursuant to P.U.C. Substantive Rule 23.147. Project Number 18768.

The Proceeding: Pursuant to P.U.C. Substantive Rule 23.147(f)(1), the Public Utility Commission of Texas (commission) initiates this initial proceeding to designate as eligible telecommunications providers (ETPs), those local exchange carriers (LECs) that are (1) holders of certificates of operating authority (COA holders) seeking support under P.U.C. Substantive Rule 23.133, relating to the Texas High Cost Universal Service Plan (THCUSP), or (2) COA holders or holders of certificates of convenience and necessity (CCN holders) seeking support under P.U.C. Substantive Rule 23.134, relating to the Small and Rural Incumbent Local Exchange Carrier (ILEC) Universal Service Plan, and that meet the criteria established by P.U.C. Substantive Rule 23.147(d)(1).

In the interests of administrative efficiency, the commission has initiated a separate proceeding, Project Number 18769, to designate as ETPs those LECs that are CCN holders seeking support under P.U.C. Substantive Rule 23.133, relating to the Texas High Cost Universal Service Plan (THCUSP), and that meet the criteria established by P.U.C. Substantive Rule 23.147(d)(2).

Application Filing Period: To aid the commission in conducting this proceeding efficiently and timely, said LECs shall file their applications not earlier than Tuesday, February 17, 1998, but not later than Monday, March 2, 1998 (filing period). Before the filing period,

the commission will issue a procedural order addressing the contents of the application, including the nature of supporting evidence, and establishing a procedural schedule for this proceeding.

TRD-9801573  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission  
Filed: February 4, 1998

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#### Notice of Initiation of Proceeding to Designate Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds Under 47 U.S.C. §214(E)

Notice is given to the public of the initiation of the initial proceeding to designate common carriers as eligible telecommunications carriers to receive federal universal service funds under 47 U.S.C. §214(e).

Project Title and Number: Initial Proceeding to Designate Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds Under 47 U.S.C. §214(e), Pursuant to P.U.C. Substantive Rule 23.148. Project Number 18770.

The Proceeding: Pursuant to P.U.C. Substantive Rule 23.148(f)(1), the Public Utility Commission of Texas (commission) initiates this initial proceeding to designate as eligible telecommunications carriers to receive federal universal service funds, those common carriers not previously so designated in General Counsel's Petition For Designation of Eligible Telecommunications Carriers Under 47 U.S.C. §214(e), Project Number 18100 (December 17, 1997) (not yet published). Designation as an eligible telecommunications carrier qualifies the designee to apply for federal universal service funds under 47 U.S.C. §254, and is a requirement for designation as an eligible telecommunications provider to receive funds from the Texas Universal Service Fund under P.U.C. Substantive Rules 23.133 and 23.134.

Application Filing Period: To aid the commission in conducting this proceeding efficiently and timely, said common carriers shall file their applications not earlier than Tuesday, February 17, 1998, but not later than Monday, March 2, 1998 (filing period). Before the filing period, the commission will issue a procedural order addressing the contents of the application, including the nature of supporting evidence, and establishing a procedural schedule for this proceeding.

TRD-9801575  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission  
Filed: February 4, 1998

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#### Notices of Intent to File Pursuant to P.U.C. 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 El Paso Times in El Paso, Texas.

Tariff Title and Number: Application of Southwestern Bell Telephone Company for a New PLEXAR-Custom Service for El Paso Times in El Paso, Texas Pursuant to P.U.C. SUBSTANTIVE RULE 23.27. Tariff Control Number 18738.

The Application: Southwestern Bell Telephone Company is requesting approval for a new PLEXAR-Custom service for El Paso Times in El Paso, Texas. The designated exchange for this service is the El Paso exchange, and the geographic market for this specific PLEXAR-Custom service is the El Paso LATA.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9801394  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 30, 1998

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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 1143 station addition to the existing PLEXAR-Custom service for Aldine ISD in Houston, Texas.

Tariff Title and Number: Application of Southwestern Bell Telephone Company for a 1143 Station Addition to the Existing PLEXAR-Custom Service for Aldine ISD in Houston, Texas Pursuant to P.U.C. SUBSTANTIVE RULE 23.27. Tariff Control Number 18740.

The Application: Southwestern Bell Telephone Company is requesting approval for a 1143 station addition to the existing PLEXAR-Custom service for Aldine ISD in Houston, Texas. The designated exchange for this service is the Houston exchange, and the geographic market for this specific PLEXAR-Custom service is the Houston LATA.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9801398  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 30, 1998

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#### Notice of Workshop on Interconnection Rule

The staff of the Public Utility Commission of Texas (commission) plans to hold a workshop on March 2, 1998, to review commission Substantive Rule §23.97, relating to Interconnection. Specifically, the review will consider the following:

1. Whether or not the local interconnection rates established pursuant to subsection (d)(4)(A)(i)(I) should apply to traffic in addition to the traffic described in that subsection (as required by §23.97(d)(4)(A)(ii));
2. Issues concerning access to 9-1-1 databases;
3. Issues concerning competitive local exchange carrier (CLEC) registration with 9-1-1 authorities; and

4. Whether the rule should include provisions regarding interconnection and enforcement of agreements as required by the federal Telecommunications Act of 1996.

The workshop will be held from 1:00 p.m. to 5:00 p.m. in the Robert W. Gee hearing room on the seventh floor of the William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701. Parties should be prepared to discuss the issues identified in this notice. This project has been assigned Project Number 18758.

If necessary, additional workshops will be held on March 16, 1998, and on March 25, 1998. Times and locations for these workshops will be announced at the March 2 workshop or filed in Project Number 18758.

Persons who plan to attend the March 2, 1998 workshop should register with Sandra Hamlett at (512) 936-7239. If there are any questions, contact Nelson Parish at (512) 936-7257.

TRD-9801534  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 3, 1998



#### Notice of Workshop on 1999 Telecommunications Scope Of Competition Report

The Public Utility Commission of Texas (commission) plans to hold a staff-level workshop on February 26, 1998, to discuss Project Number 17962, the 1999 Telecommunications Scope of Competition Report. Topics of discussion in this workshop will include what the structure of the report should be, what information should be included in the report, where the information to be included in the report can be obtained, how long it would take for the information to be provided, and any other concerns regarding legislative recommendations. The workshop will be held from 1:00 p.m. to 5:00 p.m. in the commission's training room on the seventh floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Agendas for the workshop and a preliminary staff outline proposal for the report will be made available by February 17, 1998, in the commission's central records under Project Number 17962.

Persons who plan to attend the workshop should register with Sandra Hamlett at (512) 936-7239. If there are any questions, contact Nelson Parish at (512) 936-7257.

TRD-9801472  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 2, 1998



#### Number Conservation Implementation Team (NCIT) Meeting

The Public Utility Commission of Texas (PUC) has initiated Project Number 18438 to implement number conservation measures in Texas.

The PUC staff invites parties to participate in this project by attending a meeting of the Number Conservation Implementation Team (NCIT) designed to define the key issues and develop a timeline for establishing number pooling in Texas. The NCIT meeting will be held on Thursday, February 26, 1998 from 10:00 a.m. until 4:00 p.m. in Hearing Room Gee, seventh floor, 1701 North Congress Avenue, Austin, Texas 78701.

For more information contact Ms. Linda Hymans at (512) 936-7321, or e-mail [hymans@puc.state.tx.us](mailto:hymans@puc.state.tx.us). All inquiries or written comments should reference Project Number 18438.

TRD-9801533  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission  
Filed: February 3, 1998



#### Public Notice of Amendment to Interconnection Agreement

On January 27, 1998, Southwestern Bell Telephone Company and Sterling International doing business as Reconex, collectively referred to as applicants, filed a joint application for approval of an amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 18732. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

Pursuant to P.U.C. PROCEDURAL RULE 22.341, the commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 18732. 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 February 26, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.



Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 18732.

TRD-9801396  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 30, 1998



### Public Notices of Interconnection Agreement

On January 23, 1998, Premiere Network Services, Inc. and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 18722. 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 18722. 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 March 2, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and

- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 18722.

TRD-9801395  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission  
Filed: January 30, 1998



On January 27, 1998, Southwestern Bell Telephone Company and Navigator Telecommunications, LLC, collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§ 11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 18733. 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 18733. 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 March 6, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas

78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 18733.

TRD-9801397  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission  
Filed: January 30, 1998



## **Teacher Retirement System of Texas**

### **Report of Balance Sheet, Actuarial Valuation, and Unfunded Liabilities**

Section 825.108 of the Texas Government Code requires the Teacher Retirement System of Texas (TRS) to publish a report in the *Texas Register* no later than March 1 of each year. The report must contain the balance sheet of the retirement system as of August 31 of the preceding fiscal year and an actuarial valuation of the system's assets and liabilities, including the extent to which the system's liabilities are unfunded.

TRS is publishing the following report as required by statute.



334-Report of Balance Sheet,  
Actuarial Valuation, and  
Unfunded Liabilities  
[graphic 1]

**Watson Wyatt & Company**

Suite 2400  
2121 San Jacinto Street  
Dallas, TX 75201-2772

Telephone 214 978 3400  
Fax 214 978 3650

November 20, 1997

**BOARD OF TRUSTEES**  
Teacher Retirement System of Texas

**Subject: Actuary's Certification of the Actuarial Valuation as of August 31, 1997**

We certify that the information included herein and contained in the 1997 Actuarial Valuation Report is accurate and fairly presents the actuarial position of the Teacher Retirement System of Texas as of August 31, 1997.

All calculations have been made in conformity with generally accepted actuarial principles and practices, and with the Actuarial Standards of Practice issued by the Actuarial Standards Board. In our opinion, the results presented comply with the requirements of the Texas statutes and, where applicable, the Internal Revenue Code, ERISA, and the Statements of the Governmental Accounting Standards Board. The undersigned are independent actuaries. They are Enrolled Actuaries and Members of the American Academy of Actuaries, and are experienced in performing valuations for large public retirement systems.

***Actuarial Valuations***

The primary purpose of the valuation report is to determine the adequacy of the current state contribution rate through measuring the resulting funding period, to describe the current financial condition of the system, and to analyze changes in the system's condition. In addition, the report provides information required by the system in connection with Governmental Accounting Standards Board Statement No. 25 (GASB No. 25), and it provides various summaries of the data.

Valuations are prepared annually, as of August 31 of each year, the last day of the system's plan and fiscal year.

***Financing Objective of the Plan***

Contribution rates are established by law that, over time, are intended to remain level as a percent of payroll. The employee and state contribution rates have been set by law to provide for the normal cost plus the level percentage of payroll required to amortize the unfunded actuarial accrued liability over a period not in excess of 31 years.

***Progress Toward Realization of Financing Objective***

The actuarial accrued liability, the unfunded actuarial accrued liability, and the calculation of the resulting funding period illustrate the progress toward the realization of financing objectives. Based on this actuarial valuation as of August 31, 1997, the funding period corresponding to the 6.00% state contribution rate is 0.6 years, which is less than the statutory limit of 31 years.

The state and other participating employers contributed the legislated rate for the 1996/1997 fiscal year and are contributing the legislated rate for the 1997/1998 fiscal year. The resulting funding period has remained below 31 years. Therefore all financing objectives are being realized.



### ***Plan Provisions***

The plan provisions used in the actuarial valuation are described in Table 20 of the valuation report.

### ***Disclosure of Pension Information***

Effective for the fiscal year ending August 31, 1996, the board of trustees adopted compliance with the requirements of Governmental Accounting Standards Board (GASB) Statement No. 25.

### ***Actuarial Methods and Assumptions***

The actuarial methods and assumptions have been selected by the board of trustees of the Teacher Retirement System of Texas based upon our analysis and recommendations. These assumptions and methods are detailed in Table 21 of the valuation report. The board of trustees has sole authority to determine the actuarial assumptions used for the plan. With the exception of the inflation assumption, the actuarial methods and assumptions are based on a study of actuarial experience for the plan years 1990 through 1995 and were adopted in November 1996. This year, inflation assumption was lowered from 4.25% to 4.00%. This change was adopted by the board in September 1997.

In our opinion, the actuarial assumptions used are appropriate for purposes of the valuation and are internally consistent and reasonably related to the experience of the system and to reasonable expectations.

### ***Data***

In preparing the August 31, 1997 actuarial valuation, we have relied upon member and asset data provided by the Teacher Retirement System of Texas. We have not subjected this data to any auditing procedures, but have examined the data for reasonableness and for consistency with prior year's data.

Respectfully submitted,

Richard B. Mallett, FSA, EA, MAAA  
Actuary

W. Michael Carter, FSA, EA, MAAA  
Actuary

**Actuarial Present Value of Future Benefits**

ACTUARIAL VALUATION - AUGUST 31, 1997

	August 31,	
	1997	1996
<b>Present Value of Benefits Presently Being Paid:</b>		
Service Retirement Benefits	\$ 20,666,794,890	\$ 18,477,220,235
Disability Retirement Benefits	603,871,000	558,491,000
Death Benefits	528,169,000	485,841,000
Present Survivor Benefits	136,686,000	105,997,000
<b>TOTAL PRESENT VALUE OF BENEFITS PRESENTLY BEING PAID</b>	<b>\$ 21,935,520,890</b>	<b>\$ 19,627,549,235</b>
<b>Present Value of Benefits Payable in the Future to Present Active Members:</b>		
Service Retirement Benefits	\$ 48,300,236,299	\$ 44,090,349,295
Disability Retirement Benefits		
Disability Prior to Vesting	\$ 13,835,207	\$ 13,185,263
Disability After Vesting	761,575,484	1,416,429,737
<b>TOTAL DISABILITY BENEFITS</b>	<b>\$ 775,410,691</b>	<b>\$ 1,429,615,000</b>
Refunds of Contributions on Withdrawal	\$ 1,861,639,711	\$ 2,132,545,916
Death and Survivor Benefits		
Two Times Pay	\$ 367,683,938	\$ 358,555,968
Refund of Contributions	4,541,723	4,739,324
Five Year Annuity	70,911,002	73,336,980
Life Annuity	402,720,853	436,723,680
Survivor Benefit	40,933,413	47,094,737
<b>TOTAL DEATH BENEFITS</b>	<b>\$ 886,790,929</b>	<b>\$ 920,450,689</b>
<b>TOTAL ACTIVE MEMBER LIABILITIES</b>	<b>\$ 51,824,077,630</b>	<b>\$ 48,572,960,900</b>
<b>Present Value of Benefits Payable in the Future to Present Inactive Members:</b>		
Terminated Vested Participants		
Retirement Benefits	\$ 409,824,000	\$ 261,517,000
Death Benefits	9,304,000	7,094,000
<b>TOTAL TERMINATED VESTED BENEFITS</b>	<b>\$ 419,128,000</b>	<b>\$ 268,611,000</b>
Refunds of Contributions to Terminated Non-vested Members	\$ 10,439,922	\$ 9,243,163
Future Survivor Benefits Payable on Behalf of Present Annuitants	\$ 488,090,000	\$ 469,861,000
<b>TOTAL INACTIVE LIABILITIES</b>	<b>\$ 917,657,922</b>	<b>\$ 747,715,163</b>
<b>TOTAL ACTUARIAL PRESENT VALUE OF FUTURE BENEFITS</b>	<b>\$ 74,677,256,442</b>	<b>\$ 68,948,225,298</b>

Filed: February 2, 1998



TRD-9801461  
Charles Dunlap  
Executive Director  
Teacher Retirement System of Texas

Texas Savings and Loan Department

## Notice of Application for Change of Control of a Savings Bank

Notice is hereby given that on January 21, 1998, application was filed with the Savings and Loan Commissioner of Texas by: William B. Dusty Rhodes, 2600 FM 1460, Round Rock, Texas 78664, for control of Franklin Bank, S.S.B. (currently Bowie State Bank).

This application is filed pursuant to 7 TAC §§75.121-75.127 of the Rules and Regulations Applicable to Texas Savings Banks. These rules are on file with the Secretary of State, Texas Register Division, or may be seen at the Department's offices in the Finance Commission Building, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

TRD-9801443

James L. Pledger

Commissioner

Texas Savings and Loan Department

Filed: February 2, 1998



## Texas Department of Transportation

### Notice of Invitation

Notice of Invitation: The Fort Worth District of the Texas Department of Transportation (TxDOT) intends to enter a contract with two professional engineers, pursuant to Texas Government Code, Chapter 2254, Subchapter A, and 43 TAC §§9.30-9.43, to provide the following services. To be considered, a prime provider and any subproviders proposed on the team must be precertified by the deadline date for receiving the letter of interest for each of the advertised work category(s), unless the work category is a non-listed work category. To qualify for contract award, a selected prime engineer must perform a minimum of 30% of the actual contract work. The Consultant Selection Team has established that providers that score between the range of scores of not less than 750, with a maximum of 900 are considered equally qualified to perform the work. Please be advised, a prime provider or subprovider currently employing former TxDOT employees needs to be aware of the revolving door laws, including Government Code, Chapter 572 and Section 52, Article IX, of the General Appropriations Bill. To be considered, the proposed team must demonstrate, that they have a professional engineer registered in Texas that will sign and seal the work to be performed on the contract.

Contract Number 02-8RFP5001- The precertified work categories and the percent of work per category are: 7.1.1 (20%) Traffic Engineering Studies; 7.3.1 (10%) Traffic Signal Timing; 7.4.1 (10%) Traffic Control Systems Analysis, Design and Implementation; 8.1.1 (10%) Signing, Pavement Marking, and Channelization; 8.3.1 (40%) Signalization; 8.5.1 (10%) Highway - Rail Grade Crossings. The work to be performed shall consist of the preparation of plans, specifications, and estimates (P.S.&E.) for signal installations, P.S.&E. sign installations, P.S.&E. railroad grade crossings, signal timing studies, traffic analysis and speed zone studies, signal and stop sign warrant studies, provided traffic count services, and prepare speed zone strip maps throughout the Fort Worth District.

Historically Underutilized Business (HUB) Goal: The assigned HUB goal for participation in the work to be performed under this contract is 10% of the contact amount.

Long List Criteria: TxDOT will consider the following criteria in its review of all interested providers.

1. Past Performance Scores: Minimum requirements - Must have two good written references from entities. One reference in regard to the preparation of plans, specifications, and estimates (P.S.&E.) for traffic signal installation(s). One separate reference in regard to the preparation of P.S.&E. for a railroad grade crossing. Preferred requirements - Must have three written references from entities. One reference in regard to the preparation of plans, specifications, and estimates (P.S.&E.) for traffic installation(s). One separate reference in regard to the preparation of P.S.&E. for a railroad grade crossing. One separate reference in regard to the preparation of P.S.&E. for a sign installation.

### 2. Project Requirements as Specified in Notice.

Traffic Engineering Studies (7.1.1): Minimum Requirements - Must have completed two traffic engineering studies that involve performing of traffic counts, signal warrants, collision diagrams, travel time delay, capacity and level of service analysis, intersection analysis, signing, and pavement markings, that have been completed within the past five years. Preferred Requirements: Must have worked on five traffic engineering studies that involve performing of traffic counts, signal warrants, collision diagrams, travel time delay, capacity and level of service analysis, intersection analysis, signing, and pavement markings, that have been completed within the past seven years.

Traffic Signal Timing (7.3.1): Minimum Requirements - Must have completed two traffic signal timing studies within the past five years including data collection, intersection analysis, computerized timing programs and timing implementation. Preferred Requirements - Must have completed five traffic timing studies within the past seven years.

Traffic Control Systems Analysis, Design and Implementation (7.4.1): Minimum Requirements - Must have completed two projects involving traffic control systems analysis, design and implementation with the past five years. Preferred Requirements - Must have completed five projects in the past seven years.

Signing, Pavement Marking, and Channelization (8.1.1): Minimum Requirements - Must have completed two similar type projects involving signing, pavements markings, and channelization within the past years. Preferred Requirements - Must have completed five similar type projects within the past seven years.

Signalization (8.3.1): Minimum Requirements - Must have completed two projects involving the design and preparation of plans for traffic signalization within the past five years.

Preferred Requirements - Must have completed five similar type projects within the past seven years.

Highway - Rail Grade Crossings (8.5.1.1): Minimum Requirements - Must have completed two projects involving the design and preparation of plans for active warning devices, advance warning signs, pavement markings, and other geometric or operations improvements at highway rail crossings within the past five years. Preferred Requirements - Must have completed five similar type projects within the past seven years.

### 3. Special (Similar) Project Related Experience of Project Manager and Team Member.

Traffic Engineering Studies (7.1.1): Minimum of one Registered Professional Engineer with experience or education in performing traffic engineering studies. Preferred Requirement: In addition to the minimum requirement the nominated engineer must satisfactory explain or demonstrate his/her understanding of capacity and level of service analysis and warrant analysis.

Traffic Signal Timing (7.3.1): Minimum of one Registered Professional Engineer with experience in traffic signal timing and the application and interpretation of traffic flow and signal timing models.

Preferred Requirement: In addition to the minimum requirement the nominated engineer must satisfactorily explain or demonstrate his/her understanding of current signal timing models and their application.

Traffic Control Systems Analysis, Design and Implementation (7.4.1): Minimum of one Registered Professional Engineer with experience in activities associated with traffic control systems and the firm should have sufficient staff to perform these activities. Preferred Requirement: In addition to the minimum requirement, the nominated engineer must satisfactorily explain or demonstrate his/her understanding of the analysis required for a closed loop system.

Signing, Pavement Marking, and Channelization (8.1.1): Minimum of one Registered Professional Engineer with two years experience in signing, pavement marking, and channelization. (One Registered Professional Engineer with four years experience preferred.)

Signalization (8.3.1): Minimum of one Registered Professional Engineer with two years experience in the design and production of traffic signalization. (One Registered Professional Engineer with four years experience preferred.)

Highway - Rail Grade Crossings (8.5.1): Minimum of one Registered Professional Engineer with two years experience in the development of highway-rail grade crossings. (One Registered Professional Engineer with four years experience preferred.)

4. Evidence of Compliance with Assigned HUB Goal: A provider gets three points for meeting the assigned goal or zero points for not meeting the assigned goal.

Deadline: A letter of interest notifying TxDOT of the provider's intent to submit a proposal will be accepted by fax at (817) 370-6759, or by hand delivery to TxDOT; Fort Worth District; Attention: Randy Burkett; 2501 SW Freeway; Fort Worth, Texas, or by mail addressed to TxDOT, Fort Worth District; Attention: Randy Burkett; P. O. Box 6868, Fort Worth, Texas 76115. Letters of interest will be received until 5:00 p.m. on Friday, February 27, 1998.

Letter of Interest Requirements: The letter of interest is limited in length to six - 8 1/2 X 11 inch pages, 12 pitch font size, single sided with attachments or appendices, and must include the contract number 02-8RFP5001, an organizational chart containing the names, addresses, telephone and fax numbers of the prime provider and any subproviders proposed for the team and their contract responsibilities by work category; certification that the proposed team individuals are currently employed by either the prime provider or a subprovider; the prime provider's project manager and key personnel proposed for the contract; team capabilities; special project related experience; evidence of compliance with the assigned HUB goal through the prime provider or subprovider identified on the team, or a written commitment to make a good faith effort to meet the assigned goal; project related experience performed since pre-certification; and other pertinent information addressed in the notice, including references for related projects.

Agency Contact: Requests for additional information regarding this notice of invitation should be addressed to Randy Burkett at (817) 370-6804 or fax (817) 370-6759.

Notice of Invitation: The Fort Worth District of the Texas Department of Transportation (TxDOT) intends to enter a contract with a professional engineer, pursuant to Texas Government Code, Chapter 2254, Subchapter A, and 43 TAC §§9.30-9.43, to provide the following services. To be considered, a prime provider and any

subproviders proposed on the team must be precertified by the deadline date for receiving the letter of interest for each of the advertised work category(s), unless the work category is a non-listed work category. To qualify for contract award a selected prime architect(s)/engineer(s) must perform a minimum of 30% of the actual contract work. Please be advised, a prime provider or subprovider currently employing former TxDOT employees needs to be aware of the revolving door laws including Government Code, Chapter 572 and Section 52, Article IX, of the General Appropriations Bill. To be considered, the proposed team must demonstrate that they have a professional engineer registered in Texas that will sign and seal the work to be performed on the contract.

Contract Number 02-845P5001- The precertified work categories and the percent of work per category are: 10.2.1 Basic Hydraulic Design (40%); 10.3.1 Complex Hydraulic Design (30%); 10.5.1 Bridge Scour Evaluations and Analysis (20%); and 15.2.1 Design Survey (10%). The work to be performed shall consist of performing hydraulic studies and stream analysis for designated FEMA flood ways for projects as needed.

Historically Underutilized Business (HUB) Goal: The assigned HUB goal for participation in the work to be performed under this contract is 0% of the contact amount.

Long List Criteria: TxDOT will consider the following criteria in its review of all interested providers.

1. Past Performance Scores: Minimum requirements - Must have two good written references from entities. One reference for a basic hydraulic study of a highway transportation facility either presently under contract or complete. One separate reference for a complex hydraulic study of a highway facility that has been completed in the past five years. Preferred requirements - Must have three good written references from entities. One reference for a basic hydraulic study of a highway transportation facility either presently under construction or completed. Two references for two separate complex hydraulic studies of highway facilities that have been completed in the past five years.

2. Project Requirements (Team Capability Experience)

Basic Hydraulic Design (10.2.1): Minimum Requirements - Team member must have worked on two similar projects within the past five years (four projects preferred).

Complex Hydraulic Design (10.3.1): Minimum Requirements - Team member must have worked on two similar projects within the past five years (four projects preferred).

Bridge Scour Evaluations and Analysis (10.5.1): Minimum Requirements - Team member must have worked on two similar projects within the past five years (four projects preferred).

Design Survey (15.2.1): Minimum Requirements - Team member must have worked on two similar projects within the past five years (four projects preferred).

3. Special (Similar) Project Related Experience of Project Manager and Team Members:

Basic Hydraulic Design (10.2.1): Minimum - One Registered Professional Engineer with four years related experience and minimum of two years as a Registered Professional Engineer in hydrologic analysis, hydraulic design, and storm water quality evaluation. Preferred - Five years of experience, three years as a registered Professional Engineer.

Complex Hydraulic Design (10.3.1): Minimum - One Registered Professional Engineer with four years related experience and a

minimum of two years as a Registered Professional Engineer in river geomorphology, sediment transport, scour analysis, flood plain analysis, river training techniques, federal and state regulations, and permit compliance. Preferred - Five years of experience, three years as a registered Professional Engineer.

Bridge Scour Evaluations and Analysis (10.5.1): Minimum - One Registered Professional Engineer with four years related experience and a minimum of two years as a Registered Professional Engineer in river geomorphology, sediment transport, scour analysis, and flood plain analysis. Preferred - Five years of experience, three years as a registered Professional Engineer.

Design Survey (15.2.1): Minimum Requirements: One Registered Professional Land Surveyor with one year experience in hydraulic surveys. Preferred Requirements - Three years of experience.

4. Evidence of Compliance with Assigned HUB Goal: This contract has no assigned goal; therefore, this criteria will not be scored.

Deadline: A letter of interest notifying TxDOT of the provider's intent to submit a proposal will be accepted by fax at (817) 370-6759, or by hand delivery to TxDOT, Fort Worth District, Attention: Randy Burkett, 2501 SW Freeway, Fort Worth, Texas, or by mail addressed to TxDOT, Fort Worth District, Attention: Randy Burkett, P. O. Box 6868, Fort Worth, Texas 76115. Letters of interest will be received until 5:00 p.m. on Friday, February 27, 1998.

Letter of Interest Requirements: The letter of interest is limited in length to six - 8 1/2 X 11 inch pages, 12 pitch font size, single sided with attachments or appendices, and must include the contract number 02-845P5001, an organizational chart containing the names, addresses, telephone and fax numbers of the prime provider and any subproviders proposed for the team and their contract responsibilities by work category; certification that the proposed team individuals are currently employed by either the prime provider or a subprovider; the prime provider's project manager and key personnel proposed for the contract; team capabilities; special project related experience; evidence of compliance with the assigned HUB goal through the prime provider or subprovider identified on the team or a written commitment to make a good faith effort to meet the assigned goal; project related experience performed since pre-certification; and other pertinent information addressed in the notice, including references for related projects.

Agency Contact: Requests for additional information regarding this notice of invitation should be addressed to Randy Burkett at (817) 370-6804 or fax (817) 370-6759.

TRD-9801587

Bob Jackson

Acting General Counsel

Texas Department of Transportation

Filed: February 4, 1998



## Texas Water Development Board

### Applications Received

Pursuant to the Texas Water Code, Section 6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

Holiday Beach Water Supply Corporation, P.O. Box 807, Fulton, Texas, 78358-807, received January 5, 1998, application for financial assistance in the amount of \$630,000 from the Water Supply Account of the Texas Water Development Fund.

City of Mineola, 300 Greenville Highway, Mineola, Texas, 75773, received December 3, 1997, application for financial assistance in the amount of \$4,105,000 from the State Water Pollution Revolving Fund.

Angelina-Neches River Authority, 210 Lufkin Avenue, Lufkin, Texas, 75901, received January 23, 1998, application for additional assistance in the amount of \$50,000 from the State Water Pollution Revolving Fund.

City of Wichita Falls, 1300 Seventh Street, Wichita Falls, Texas, 76301, received December 29, 1997, application for financial assistance in the amount of \$8,060,000 from the State Water Pollution Revolving Fund.

City of Lorenzo, 703 5th Street, P.O. Box 430, Lorenzo, Texas, 79343, received January 30, 1998, application for financial assistance in the amount of \$705,000 from the State Water Pollution Revolving Fund.

City of Mexia, 101 South McKinney Street, P.O. Box 207, Mexia, Texas, 76667, received January 28, 1998, application for financial assistance in the amount of \$2,000,000 from the State Water Pollution Revolving Fund.

City of Mount Calm, P.O. Box 85, Mount Calm, Texas, 76673, received January 5, 1998, application for financial assistance in the amount of \$100,000 from the State Water Pollution Revolving Fund.

Hudspeth County Water Authority and Improvement District No. 1, P.O. Box 67, Sierra Blanca, Texas, 79851, received October 30, 1997, application for additional grant assistance in the amount of \$954,600 from the Economically Distressed Areas Program of the Texas Water Development Fund.

High Plains Underground Water Conservation District Number 1, 2930 Avenue Q, Lubbock, Texas, 79405, received December 23, 1997, application for financial assistance in the amount of \$1,945,000 from the Agricultural Water Conservation Loan Program.

Evergreen Underground Water Conservation District, P.O. Box 155, Jourdanon, Texas, 78026, received January 12, 1998, application for financial assistance in the amount of \$500,000 from the Agricultural Water Conservation Loan Program.

Clear Lake City Water Authority, 900 Bay Area Boulevard, Houston, Texas, 77058, received January 2, 1998, application for financial assistance in the amount of \$5,410,000 from the Water Supply Account of the Texas Water Development Fund.

Additional information concerning this matter may be obtained from Craig D. Pedersen, Executive Administrator, P.O. Box 13231, Austin, Texas, 78711.

TRD-9801588

Gail L. Allan

Director of Project-Related Legal Services

Texas Water Development Board

Filed: February 4, 1998



### Notice of Availability of Funds

Pursuant to 31 TAC Chapter 375 the Texas Water Development Board announces the availability of \$190,000,000 at a low interest rate for the construction of waste treatment works under the State Water Pollution Control Revolving Fund program. These funds are offered only to political subdivisions which are listed on the State Revolving Fund Project Priority List and which agree to satisfy federal requirements contained in Chapter 375. Because Chapter



375 imposes more stringent requirements than those in SRF funding pursuant to 31 TAC Chapter 363, the board will provide funding at an interest rate of 120 basis points below the applicant's market rate on a standard loan. Subject to available funds, applications will be considered on a first-come, first-served basis, based on the date the application is considered to be complete and ready for board action, unless a fund shortage exists. For every notice of availability of funds pursuant to §375.19 of the board rules, the maximum amount of funding that will be available at this interest rate to a single application will be limited to 25% of the funds available. No applications for these funds will be accepted before March 16, 1998.

For additional information, please contact Frank Forsyth, Jr. at (512) 463-8429.

TRD-9801446

Gail L. Allan

Director of Project-Related Legal Services

Texas Water Development Board

Filed: February 2, 1998



## Texas Workforce Commission

### Request for Proposals

#### TEXAS CHILD CARE TRAINING CENTER PILOT PROGRAMS

The Texas Workforce Commission (TWC) invites proposals to provide academic and practicum training and mentoring to certain recipients of public assistance (herein referred to as TANF clients) who are transitioning from welfare to work in the child care field. The child care training center pilot programs are established in Subsection 302.003, Texas Labor Code.

#### A. DEFINITIONS

TANF Benefits: Temporary Assistance to Needy Family Benefits

Trainee: TANF client who is selected to and receives training under the child care training center pilot programs.

Training Center: a child care facility licensed under Texas Human Resources Code, Chapter 42, which provides both academic coursework and practicum hours. The training center must directly provide either the academic or practicum hours, and may subcontract the other function.

Urban: Territories, persons and housing units in places of 2,500 or more persons incorporated as cities, villages, boroughs, and towns.

Rural: A municipality in a non-metropolitan county as defined by the United States Census Bureau in its most recent census (Texas Health and Safety Code). The most recent census data defines these areas as "territories, persons and housing units in places of less than 2,500 persons incorporated as cities, villages, boroughs and towns."

#### B. AUTHORIZATION OF FUNDING

The funds for the TWC Child Care Training Center Pilot Programs are authorized under the Federal FY 1998 Appropriations Act for the federal Department of Health and Human Services, Child Care Development Fund (CCDF). Funds are subject to the requirements of the Child Care and Development Block Grant Act (CCDBG). The TWC is the lead agency in Texas for the CCDF.

#### C. TRAINING CENTER PILOT PROGRAMS OBJECTIVES

The objectives of the training center pilot programs are to:

(1) Conduct a comparative study of child care training models offered in four geographic locations in Texas. The study, prepared by TWC, will be presented to the 76th Legislature, and will include recommendations for a possible statewide child care training program for TANF clients.

(2) Provide high quality training in basic skills, child care, child care vendor entrepreneurship, and early childhood development to TANF clients that will:

a. assist selected individuals in making successful transitions into the workforce as child care aides, teachers, directors, and owners of child care-related businesses; and

b. increase the number of qualified individuals entering the child care work force.

(3) Encourage creative community partnerships that support TANF clients transitioning from welfare to work in the child care field.

#### D. PROJECT DESIGN FEATURES

The TWC will select four pilot sites to provide academic and practicum training, as well as mentoring, to TANF clients. At least one site must be located in an urban area, and one site in a rural area.

The TWC will set the parameters for the training center pilot programs in terms of training center qualifications and responsibilities, and these will be included in the application packet. Training centers are required to propose their own training models based TWC criteria and their community needs and resources.

#### E. ELIGIBLE APPLICANTS

Detailed eligibility requirements will be included in the application packet. Applicants must, at a minimum, meet the following criteria to be considered eligible:

(1) Must be or subcontract with a child care facility licensed under Chapter 42 of the Human Resources Code;

(2) Must offer training and certification in basic skills, child care, early childhood education, and vendor entrepreneurial training;

(3) Must have a history of the delivery of high-quality care and an excellent history of compliance with the minimum licensing or registration standards as defined by the Texas Department of Protective and Regulatory Services;

(4) Must be physically located in the area to be served; and

(5) Show a history of collaboration with entities engaged in the provision of direct child care services and training of child care staff

#### F. AVAILABLE FUNDING

Proposals for the child care training center pilot programs may request up to \$25,000. Program funds will be reimbursed on a cost reimbursement basis subject to successful performance during the course of the contract period.

#### G. FUNDING RESTRICTIONS

Expenditures will be reimbursed on "cost reimbursement" basis subject to measurable and successful performance of the project. Project funds have a 5% administrative cost cap. Ninety-five percent of the funds must be used for direct project activities. Prior permission must be secured from TWC before any part of the project can be subcontracted and/or changes can be made in activities to be performed, project personnel, and/or budgeted expenditures as authorized in the contract.

#### H. LENGTH OF CONTRACT

The contract period is for twelve months and begins as soon as negotiations can be mutually completed and a contract can be executed. Contractees must be able and willing to extend the training program an additional 12 months should TWC extend the program another 12 months. Additional funding will be provided should TWC extend the child care training center pilot programs an additional 12 months.

#### I. SELECTION CRITERIA

Applications will be reviewed for eligibility by TWC. Eligibility will be determined by successful completion of all required proposal documentation and meeting eligibility requirements. Eligible applicants will be evaluated and graded by TWC. Evaluation criteria and their weights are: the applicant's project design, and the quality of and ability to offer accredited training; the applicant's experience in delivering child care and child care training; geographic diversity; the types, numbers, and quality of community partnerships formed to provide funding and other services; employment market conditions; and reasonable budget.

#### J. SELECTION, NOTIFICATION, AND NEGOTIATION PROCESS

Applicants will be reviewed and graded on a competitive basis by TWC. Detailed evaluation criteria will be included in the application packet. Incomplete applications are subject to rejection and disqualification by TWC. Grading criteria will be included in the application packet. Applications will be reviewed and ranked according to scores, their apparent ability to complete the project timely and successfully, and reviewed for past contracting performance with TWC. Top contenders will be required to attend a bidder's conference in Austin, and to prepare and submit written questions to TWC prior to the conference. Failure to attend the requested bidder's conference could disqualify a potential applicant. A tentative selection will be determined immediately after the conference is completed. A designated person from the selected entity must be readily available to respond to inquiries, prepare proposed amendments, and negotiate with TWC concerning budget and/or proposed programmatic revisions. If a designated person is not readily available to promptly respond to requested revisions, the applicant will be removed from consideration for a contract. TWC is not liable for any bidder costs associated with the RFP process.

#### K. DUE DATE AND AGENCY CONTACT

Proposals on the required forms must be received not later than 5:00 p.m. on Friday, March 20, 1998. Proposals received after that time will be disqualified. Any reasonable delivery method, except telefacsimile (FAX) may be used. For further information and to order Application Packets, contact the Child Care/Work and Family Clearinghouse, Room 416T, 1117 Trinity, Austin, Texas 78778-0001, (512) 936-3230=Office, (512) 936-3223=Fax.

#### L. TWC's OBLIGATIONS

TWC reserves the right to vary all provisions of this Request for Proposal prior to the execution of a contract when TWC deems such variances and/or amendments are in the best interest of the State of Texas. TWC reserves the right to reject any and all proposals .

TWC's obligations under this RFP are contingent upon the actual receipt by the Agency of funds from the US Department of Health and Human Services. If adequate funds are not available to make payment under the terms of this grant, TWC will terminate this RFP or resulting contract and will not be liable for failure to make payments.

TRD-9801458  
J. Randel (Jerry) Hill  
General Counsel  
Texas Workforce Commission  
Filed: February 2, 1998



#### Workshop on JTPA Planning Guidelines/Performance Standards

The Texas Workforce Commission will hold a Job Training Partnership Act (JTPA) Planning Guidelines/Performance Standards Workshop on February 17 - 18, 1998, beginning at 8:00 a.m., in the Holiday Inn at Town Lake, IH 35 & Town Lake Road, Sunflower/Marigold Room, in Austin, Texas. The Texas Workforce Commissioners will convene as special guests during this open workshop to discuss and may possibly take action on the following items:

- I. Job Training Partnership Act Planning Guidelines
- II. Welfare-to-Work Issues
- III. Labor Market Information
- IV. JTPA Title IIB Summer Youth Employment and Training Program
- V. Performance Standards
- VI. Youth Competencies
- VII. Older Individuals Program and 8% Education Coordination
- VIII. JTPA Title III Programs
- IX. Employment Service: Wagner-Peyser 7(a) and 7(b)

Persons who may need auxiliary aids, services or special accommodations, are requested to contact Barbara Cigainero, at (512) 936-3395, (or Relay Texas 800-735-2989) at least two days prior to the workshop so that appropriate arrangements can be made.

Contact: J. Randel (Jerry) Hill, 101 East 15th Street, Austin, Texas 78778, (512) 463-7833.

TRD-9801599  
J. Randel (Jerry) Hill  
General Counsel  
Texas Workforce Commission  
Filed: February 4, 1998



# *Texas Register*

## Services

The *Texas Register* offers the following services. Please check the appropriate box (or boxes).

### **Texas Natural Resource Conservation Commission, Title 30**

- Chapter 285** \$25     update service \$25/year (*On-Site Wastewater Treatment*)  
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 **Chapter 335** \$30     update service \$25/year (*Industrial Solid Waste/Municipal Hazardous Waste*)

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