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Wills Point Middle School

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Office of the Governor

Appointments made January 22, 1998


To be designated as CHAIRMAN of the TEXAS BOARD OF MENTAL HEALTH AND MENTAL RETARDATION for a term at the pleasure of the Governor. Mr. Cooper will be replacing Ann K. Utley of Dallas as chairman. Mrs. Utley no longer serves on the board.

To be appointed as members of the TEXAS SKILLS STANDARDS BOARD for terms at the pleasure of the Governor: James E. Mitchell, 3003 Indian Mound Road, Georgetown, Texas 78628 (replacing John Hamice James of Midland who resigned); Edward “Ted” Lloyd O’Rourke, 1128 Postoffice Street, Galveston, Texas 77550, (replacing Betty Files of Abilene who resigned).

To be appointed as members of the TEXAS COMMITTEE FOR THE HUMANITIES for terms to expire December 31, 1999: Kathleen Ford Bay, 709 Lost Canyon, Austin, Texas 78746, (reappointment); Randolph D. Hurt, Jr., 301 North Rio, Fort Stockton, Texas 7973504833, (replacing Dr. Thomas G. West of Irving whose term expired); Dr. Wright L. Lassiter, Jr., 1474 Bar Harbor Drive, Dallas, Texas 75232 (reappointment).

Appointments made February 12, 1998

To be appointed as members of the TEXAS STRATEGIC MILITARY PLANNING COMMISSION for terms to expire February 1, 2001: Chino Chapa, 6803 Del Norte, Dallas, Texas 75225 (reappointment); Dr. Charles A. Hines, P.O. Box 4409, Prairie View, Texas 77446 (reappointment); Fred Lee Hughes, 24 Surrey Square, Abilene, Texas 79606 (reappointment).

February 13, 1998

To be appointed as members to CONTINUING ADVISORY COMMITTEE FOR SPECIAL EDUCATION pursuant to Public Law 105-17 Individuals with Disabilities Education Act, Amendments to 1997 for terms to expire February 1, 1999: Jimmie Rose Drive, 13517 King Phillip Court, Corpus Christi, Texas 78418; Edward G. Owens, P.O. Box 6875, Huntsville, Texas 77342; Melody Vuich, 6401 Sam Maverick Pass, Austin, Texas 78749; Betty Priddy Walker, 4222 Arcady Avenue, Dallas, Texas 75205; Lee Roy Williams, 710 Rose, Bryan, Texas 77802.

Appointments made February 17, 1998

To be appointed as CHIEF JUSTICE OF THE COURT OF APPEALS, THIRD DISTRICT OF TEXAS, until the next General Election and until his successor shall be duly elected and qualified: Earl L. Yeakel, III, 2500 Greenlee Drive, Austin, Texas 78703. Mr. Yeakel will be replacing Chief Justice Jimmy L. Carroll of Temple who resigned.

Appointments made February 19, 1998

To be appointed as members of the UPPER COLORADO RIVER AUTHORITY, BOARD OF DIRECTORS for terms to expire February 1, 2003: Jack H. Brewer, 1110 12th Street, P.O. Box 1020, Robert Lee, Texas 76945 (replacing Patricia Pruitt Ivey of Robert Lee whose term expired); Fred C. Campbell, P.O. Box 186, Paint Rock, Texas 76866 (replacing Sara T. Ortiz of Colorado City whose term expired); Hope Wilson Huffman, 1419 Paseo de Vaca, San Angelo, Texas 76901 (replacing Carrol E. Hill of San Angelo, whose term expired).

To be appointed as members of the TEXAS COSMETOLOGY COMMISSION for terms to expire December 31, 2003: William (B.J.) Joseph, 2918 Bay Hill Court, Harlingen, Texas 78550 (replacing Diana Mays of Greenville whose term expired); Heliana L. Kiessling, 416 Westwood, Friendswood, Texas 7755546 (replacing Lucille Garcia of San Antonio whose term expired).

To be appointed as members of the NUECES RIVER AUTHORITY BOARD OF DIRECTORS for terms to expire February 1, 2003: W. Scott Bledsoe, III, P.O. Box 3, Oakville, Texas 78060 (replacing Robert D. Johanson of Three Rivers whose term expired); John William Howell, 113 Lost Creek Drive, Portland, Texas 78374 (replacing Ted Jones of Ingleside whose term expired); Leslie L.W. Kinsel, P.O. Box 677, Cotulla, Texas 78014 (replacing Thomas R. Faulkenberry of Brackettville whose term expired); August Linnartz, Jr. P.O. Box 753, Carrizo Springs, Texas 78834 (replacing Cleo Bustamante, Jr., of Carrizo Springs whose term expired); Thomas M. Reding, Jr., 620 Colonial Drive, Portland, Texas 78374–4009 (replacing Janna Williams of Sinton whose term expired); Patricia Keane Sutton, Chulaguag Ranch, Box 444, Camp Wood, Texas 78833 (replacing Mary Auty of Pipe Creek whose term expired); Lawrence H. Worburn, Jr., 1821 Helen, Alice, Texas 78332 (replacing Bob Mullen of Alice whose term expired).
ATTORNEY GENERAL

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

**ORQ-27(ID#114181).** Request from the Honorable John Sharp, Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78774, concerning whether §552.101 or §552.110 of the Government Code excepts from disclosure information required to be filed with the Comptroller by entities subject to certain fees under section 161.123(a) of the Health and Safety Code for placing outdoor advertisements for cigarettes and tobacco products.

**TRD-9803071**

Request for Opinions

**RQ-1081.** Request from William R. Archer III, M.D., Commissioner of Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, concerning whether §673.002, Health and Safety Code, which requires the Commissioner of Health to review and authorize payment of claims for autopsies performed on children under the age of two years, has been superseded.

**RQ-1082.** Request from the Honorable Gonzalo Barrientos, Chair, Committee of the Whole on Legislative and Congressional Redistricting Texas House of Representatives, P.O. Box 12068, Austin, Texas 78711-2068, concerning whether the Texas Crime Stoppers Advisory Council is an "advisory committee" under Chapter 2110, Government Code.

**RQ-1083.** Request from the Honorable Eddie Lucio, Jr., Chair, Intergovernmental Relations, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068, concerning whether a county judge may practice law in the courts of his county.

**RQ-1084.** Request from the Honorable Eddie Lucio, Jr., Chair, Intergovernmental Relations, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068, concerning whether the mayor or the city manager of the City of Brownsville may remove municipal housing authority commissioners.

**RQ-1085.** Request from Mike Moses, Commissioner of Education, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, concerning whether an independent school district may purchase buses from another school district.

**RQ-1086.** Request from Ron Allen, Executive Director, Texas State Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 2-330, Austin, Texas 78701-3998, concerning whether certain business arrangements constitute the practice of veterinary medicine.

**RQ-1087.** Request from William R. Archer III, M.D., Commissioner of Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, concerning whether certain persons who dispense contact lenses are exempt from the permitting requirements of Texas Civil Statutes, Article 4552-A, the Texas Contact Lense Prescription Act.

**RQ-1088.** Request from Sid L. Harle, Chairman, Court Reporters Certification Board, P.O. Box 13131, Austin, Texas 78711-3131, concerning requirements of a verified complaint filed with the Court Reporters Certification Board.

**RQ-1089.** Request from the Honorable Tom O'Connell, Criminal District Attorney, 210 South McDonald, Suite 324, McKinney, Texas 75069, concerning whether the City of Plano may provide a retirement plan for its appointive officers and employees.

**RQ-1090.** Request from John R. Speed, P.E., Executive Director, Texas Board of Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760-8329, concerning whether the Texas Natural Resource Conservation Commission may license site evaluations, and related questions.

**RQ-1091.** Request from Mike Moses, Commissioner of Education, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, concerning Liability of an independent school district for taxes collected in excess of a maximum maintenance tax rate adopted by voters.
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.
Texas Ethics Commission

Ethics Advisory Opinions

EAO-393(AOR-431). Whether a district judge who is running for re-election in 1998 may use political contributions accepted in 1997 or 1998 to pay debts incurred in 1992 in connection with a legislative race.

SUMMARY The restrictions in Election Code section 253.161 do not apply to the use of political contributions to pay debts incurred in connection with elections that took place before June 16, 1995.

EAO-394(AOR-432). Questions concerning the application of Election Code section 253.031 to a club that endorses candidates in Texas elections.

SUMMARY A political committee must file a campaign treasurer appointment before it accepts more than $500 in political contributions or makes or authorizes more than $500 in political expenditures. All political contributions to and political expenditures by a political committee count toward these thresholds, regardless of when made. Membership dues paid to support a general-purpose committee are political contributions to the committee.

EAO-395(AOR-433). Whether a state employee may use a state-owned telephone to make a personal long-distance telephone call if no charge is incurred by the state.

SUMMARY A state employee’s incidental use of state telephones to place long-distance personal calls is not a misapplication of government resources as long as the calls do not result in any charges to the state.

EAO-396(AOR-434). Whether a county or district clerk may accept contributions from a corporation to defray costs of a campaign for an officer position in a professional organization or may accept other gifts.

SUMMARY A contribution from a corporation to a county or district clerk that is intended to defray the clerk’s costs of running for an elective position with an association of county or district clerks is a prohibited “officeholder contribution” unless the costs are reimbursable with public money.

For purposes of Penal Code §36.08(d), a county or district clerk exercises discretion in regard to purchasing matters by making recommendations to the commissioners court even if the commissioners court makes the final decisions about purchasing matters.

TRD-9802803
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: February 25, 1998

Advisory Opinion Request

AOR-435. The Texas Ethics Commission has been asked about the application of the revolving door provision in Government Code §572.054(b) to a former employee of a regulatory agency who, as an agency employee, participated in choosing a contractor to perform a feasibility study on a project. The former employee’s current employer has contracted to perform an environmental study in connection with the same project.

TRD-9802804
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: February 25, 1998
EMERGENCY RULES

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

Symbology in amended emergency sections. New language added to an existing section is indicated by the text being underlined. [Brackets] and strike-through of text indicates deletion of existing material within a section.
TITLE 10. COMMUNITY DEVELOPMENT
Part I. Texas Housing and Community Affairs
Chapter 80. Manufactured Housing Standards and Requirements
10 TAC §80.54
The Texas Department of Housing and Community Affairs (Department) Manufactured Housing Division adopts on an emergency basis amendments to 10 TAC §80.54, concerning manufactured home anchor installation requirements. The Department finds that there is an immediate need for safe, affordable anchoring of new and used manufactured homes in difficult soils, without which there is an imminent peril to occupants and neighboring homes if such anchoring systems are not implemented. Presently although there are Department approved anchors for installation in soil and in rock, there are no anchors designed for mixed rock and soil conditions or hard caliche soil. Even if there were such anchors available, there is a 12-month time period for testing new anchors under the department's requirements, with a cost to the anchor manufacturer of approximately $50,000.

Testimony at the Texas Department of Housing and Community Affairs (TDHCA) Board meeting on January 26, 1998, indicated that because of lack of anchors designed for difficult soils, installers are installing anchors in soils for which they were not designed, and are being cited for violations. Alternative systems approved by the Department, such as custom-designed anchor systems or concrete pads with embedded anchors, are economically prohibitive for most consumers and homeowners who live in areas of difficult soils. At a meeting on February 10, 1998, the Department’s Anchor Task Force, composed of five Manufactured Housing Division staff and twelve outside members representing retailers, installers, distributors, anchor manufacturers, and consumer groups, reached consensus on the proposed emergency rules, which were then recommended to the TDHCA Board. The rules will require that anchors presently approved for soil or rock will be installed securely in mixed soil and rock or hard caliche conditions. An additional consideration in adopting these emergency rules is that under recently enacted §9(g) of 5221f, the effective date of a rule relating to installation standards shall not be less than 60 days following the date of publication of notice that the rule has been adopted. The Anchor Task Force was in agreement that these emergency rules could go into effect immediately without unduly burdening the industry.

These emergency rules are adopted pursuant to Texas Civil Statutes, Article 5221f, §4(a), which gives the Department the authority to adopt standards and requirements for the installation of manufactured housing that are reasonably necessary to protect the health, safety, and welfare of the occupants and the public, and 10 TAC §2001.034, which allows an agency to adopt an emergency rule if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days’ notice.

§80.54. Generic Installation Requirements.

(a) All new and used HUD-code manufactured homes, mobile homes, and rebuilt salvaged homes shall be anchored in accordance with the manufacturer’s installation instructions or these generic standards approved and promulgated by the department.

(1) Ground anchors shall be approved in compliance with the requirements of these standards and shall be used in soil types for which the ground anchors are designed. The anchors shall be installed in accordance with the anchor manufacturer’s instructions.

(A) In the event that an impenetrable layer below the top soil layer stops the augering of an auger anchor, a department-approved cross drive anchor may be installed according to the manufacturer’s instructions. If this is not possible, then a department-approved cross drive anchor may be used with a steel stabilizer plate installed next to the rods to resist horizontal anchor head movement. The stabilizer plate shall be centered on the pull side of the anchor and within 1 inch of the anchor shaft.

(B) In hardpan caliche (that is, heavily weathered limestone), where a stabilizer plate cannot be installed, a cross drive anchor may be installed with rods inserted in pre-drilled holes according to the anchor manufacturer’s instructions.

(2)-(7) (No change.)

(b) (No change.)

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

TRD-9802857
Larry Paul Manley
Executive Director
Texas Department of Housing and Community Affairs
Effective date: February 26, 1998
Expiration date: June 26, 1998
For further information, please call: (512) 475–3930
TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 21. Student Services

Subchapter A. General Provisions

19 TAC §21.6

The Texas Higher Education Coordinating Board adopts emergency Chapter 21, Subchapter A, new §21.6, concerning General Provisions (Student Compliance with Selective Service Registration). The rule is to be adopted on an emergency basis pursuant to §2001.034 of the Texas Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The rules are being proposed to comply with House Bill 2061, passed by the 75th Legislature. The bill requires students to register with the Selective Service before they can receive a loan, grant, scholarship or other financial assistance funded by state revenue. Currently over 90 percent of students receiving financial assistance complete the Federal Application for Federal Student Aid. The federal government already has rules and guidelines in place to ensure that students receiving financial aid have complied with Selective Service requirements.

The new section to the rules is proposed under Texas Education Code, Section 51.9095, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning General Provisions (Student Compliance with Selective Service Registration).

§21.6. Student Compliance with Selective Service Registration.

(a) An individual may not receive a loan, grant, scholarship, or other financial assistance funded by state revenue, including federal funds or gifts and grants accepted by this state, or receive a student loan guaranteed by this state or the Texas Guaranteed Student Loan Corporation, unless the individual files a statement of the individual’s Selective Service status with the institution or other entity granting or guaranteeing the financial assistance as required by this section.

(b) Rules and guidelines to be used in administering the Texas Education Code, §51.9095 will be the same as those used for students receiving federal financial aid.

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

TRD-9802667
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Effective date: February 23, 1998
Expiration date: June 23, 1998
For further information, please call: (512) 483–6162
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.
TITLE 1. ADMINISTRATION

Part XII. Advisory Commission on State Emergency Communications

Chapter 251. Regional Plans - Standards

1 TAC §251.7

The Advisory Commission on State Emergency Communications proposes an amendment to §251.7, concerning the inclusion of third-party software applications into the 9-1-1 integrated workstation environment through expanded guidelines and provisions.

James D. Goerke, executive director, Advisory Commission on State Emergency Communications has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing the rule, however, local governments may incur costs dependent upon the applications they choose to incorporate into the 9-1-1 workstation.

Mr. Goerke 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 allowing for third-party applications will be an increased functionality of the 9-1-1 workstation to more expeditiously handle emergency calls and the subsequent responses. There will be no effect on small businesses. There is no anticipated economic costs to individuals, as no individuals have a duty to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Mr. James D. Goerke, Executive Director, Advisory Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942, facsimile number (512) 305-6937. Comments must be submitted no later than 5 p.m. on the thirtieth day after publication in the Texas Register.

The amendment is proposed under Health and Safety Code, Chapter 771, §§771.051, 771.056, and 771.059, which provides the Advisory Commission on State Emergency Communications with the authority to administer the implementation of statewide 9-1-1 service, to develop minimum performance standards for 9-1-1 service to be followed in developing regional plans, and to allocate money for the operation of 9-1-1 service. Health and Safety Code, Chapter 771 is affected by the proposed amendment.

§251.7. Guidelines For Implementing Integrated Services.

(a) Definitions. When used in this rule, the following words and terms shall have the meanings identified in paragraphs (1)-(13) of this subsection, unless the context and use of the word or terms clearly indicates otherwise:

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

(5) Address Maintenance Plan. A plan that identifies a cost effective program for the maintenance of addressing in a county. For regional planning commissions, a [regional] council of governments (COG), this plan is part of a regional plan as described by the Texas Health and Safety Code, Chapter 771.

(6) (No change.)

(7) Emergency Communications District (District). A public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service; or a district created under Texas Health and Safety Code, Chapter 772, Subchapters B, C, or D.

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

(11) Regional Planning Commission. A commission established under Local Government Code, Chapter 391, also referred to as a [regional] council of governments (COG).

(12)-(13) (No change.)

(b) Policy and Procedures. As authorized by Texas Health and Safety Code, Chapter 771, the ACSEC may impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the state of Texas. The implementation of such service involves the procurement, installation and operation of equipment designed to either support or facilitate the delivery of an emergency call to an appropriate emergency response agency. In addition, the ACSEC has funded addressing projects throughout the state to allow for the implementation of Automatic Location Identification (ALI) level of
service. In the funding of such projects, it has been the policy of the ACSEC to fund geographic information systems and the development of digital maps to support such activities. The ACSEC recognizes the rapidly changing telecommunications environment in wireline and wireless services and its impact on 9-1-1 emergency services. Integration of new technology and 9-1-1 functionality are enhancing and facilitating the delivery of an emergency call. It is the policy of the ACSEC that all 9-1-1 emergency calls for service be handled at the highest level of service available. In accordance with this policy, the following policies and procedures shall apply to the procurement, installation, and implementation of integrated services funded in part or in whole by the 9-1-1 funds referenced in subsection (a)(2) of this section (relating to Definitions). Prior or to money being allocated, implementation of integrated services for a county system, a COG, and/or District shall meet the following requirements listed in paragraphs (1)-(4) of this subsection:

(1) Integrated Services,

(A) Personal Computer (PC) based Integrated Workstation (IWS) 9-1-1 call-taking equipment has the capability of expanding the traditional 9-1-1 Automatic Number Identification (ANI) and Automatic Location Identification (ALI) feature functionality to allow for additional third-party public safety software applications. The ACSEC is supportive of such advancement in emergency services call-taking capabilities; however, to ensure the integrity of 9-1-1 is maintained, only the following features listed in clauses (i)-(x) of this subparagraph are eligible integrated services:

(i) Automatic Number Identification;

(ii) Automatic Location Identification;

(iii) Expanded and/or Supplemental Location Information;

(iv) Call Recording and Playback;

(v) Telecommunication Devices for the Deaf (TDD/TTY);

(vi) Paging;

(vii) Texas Law Enforcement Teletype Services (TLETS);

(viii) Computer Aided Dispatch Gateway;

(ix) Graphical/Mapping Displaying of Location and;

(x) Call Handling Protocols.

(B) Integrated services other than the applications listed in clauses (i)-(x) of subparagraph (A) must have a demonstrated applicability to the direct provisions of delivering 9-1-1 and emergency call-taking services. Services not directly related to 9-1-1 call delivery, such as administration, information management, and entertainment will not be authorized for integration into the IWS 9-1-1 call-taking equipment.

(C) Prior to integrating and deploying the expanded third-party applications onto a IWS 9-1-1 call-taking environment, the following listed in clauses (i)-(iii) of this subparagraph must be demonstrated to the Commission to ensure the stability and reliability of the 9-1-1 system:

(i) Documented “Lab” testing shall be completed by the IWS Vendor and councils of governments demonstrating the successful integration of the authorized third-party applications. Test scenarios should include documentation of the operating system requirements, detailed functionality results as each application is integrated and evaluated independently, and load testing results of all systems operating together on the IWS workstation.

(ii) Baseline memory usage of the operating system should maintain the “80/20” performance rule, thereby demonstrating that 80% of the total memory is available to the operating system applications, while 20% of the total memory remains unused.

(iii) Documented “Live” testing in a PSAP shall also be completed by the IWS Vendor with cooperation and coordination by the COG or District, demonstrating the successful integration of the authorized third-party applications. Test scenarios should include documentation of the operating system requirements, detailed functionality results as each application is integrated and evaluated independently, and load testing results of all systems operating on the IWS workstation, as well as a standardized set of basic call-taking functions.

(D) Operating procedures should be established by the COG and/or District and security measures taken and demonstrated to ensure that non-ACSEC-approved third-party software applications cannot be integrated into the IWS platform.

(E) Documentation of all testing shall be provided to the ACSEC prior to funding of any integrated services.

(2) Graphical Display. Prior to the implementation of graphical display of location information for a county system, a COG [regional planning commission] and/or [emergency communications] District [district] shall meet the following requirements listed in subparagraphs (A)-(C) of this paragraph:

(A)-(C) (No change.)

(3) (No change.)

(4) Annual budgeted costs associated with authorized integrated services, as outlined in this rule, [graphical display of 9-1-1] shall be monitored by the ACSEC staff for consistency with approved maintenance plans and systems costs. Such costs that are determined by ACSEC staff to not be consistent with the approved strategic plan, shall be presented for review and approval by the Commission.

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

Filed with the Office of the Secretary of State on March 2, 1998.
TRD-9802985
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Earliest possible date of adoption: April 12, 1998
For further information, please call: (512) 305-6911

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 3. Boll Weevil Eradication Program

23 TexReg 2644  March 13, 1998  Texas Register
Subchapter E. Creation of Eradication Zones

4 TAC §3.113

The Texas Department of Agriculture (the department) proposes new §3.113, concerning the creation of a nonstatutory boll weevil eradication zone. The new section is proposed to establish a new nonstatutory boll weevil eradication zone consisting of counties now located in a statutory zone created under Chapter 74, Subchapter D. §3.113 proposes, upon the request of the Northwest Plains Boll Weevil Eradication Zone Task Force, the establishment of the Northwest Plains Boll Weevil Eradication Zone, in accordance with Senate Bill 1814, 75th Legislature, 1997, § 1.27(d), and the Texas Agriculture Code, §74.1042.

Katie Dickie Stavinoha, special assistant for producer relations, 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.

Ms. Stavinoha 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 sections will be the ability to address cotton growers’ desires to have efficient, responsive eradication zones to facilitate boll weevil eradication in Texas. There will be no effect on small businesses. The anticipated economic cost to persons who will be required to comply with the new sections, as proposed, is not determinable at this time. If the proposed zone is established and an assessment approved for the zone, cotton growers in the zone will be assessed annually to cover costs of an eradication program in that zone. The costs to individual growers will depend on voter approval of the proposed zone and assessment and the amount of the assessment established for the zone once approved.

Comments on the proposal may be submitted to Katie Dickie Stavinoha, Special Assistant for Producer Relations, P. O. Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of the publication of this proposal in the Texas Register.

The new section is proposed under the Texas Agriculture Code, §74.1042, which provides the commissioner of agriculture with the authority, by rule, to designate an area of the state as a proposed boll weevil eradication zone; and Senate Bill 1814, 75th Legislature, 1997, § 1.27(d), which provides the commissioner of agriculture with the authority, by rule, to divide a statutory zone and fairly apportion debt to each portion of the divided zone.

The codes affected by the proposal are the Texas Agriculture Code, Chapter 74.

§3.113. Northwest Plains Boll Weevil Eradication Zone.

The Northwest Plains Boll Weevil Eradication Zone shall consist of the following area originally included as a part of the Northern High Plains Eradication Zone described at the Texas Agriculture Code, §74.1024(a): all of Bailey, Castro, Deaf Smith, Lamb and Parmer counties.

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 March 2, 1998.

TRD-9803026
Dolores Alvarado Hibbs
Deputy General Counsel

Texas Department of Agriculture
Earliest possible date of adoption: April 12, 1998
For further information, please call: (512) 463-7541

TITLE 7. BANKING AND SECURITIES

Part I. Finance Commission of Texas

Chapter 1. Consumer Credit Commissioner

Subchapter A. Regulated Loan Licenses

Division 2. Application for License and Transfer of License

7 TAC §§1.30–1.34, 1.36–1.40

The Finance Commission of Texas (the commission) proposes the adoption of new §§1.30 through 1.34 and §§1.36 through 1.40, concerning the procedures for filing an application for and issuance of a consumer (regulated) loan license under Chapter 3A (Texas Civil Statutes, Art. 5069-3A.101 et seq.), procedures for the transfer of a consumer loan license, processing procedures and time frames for applications, procedures for changes in business form or proportionate ownership, procedures for amendments to pending applications, procedures for the relocation of licensed offices, procedures for designating licenses in an active or inactive status, and the fees associated with licensing activities.

The new sections set out detailed procedures related to applications for licenses under Chapter 3A.

Section 1.30 defines particular terms.

Section 1.31 describes the procedure for filing a new application for a consumer loan license, including instructions regarding what form to use and what information is necessary on the application and what information must be filed with the application.

Section 1.32 describes the procedure for filing an application for transfer of a consumer loan license, including the filing requirements.

Section 1.33 describes how an application for a consumer loan license is processed, including a description of when an application is complete as well as an explanation of what may occur if an applicant fails to complete an application. In addition, this section describes the hearings process that occurs if the applicant contests the denial of its application.

Section 1.34 describes what action the licensee must take when it changes the proportion of ownership in or the form of the licensed entity and lists the time frame within which the licensee must notify the commissioner.

Section 1.36 requires each applicant, upon discovery of new or changed information, to supplement its application within 10 days of discovery of the new or changed information.

Section 1.37 describes the procedures for relocating a licensed office, including deadlines for notification thereof.

Section 1.38 describes how a licensee may change its license from active to inactive status and how a licensee may activate an inactive license.

PROPOSED RULES March 13, 1998 23 TexReg 2645
Section 1.39 sets out the fees for new licenses, license transfers, fingerprint checks, license amendment, license duplication, and costs of hearings.

Section 1.40 states that, upon filing with the Office of Consumer Credit Commissioner, an application for consumer loan license or notice becomes a state record and public information subject to the Public Information Act (formerly the Open Records Act.)

Most of these procedures were currently in place as a part of the licensing process under the former Chapter 3. These rules clarify and streamline some of the filing procedures.

Leslie Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period these rules will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing these rules.

Commissioner Pettijohn also has determined that for each year of the first five-year period these rules will be in effect, the public benefit anticipated as a result of the adoption of the new rules is the clarification and publication of the licensing procedures in Chapter 3A.

Commissioner Pettijohn anticipates these rules will have a minimal adverse economic effect on small business. The economic effect primarily manifests itself in the form of fees. Fees relating to new licenses and transfers of licenses may be found in §1.39. Many, if not all, of these fees will be assessed based upon the actions of the applicant for the consumer (regulated) loan license. Therefore, it is not possible to predict the cost of compliance for small businesses or to predict a comparison of the cost of compliance for small businesses with the cost of compliance for the largest businesses affected by the rules. It is anticipated that large businesses and small businesses will be impacted equitably. In order to derive a cost comparison pursuant to Tex. Gov’t Code §2001.003(d)(1), Commissioner Pettijohn has determined that the minimum, maximum, and median times for processing a permit application from the date the Office of Consumer Credit Commissioner received an initial permit application to the date of final disposition on the application is 1, 2, and 8, respectively, in the 12 month period immediately preceding the date these proposed rules are published.

Comments on the proposed adoption of the new sections may be submitted in writing to Leslie Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207.

The new sections are proposed under Texas Civil Statutes, Article 5069-3A, which authorizes the Finance Commission to adopt rules to enforce new Chapter 3A.

Texas Civil Statute, Art. 5069-3A, Subchapter C is affected by these proposed new sections.

§1.30 Definitions.

Words and terms used in this chapter that are defined in Texas Civil Statutes, Article 5069, Chapter 3A, have the same meanings as defined in Chapter 3A. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Net assets—The total value of acceptable assets used or designated as readily available for use in the business, less liabilities, other than those liabilities secured by unacceptable assets. Unacceptable assets include, but are not limited to, goodwill, unpaid stock subscriptions, lines of credit, notes receivable from an owner, property subject to the claim of homestead or other property exemption, and encumbered real or personal property to the extent of the encumbrance. Generally assets are available for use if they are readily convertible to cash within 10 business days.

(2) Principal party—All proprietors and adult individuals with a substantial relationship to the proposed lending business of the applicant. Individuals with a substantial relationship to the proposed lending business of the applicant include but are not limited to:

(A) general partners,

(B) voting members of a limited liability corporation,

(C) corporate officers, to include the Chief Executive Officer or President, the Chief Financial Officer or Treasurer, and those with substantial responsibility for lending operations or compliance with Texas Civil Statutes, Article 5069, or the Finance Code,

(D) directors of privately-held corporations,

(E) shareholders owning 10% or more of the outstanding voting stock, and

(F) trustees.

§1.31. Filing of New Application.

An application for issuance of a new consumer loan license must be submitted on forms prescribed by the commissioner at the date of filing and in accordance with the commissioner’s instructions. The application shall include, but not be limited to, the following:

(1) Required Forms. All questions must be answered.

(A) Application form (Form ADM-10/11),

(i) A physical street address must be listed for the proposed address for the applicant’s lending address. A post office box or a mail box location at a private mail-receiving service generally may not be used. If the address has not yet been determined or the application is for an inactive license, then the application must so state.

(ii) If the applicant is a corporation, then the officers and directors’ sections on the back side of the form must be completed.

(iii) The section inquiring about owners requires an answer based upon the applicant’s entity type. If an individual’s interest in an entity is community property, then spouses with a community property interest must also be listed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming such status should be provided.

(L) Sole proprietorships. The individual(s) owning and operating the business must be named.

(II) General Partnerships. All partners must be listed and the percentage of ownership stated.

(III) Corporations. All shareholders holding voting stock must be named if the corporation is privately held. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be attached that describes each level of ownership and management. This narrative or diagram requires the

23 TexReg 2646 March 13, 1998 Texas Register
listing of the names of all officers, directors and stockholders owning 5% or more stock at each level.

(IV) Limited Liability Partnerships. All partners, general and limited, must be listed and the percentage of ownership stated. If a partner is a business entity and not an individual, a narrative or diagram must be attached that describes each level of ownership. This narrative or diagram requires the listing of the names of all officers, directors and stockholders owning 5% or more stock at each level.

(V) Limited Liability Companies. All managers, officers, agents and members, as those terms are used by the Texas Limited Liability Company Act, Texas Civil Statutes Art. 1528n, must be named. If a member is a business entity and not an individual, a narrative or diagram must be attached that describes each level of ownership. This narrative or diagram requires the listing of the names of all officers, directors and stockholders owning 5% or more stock at each level.

(VI) Trusts / Estates. List the trustee(s) or executor(s).

(iv) Manager. Each person who is responsible for the day-to-day operation of one or more of applicant’s proposed offices must be named.

(v) Supervisor. Each person who will be responsible for the supervision of a licensed location must be named.

(vi) Signature(s). With sole proprietorships and partnerships, all proprietors and general partners must sign. With corporate applicants, two officers must sign unless only one officer of the corporation has been appointed. With limited liability companies, two authorized members must sign unless the company only has one member. With trusts or estates, the trustee or executor must sign.

(B) Statutory Agent Disclosure (Form ADM-13). This form must be completed by all applicants. The statutory agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the statutory agent is an individual, the address must be a residential address. With corporations, the statutory agent listed on Form ADM-13 should be the registered agent listed in the articles of incorporation. With limited liability companies, the statutory agent listed on Form ADM-13 must be the registered agent listed in the articles of organization. If the statutory agent is not listed in the relevant organizational document, then the applicant must submit certified minutes appointing the new agent.

(C) Personal Affidavit (Form ADM-15/16). Every individual listed on the license application (ADM-10/11) as a principal party or as a supervisor or manager must complete this form. The percentage of ownership stated on this form must correspond to the individual’s percentage listed on the license application Form ADM-10/11. The record of business associations must also include the individual’s association with the entity applying for the license.

(D) Fingerprint Cards. A complete set of legible fingerprints shall be provided for each individual having a substantial relationship with the applicant. An individual has a substantial relationship with an applicant if it is a “principal party,” as that term is defined in 7 TAC§13.30. Individuals who have previously been licensed by the commissioner and principal parties of entities currently licensed by the commissioner are not required to provide fingerprints. The commissioner may require fingerprints of employees or other persons with some relationship to the applicant if the commissioner believes that the individual’s involvement in the lending operation is relevant to the applicant’s eligibility for a license. All fingerprints should be submitted on the format provided by the agency and approved by the Department of Public Safety and the Federal Bureau of Investigation. A request for acceptable fingerprint cards may be made by submitting a completed Form ADM-030.097.

(E) Financial Statement (Form ADM-17/18/19).

(i) General Information. The financial statement must be dated no earlier than sixty (60) days prior to the date of application. Applicants may also submit audited financial statements dated within one year prior to the application date in order to expedite verification procedures. All financial statements must be certified as true, correct, and complete.

(ii) Sole Proprietorships. Sole proprietors must complete all sections of Form ADM-17 and the attached schedules, Form ADM-18/19, or provide a personal financial statement that contains all of the same information requested by Form ADM - 17/18/19.

(iii) Partnerships. A financial statement for the partnership itself must be submitted. In addition, each general partner must submit a financial statement. All of the financial statements for the partnership and the partners must be dated the same day. The information requested in Schedules 1-6 (ADM-18/19) must be submitted and attached to any balance sheet that is appended to the application.

(iv) Corporations and Limited Liability Companies. Corporations and limited liability companies must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in Schedules 1-6 (ADM-18/19) must be submitted and attached to any balance sheet that is appended to the application. Financial statements are generally not required of related parties, but may be required by the commissioner if the commissioner believes they are relevant.

(F) Assumed Name Certificates (Forms ADM-20 and ADM-21). For any applicant that does business under an assumed name as that term is defined in Tex. Bus. & Comm. Code.§36.02(7), an assumed name certificate must be filed as provided in this subsection.

(i) Unincorporated applicants. Unincorporated applicants using or planning to use an assumed name must file an assumed name certificate (ADM-20 or its equivalent) with the county clerk of the county where the proposed business is located in compliance with Tex. Bus. & Comm. Code§36.0010, as amended. An applicant must provide a copy of the assumed name certificate that shows the filing stamp of the county clerk or, alternatively, a certified copy.

(ii) Incorporated applicants. Incorporated applicants using or planning to use an assumed name must file an assumed name certificate (ADM-21 or its equivalent) in compliance with Tex. Bus. & Comm. Code§36.0011, as amended. Evidence of the filing bearing the appropriate filing stamp must be submitted or, alternatively, a certified copy.

(2) Other Required Filings.

(A) Loan Forms. The applicant must provide information regarding all loan forms it intends to use.

(i) Custom Forms. If a custom loan form is to be prepared, a preliminary draft or proof that is complete as to format and content and which indicates the number and distribution of copies to be prepared for each transaction must be submitted.
(ii) Stock Forms. If applicant purchases or plans to purchase stock forms from a supplier, the applicant must attach a statement that includes the supplier’s name and address and a list identifying the forms to be used, including the revision date of the form, if any.

(B) Statement of Experience. All new applicants should provide an attached statement setting forth the details of the applicant’s prior experience in the lending or credit granting business. If the individuals named on the application do not have significant experience in the same type of credit business as planned for the prospective licensee, the applicant must provide a written statement explaining the applicant’s relevant experience and why the commissioner should find that the applicant has the necessary experience.

(C) Statement of business operation plan. Applicants must attach a brief narrative to the application explaining the type of lending operation that is planned. This narrative should discuss each of the following topics: the source of customers, purpose(s) of loans, size of loans, the source of working capital for planned operations, whether the applicant will only be arranging or negotiating loans for another lender or financing entity and, if so, a list of those lenders, whether the loans will be collected at the location where the loans are made and, if not, identify the person or firm that will be handling servicing and state their location, and a detailed description of the process to be utilized in collections.

(D) Entity documents.

(i) Partnerships. Partnership applicants must submit a complete copy of the partnership agreement. This copy must be signed and dated by all partners. Limited partnerships must submit a copy of the articles of partnership filed with the secretary of state, any amendments, and a copy of the secretary of state’s acknowledgment.

(ii) Corporations.

(I) All corporate applicants, domestic and foreign, must provide the following documents:

(a) A copy of the articles of incorporation and any amendments;

(b) A copy of the corporate by-laws;

(c) Minutes of corporate meetings that record:

(1) the election of all current officers and directors as listed on the license application (Form ADM-10/11), and

(2) the authorization for the application for the license; and

(d) A certificate of good standing from the comptroller of public accounts.

(II) All foreign corporate applicants must provide the following:

(a) A certificate of authority to do business in Texas;

(b) A statement of where corporate records and records of Texas loan transactions will be kept. If these records will be maintained at a location outside of Texas, the corporate applicant must acknowledge responsibility for the travel costs associated with examinations in addition to the usual examination fees or agree to make all the records available for examination in Texas.

(III) Publicly held corporations must file the most recent 10K and 10Q for the applicant or for the parent company.

(iii) Trusts. A copy of the instrument that created the trust must be filed with the application.

(iv) Estates. A copy of the instrument establishing the estate must be filed with the application.

(E) Bond. The commissioner may require a bond under Texas Civil Statutes, Article 5069-3A.202 when the commissioner finds that this would serve the public interest. When a bond is required, the commissioner shall give written notice to the applicant. Should a bond not be submitted within 40 calendar days of the date of the commissioner’s notice, any pending application may be denied.

Subsequent Applications. If the applicant is currently licensed and filing an application for a new office, the applicant must provide the forms and other information that are unique to the new location including the application form (ADM 10/11) and a new financial statement as provided in 7 TAC §1.31(1)(E). Other information required by this section need not be filed if the information on file with the agency is current and valid.

§1.32. Transfer of License.

(a) Definition. As used in this section, a “transfer of ownership” occurs whenever an existing owner relinquishes that owner’s entire interest in a licensee or an entirely new person has obtained an ownership interest in the licensee. This term includes any purchase or acquisition of control over more than 10% of the outstanding voting stock of any licensed corporation, or of any corporation which is the parent or controlling stockholder of a licensed corporation. This term also includes any acquisition of a license by gift, devise or descent.

(b) Approval of transfer. No consumer loan license may be sold, transferred or assigned without written approval of the commissioner. When a person with no prior ownership interest in the licensee purchases or acquires control of 10% or more of the voting stock of any licensed corporation, or of any corporation that is the parent or controlling stockholder of a licensed corporation, an application for transfer of the ownership of the license must be filed.

(c) Filing requirements. An application for transfer of a consumer loan license must be submitted on forms prescribed by the commissioner at the date of filing and in accordance with the rules and the commissioner’s instructions. The application for transfer shall include, but not be limited to, the following:

(1) Application form (Form ADM-10/11). The instructions in 7 TAC §1.31(1)(A) are applicable to this filing.

(2) Statutory Agent Disclosure (Form ADM-13). The instructions in 7 TAC §1.31(1)(B) are applicable to this filing.

(3) Personal Affidavit (Form ADM-15/16). Every individual listed on the license application (ADM10/11) who is a principal party or is a supervisor or manager of the transferee must complete this form. The instructions set forth in 7 TAC §1.31(1)(C) are applicable to this filing.

(4) Fingerprints. A complete set of legible fingerprints shall be provided for each individual having a substantial relationship with the applicant. An individual has a substantial relationship with an applicant if it is a “principal party,” as that term is defined in 7 TAC §1.30. Individuals who have previously been licensed by the commissioner and principal parties of entities currently licensed by the commissioner are not required to provide fingerprints. The commissioner may require fingerprints of employees or other persons with some relationship to the applicant if the commissioner believes that the individual’s background history is relevant to the applicant’s eligibility for a license. All fingerprints should be submitted on a
(5) Evidence of the transfer of ownership. Documentation evidencing the transfer of ownership must be filed with the application. This must include one of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased,

(B) a copy of the stock purchase agreement if 10% or more of the outstanding voting stock of a corporate licensee has been purchased or otherwise acquired, or

(C) any document that transferred ownership in a licensee by gift, devise or descent, such as a probated will or a court order.

(6) Financial statement (ADM-17/18/19). The instructions in 7 TAC§1.31(1)(E) are applicable to this filing.

(7) Other Required Filings. All filings required of new license applicants pursuant to 7 TAC§1.31 (2) must be filed and completed by any applicant for transfer of a license. If the applicant is currently licensed and acquiring another location, the applicant must provide the forms and other information that are unique to the new location. Other information required by this subsection need not be filed if the information on file with the agency is current and valid.

(d) Permission to operate. No business under the license shall be conducted by any transferee until the application has been received, all applicable fees have been paid, and a request for permission to operate has been approved by the commissioner. The commissioner may deny a request for permission to operate during the pendency of the application.

(e) Purchaser operating under seller’s license. The commissioner may approve a written agreement whereby a seller grants a buyer the authority to operate under the seller’s consumer loan license pending approval of the buyer’s license application. The agreement must provide that the seller accepts full responsibility to the commissioner and any customer of the licensed business for any acts of the buyer in connection with the operation of the lending business. The written agreement between the seller and the buyer must be submitted with a request to operate under the seller’s license not less than three (3) business days after the date of the sale. The agreement shall be for a limited time as provided in the agreement and in no case may such authority extend beyond 180 days.

(f) Application filing deadline. Applications filed in connection with transfers of ownership may be filed in advance but must be filed no later than ten (10) calendar days following the actual transfer.

§1.33 Processing of Application

(a) Initial review. The commissioner shall respond to applications within 15 working days of receipt stating that the application is complete and accepted for filing or stating that the application is incomplete and specifying the information required for acceptance.

(b) Complete application. An application is complete when it:

(1) conforms to the rules and the commissioner’s published instructions,

(2) all fees have been paid, and

(3) all requests for additional information have been satisfied.

(c) Failure to complete application. If a complete application has not been filed with the commissioner within 30 days after notice of deficiency has been sent to the applicant, the application may be denied.

(d) Hearing. Whenever an application is denied, the affected applicant has 30 days from the date the application was denied to request in writing a hearing to contest the denial. This hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001 and 7 TAC§9.01 et seq., before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) Denial. Upon the final denial of an application, the annual fee shall be refunded to applicant. The investigation fee shall be forfeited.

(f) Processing time.

(1) The commissioner shall ordinarily approve or deny a license application within a maximum of 60 days after the date of filing of a completed application.

(2) When a hearing is requested following an initial license application denial, the hearing shall be held within 60 days after a request for a hearing is made unless the parties agree to an extension of time. The commissioner shall make a final decision approving or denying the license application after receipt of the proposal for decision from the administrative law judge.

§1.34 Change in Form or Proportionate Ownership

(a) Organizational form. When any licensee desires to change the organizational form of its business (e.g. from sole proprietorship to corporation), the licensee must advise the commissioner in writing of the change within ten (10) calendar days by filing the appropriate transfer documents as provided in 7 TAC§1.32. In addition, the licensee shall submit a copy of the organizational document (such as the articles of incorporation) for the new entity.

(b) Merger. A merger of a corporate licensee is a change of ownership and requires the filing of a transfer application pursuant to 7 TAC§1.32. A merger of the parent corporation of a licensee with another corporation that leads to the creation of a new corporate entity requires a transfer application pursuant to 7 TAC§1.32. A merger of the parent corporation of a licensee with another corporation that results in the situation where the surviving corporation is not the existing parent corporation requires a transfer application pursuant to 7 TAC§1.32. Mergers of other corporations with a beneficial interest beyond the parent corporation level only require notification within 10 calendar days.

(c) Proportionate Ownership. A mere change in the proportion of ownership among the current owners does not require the filing of a transfer application. A change in the proportionate interests of two or more current owners of consumer loan license must be reported in writing.

(d) Notice deadline. Notices filed in connection with changes in proportionate ownership may be filed in advance but must be filed no later than ten (10) calendar days following the actual change.
§1.36. Amendments to Pending Applications.

Each applicant shall provide the commissioner with information supplemental to that contained in the applicant’s original application documents and attachments. Any action, fact, or information that would require a materially different answer than that given in the original license application and which relates to the qualifications for license must be reported to the commissioner within 10 business days after the person has knowledge of the action, fact or information.

§1.37. Relocation of Licensed Offices.

(a) A licensee may move the licensed office from the licensed location to any other location by giving notice of intended relocation to the commissioner not less than 30 days prior to the anticipated moving date. The notice must include the present address of the licensed office, the contemplated new address of the licensed office, the approximate date of relocation, and a copy of the notice to debtors. Any licensee failing to give the required notice shall waive all default charges on payments coming due from the date of relocation to 15 days subsequent to the mailing of notices to debtors. Notices shall identify the licensee, give both old and new addresses, old and new telephone numbers, and state the date relocation is effective. The notice to debtors can be waived or modified by the commissioner when it is in the public interest. A request for waiver or modification must be submitted in writing for approval. The commissioner may approve notification to debtors by signs in lieu of notification by mail, if in the commissioner’s opinion, no debtors will be adversely affected.

(b) Written notice of a relocation of an office must be mailed to all debtors of record at least 5 days prior to the date of relocation. A fee of $25 must be paid each time a licensee seeks to amend a license by rendering a license inactive, activating an inactive license, changing the assumed name of the licensee, or relocating an office.

(c) License amendment. A fee of $25 must be paid each time a licensee seeks to amend a license by rendering a license inactive, activating an inactive license, changing the assumed name of the licensee, or relocating an office.

(e) License duplicate. The fee for a license duplicate is $10.

(f) Costs of hearings. The commissioner may assess the costs of an administrative appeal hearing afforded under §7.33(d) above, including the cost of the administrative law judge, the court reporter and agency staff representing the agency at a hearing.

§1.40. Applications and Notices as Public Records.

Once a license application or notice is filed with the OCCC, it becomes a “state record” under Government Code §441.180(11), and “public information” under Government Code §552.002. Under Government Code §§441.190, 441.191 and 552.004, the original applications and notices must be preserved as “state records” and “public information” unless destroyed with the approval of the director and librarian of the State Archives and Library Commission under Government Code §441.187. Under Government Code §441.191, the OCCC may not return any original documents associated with a consumer loan license application or notice to the applicant or licensee. An individual may request copies of a state record under the authority of the Government Code, Chapter 352.

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 20, 1998.

TRD-9802600
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Earliest possible date of adoption: April 12, 1998
For further information, please call: (512) 936-7600

7 TAC §§1.31–1.34, 1.36–1.40

(ResourceManager’s note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Finance Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Finance Commission of Texas (the commission) proposes the repeal of §§1.31–1.34 and 1.36–1.40, part of the rules which implemented Chapter 3, Texas Civil Statutes, Article 5069-3.01 et seq. The sections which are proposed for repeal relate to licensing procedures under Chapter 3, Texas Civil Statutes, Article 5069-3.01 et seq., which was repealed by the 75th Legislature. Moreover, they are being replaced by a new set of rules for Chapter 3A, a new chapter of the Credit Title which encompasses old Chapters 3 through 5. The new rules are in the process of being published for comment in the Texas Register.

Leslie Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the repeal as proposed will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the repeal.

Ms. Pettijohn also has determined that for each year of the first five-year period the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal is the
removal of unenforceable regulations which will provide space for replacement rules. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. There will be no effect on small businesses.

Comments on the proposed repeal may be submitted in writing to Leslie Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207.

The repeal is proposed under Texas Civil Statutes, Article 5069-3A, 901, which authorizes the Finance Commission to adopt rules to enforce new Chapter 3A. The repeal will not be adopted until the proposed replacement sections are adopted.

The statutory provisions (as currently in effect) affected by the proposed repeal are Texas Civil Statutes, Articles 5069, Chapter 3A, Subchapter C.

§1.31. Filing of Application
§1.32. Principal Parties
§1.33. Requirement of Bond
§1.34. Financial Responsibility
§1.36. Sale or Transfer of Regulated Receivables
§1.37. Sale, Transfer, or Assignment of License
§1.38. Acquisition of Stock
§1.39. Acquisition of License of Gift, Devise, or Descent
§1.40 Organizational Form of Business Certification

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 20, 1998.

TRD-9802599
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Earliest possible date of adoption: April 12, 1998
For further information, please call: (512) 936-7600

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

16 TAC §23.17

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

The Public Utility Commission of Texas (commission) proposes the repeal of §23.17, relating to Administration of IntraLATA Compensation and Interexchange Carrier Access Charge Revenues. On December 17, 1997, the commission adopted new §§23.131 (relating to Texas Universal Service Fund (TUSF)), 23.133 (relating to Texas High Cost Universal Service Plan (THCUSP)), 23.134 (relating to Small and Rural Incumbent Local Exchange Carrier (ILEC) Universal Service Plan), 23.136 (relating to Implementation of the Public Utility Regulatory Act §56.025), 23.138 (relating to Additional Financial Assistance), 23.142 (relating to Service and Link Up Service Programs), 23.143 (relating to Tel-Assistance Service), 23.147 (relating to Designation of Local Exchange Carriers as Eligible Telecommunications Providers to Receive Texas Universal Service Funds), 23.148 (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds), and 23.150 (relating to Administration of Texas Universal Service Fund). Upon implementation of these new rules, §23.17 will become duplicative and no longer necessary. Project Number 18654 has been assigned to the proposed repeal of §23.17.

Diana Zake, senior policy analyst, Office of Policy Development, has determined that for each year of the first five-year period this repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Diana Zake has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be the elimination of confusion resulting from duplicative rule sections. There will be no effect on small businesses as a result of repealing this section. There is no anticipated economic cost to persons as a result of repealing this section.

Diana Zake has also determined that for each year of the first five years the repeal is in effect there will be no impact on employment in the geographical area affected by the repeal of this section.

Comments on the proposed repeal (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas 78711-13326, within 30 days after publication. All comments should refer to Project Number 18654.

The repeal is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§23.17. Administration of IntraLATA Compensation and Interexchange Carrier Access Charge Revenues.

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 26, 1998.

TRD-9802844
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: April 12, 1998
For further information, please call: (512) 936-7308

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Customer Service and Protection

PROPOSED RULES  March 13, 1998  23 TexReg 2651
The Public Utility Commission of Texas (commission) proposes the repeal of §23.53, relating to Universal Service Fund. On December 17, 1997, the commission adopted new §§23.131 (relating to Texas High Cost Universal Service Plan (THCUSP)), 23.134 (relating to Small and Rural Incumbent Local Exchange Carrier (ILEC) Universal Service Funds), 23.144 (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds), and 23.150 (relating to Distribution unbundling reports would require utilities to file an annual report relating to the number and kinds of electric meters in use, generation mix and emissions, and the numbers and kinds of customer services. The new section relating to cost separation would require electric utilities to separate the costs of electric service into functional categories consisting of electricity production, electricity delivery, and the provision of related services — metering and billing services, customer services, and energy services — to electric customers.

This rulemaking proceeding has three objectives. The first is to separate the costs of electric service by function so the commission can monitor the cost of the service components. The second objective is to begin the process of removing regulation from those services and markets which are sufficiently competitive such that regulatory-based pricing and oversight are no longer needed. The commission determined in its consideration of integrated resource planning that unbundling distribution functions would facilitate further competition in the existing retail energy-service markets, and concluded that there is no longer a reason to maintain strict regulatory control over those markets. Cost separation is the first step in the process of unbundling and deregulating those markets.

The third objective of this proceeding is to enhance public awareness of electricity production and delivery costs. Presenting total costs by function allows customers to become better informed about the cost components that underlie their electric bills. Changes in the presentation of information on the electric bill may cause some initial customer concerns, but it will not change the total cost to each customer and it will allow customers to become more informed consumers of electricity today and in the future.

The commission requests that interested parties particularly address the following questions issues in their comments. These questions are grouped into eight categories: the application of the proposed regulations; the terminology that may appear on customer bills; the grouping of costs on customer bills; the need for additional education efforts; the simplification of reporting requirements; the classification of services for the purpose of unbundling; the appropriateness of old cost-of-service studies;
and the cost of complying with, and the benefits to be gained by, the proposed regulations. This grouping provides a framework for discourse on these topics, and interested parties should organize their comments using the topics listed above. The commission also seeks any other comments on the proposed rule.

First, the commission is interested in receiving comments on the application of the proposed regulations. Is an exemption for small utilities appropriate? If so, what exemptions would allow the commission to meet its goals? The commission is also interested in whether any exemption for a small utility would deny choices or information to the customers of that utility.

Second, the terminology that may appear on customer bills must be understood by a typical customer. What terms and presentation are appropriate to address the commission’s goals relating to simplification, public awareness, and customer education?

Third, the commission is interested in the grouping of costs on customer bills. Should the costs of metering and billing service and customer service – once identified in the cost of service – be included as a component of the cost of power, the cost of power delivery, or as a separate item on the bill?

Fourth, in raising public awareness relative to the presentation of cost information on the electric bill some additional education efforts may be required. Should the commission and utilities conduct customer education efforts before unbundled electric bills are distributed?

Fifth, the purpose of the reporting requirement relating to generation mix and emissions is to capture – to an accuracy of approximately one-half percent – a utility’s annual generation mix and emissions, so that customers who would like this information may have access to it. Because such percentages must include power purchases, should the commission adopt a methodology or a set of simplifying assumptions for this purpose? If so, what methods, assumptions, or procedures are appropriate such that the reporting burden will be kept to the minimum necessary to achieve the accuracy desired?

Sixth, the commission has set forth a classification scheme for the services provided by retail electric utilities today, and it would invite comment on these definitions. Is each definition reasonable? How should the commission unbundle the cost of other competitive services that are not energy related and not included in the proposed definitions?

Seventh, the commission is interested in using appropriate cost data during the compliance phase of this proceeding. Should the commission require all affected utilities to prepare an up-to-date cost-of-service study for the compliance filing? If not, how old a cost-of-service study should be permitted for the compliance filing? What other criteria are more appropriate to make this determination?

Finally, the commission requests that electric utilities that could be affected by the proposed regulations provide an estimate of the cost of compliance with the proposed regulations with the utility’s initial comments. A utility’s cost estimates should indicate its cost of modifying customer bills, its cost of preparing annual reports, and its cost of modifying cost-accounting procedures and separating costs. Interested persons may reply to each utility’s cost estimates. In addition, the commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the new regulations. The commission will consider the costs and benefits in deciding whether to adopt the new regulations.

Nat Treadway, policy analyst, Office of Policy Development, has determined that for the first five years that the proposed sections are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the sections.

Mr. Treadway also has determined that for the first five years that the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections includes improved regulatory oversight of the cost of electricity delivery and the provision of related services by retail electric utilities, increased competition in the provision of services as utilities seek to reduce costs, increased efficiency in the provision of competitive energy services, and enhanced customer awareness of the cost of electricity, the cost of power delivery, and the cost of related services.

The proposed new sections relating to electric billing and cost separation are likely to increase the costs to utilities of complying with the commission’s rules, but the benefits described above are expected to outweigh the costs. The costs of complying with the proposed regulations concerning electric billing and cost separation are difficult to estimate and are likely to vary from utility to utility. Utilities that maintain billing and accounting systems that are flexible and readily altered may incur no significant costs. Utilities that out-source billing and accounting may incur a modest cost at the time of negotiating a new contract. A rough estimate of the annual cost for utilities that must substantially revise customer billing and cost accounting procedures is from $20,000 to $2.5 million, depending on the size of the utility. To put these figures in context, the cost of service for the largest electric utility in the state is about $5.6 billion, while the revenue of a small utility is measured in millions of dollars.

For each year of the first five years the proposed sections are in effect, there will be no effect on small businesses as a result of enforcing the proposed sections. The new sections relating to electric billing and cost separation may increase the opportunities for small businesses to provide services to electric utilities, but the magnitude of this benefit is uncertain. It is anticipated that the economic impact of the rules on the persons that are required to comply with them will be favorable, but it is impossible to estimate the magnitude of this benefit.

These rules should improve utility services by permitting a more focused application of the state’s resources to the regulation of electric utilities, and by bringing better pricing information to customers.

Mr. Treadway has further determined that for the first five years the proposed new sections are in effect there will be a favorable effect on the opportunities for employment in the geographic areas of Texas affected by implementing the requirements of the rules, but it is impossible to estimate the magnitude of the benefit.

Comments on the proposed rule (16 copies) may be submitted to Filing Clerk, Public Utility Commission of Texas, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. All comments should refer to Project Number 16536: Cost Separation Proposal.
The commission staff will conduct a public hearing on this rule-making under Government Code §2001.029 at the commission’s offices on Friday, May 8, 1998, at 9:00 a.m. in the commissioners’ hearing room, seventh floor of the William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas, 78701. Interested persons may make oral comments concerning the proposed regulations at that time.

Subchapter B. Customer Service

16 TAC §25.41

This section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.002, 32.101, 38.001, 38.002, and 38.003 (Vernon 1998) (PURA). Section 14.002 provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. Section 32.101 requires an electric utility to file tariffs with each regulatory authority showing each rate that is in effect for a utility service, product, or commodity. Section 38.001 requires an electric utility to furnish service, instrumentality, and facilities that are safe, adequate, efficient, and reasonable. Sections 38.002 and 38.003 provide the commission with authority to adopt reasonable standards and classifications with respect to electric services.


§25.41. Calculation, Rendering, and Form of Certain Electric Bills.

(a) Purpose. The purpose of this section is to more clearly present total cost information by function on the customers’ electric bills. In no event shall the compliance proceeding of this rule be used to alter the amount that a customer pays for electric service under the utility’s effective rates.

(b) Application. This section shall apply to all electric utilities that provide retail electric utility service in Texas.

(c) Compliance and timing. Affected utilities shall file a plan for revising billing formats and shall file sample bills consistent with this section at the time that utility makes a compliance filing under §25.221 of this title (relating to Electric Cost Separation). The sample bills for residential customers shall be based on usage of 500 and 1000 kilowatt-hours per month. The sample bills for small commercial customers shall be based on usage of 7500 and 15000 kilowatt-hours per month, with 35 kilowatts per month demand usage in each case. At its election, the affected utility may also amend its existing approved tariffs to indicate how the separately-stated costs will be calculated for retail customers’ bills using approved rates. The commission shall issue an order approving or modifying and approving the sample billing format and the utility’s plan for revising its billing format prior to implementation of the new billing procedures. Once this order has been issued, §23.45(g)(2) of this title (relating to Billing) no longer applies to the affected utility.

(d) Definitions. As used in this section, the terms affected utility, generation service, transmission service, distribution service, metering and billing service, customer service, and energy service have the meanings set forth in §25.221 of this title (relating to Electric Cost Separation). The term renewable resource refers to electricity generated by a renewable energy technology as that term is defined in §23.3 of this title (relating to Definitions).

(e) Calculation of bills. Affected utilities shall calculate the customer’s electric bill according to the utility’s approved tariffs.

(f) Rendering of bills. Bills for electric service shall be rendered monthly, unless otherwise authorized by the commission, or unless service is rendered for a period of less than one month. Bills shall be rendered as promptly as possible following the reading of meters.

(g) Form of bills to present separated costs and usage. Affected utilities shall render bills that display, at a minimum, the following information for the relevant billing period. The information listed in paragraphs (1) - (6) of this subsection shall be displayed in a conspicuous manner.

1. the total cost of generation service, customer service, metering and billing service, and any commission-approved energy service, using the term “cost of power”;

2. the "average cost per kWh," calculated by dividing the total cost listed in paragraph (1) of this subsection by the total kilowatt-hours consumed;

3. the total cost of transmission service and distribution service, using the term "cost of power delivery";

4. the total cost of retail taxes, using the term "taxes (city, state)";

5. the sum of the total costs listed in paragraph (1), (3), and (4) of this subsection, which shall be the total amount due for services provided, using the term “total due”;

6. the date payment is due;

7. if the meter is read by the utility, the date and reading of the meter at the beginning and at the end of the period for which the bill is rendered, and the number of units metered for that time period;

8. the total amount due after addition of any penalty for nonpayment within a designated period. The terms “gross bill” and “net bill” and other similar terms implying the granting of a discount for prompt payment shall be used only when an actual discount for prompt payment is granted. The terms shall not be used when a penalty is added for nonpayment within a designated period;

9. the following explanations:

(A) that the applicable rate schedule will be mailed on request to the customer;

(B) how to contact the utility for customer service, billing inquiries, or to report an outage or emergency condition, including the appropriate telephone numbers and other information;

(C) the statement: "Persons unable to resolve billing or service complaints with their electric provider may contact the Public Utility Commission of Texas’ Office of Customer Protection at 1701 N. Congress Ave., P.O. Box 13326, Austin, TX 78711-3326, or by internet at customer@puc.state.tx.us.;" and

(D) the statement: "Persons interested in obtaining information regarding this electric provider’s mix of generation resources (coal, gas, nuclear, or renewable resource) and air emissions may request a disclosure statement by calling (insert utility phone number) or writing to the utility at (insert utility address)."

(h) Past due balance. All rules pertaining to billing and disconnection of service shall apply to backbilling, with the exception of §23.45(b) of this title.

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 27, 1998.

TRD-9802949
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7308

Subchapter D. Records and Reports

16 TAC §25.87

This section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.002, 32.101, 38.001, 38.002, and 38.003 (Vernon 1998) (PURA). Section 14.002 provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. Section 32.101 requires an electric utility to file tariffs with each regulatory authority showing each rate that is in effect for a utility service, product, or commodity. Section 38.001 requires an electric utility to furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable. Sections 38.002 and 38.003 provide the commission with authority to adopt reasonable standards and classifications with respect to electric services.


§25.87. Distribution Unbundling Reports.

(a) Purpose. The purpose of this section is to require the filing of certain reports by affected utilities.

(b) Application. This section shall apply to electric utilities that provide retail electric utility service in Texas.

(c) Compliance and timing. Affected utilities shall file annual reports with the commission’s filing clerk on the last working day of February each year which shall cover the 12 months of the preceding calendar year. The first such report may cover months prior to the effective date of this section.

(d) Definitions. As used in this section, the terms affected utility, generation service, transmission service, distribution service, metering and billing service, customer service, and energy service have the meanings set forth in §25.221 of this title (relating to Electric Cost Separation). The term renewable resource refers to electricity generated by a renewable energy technology as that term is defined in §23.3 of this title (relating to Definitions).

(e) Reports. Affected utilities shall file the following reports on forms provided by the commission.

(1) Meters. The report shall indicate the number of meters in service at year end by customer class, rate schedule, and type of meter.

(2) Generation mix and generation emissions. The utility’s generation mix and generation emissions shall include the mix and emissions associated with purchased power. The utility shall state its assumptions made to estimate the fuel sources and emissions associated with the utility’s power purchases. The utility’s generation mix and generation emissions shall be compared to national and statewide averages as established by the commission.

(A) The report shall indicate the utility’s generation mix in percentages for the previous calendar year using the following terms: “coal and lignite”; “natural gas”; “fuel oil”; “nuclear fuel”; and “renewable resource.”

(B) The report shall indicate the utility’s generation emissions for the previous calendar year based on the average emissions using the following terms: “pounds of nitrous oxide (NO) per megawatt-hour (MWh)”; “pounds of sulfur dioxide (SO) per megawatt-hour (MWh)”; and “tons of carbon dioxide (CO) per megawatt-hour (MWh).”

(3) Customer service. The report shall be organized by individual activity, program, or service. The report shall describe all services provided to retail customers. These include services provided according to a rate schedule, service regulations, contracts between the utility and its customers, or other arrangements, including services provided according to an arrangement that is not set forth on an approved tariff. The report shall indicate the annual expenditures by cost category; the number of participants or customers affected; the applicable charges and revenues, if any; the compensation or rebates, if any; and a report on the status or results of evaluations planned, initiated, in progress, or completed during the reporting year.

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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Rhonda Dempsey
Rules Coordinator
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For further information, please call: (512) 936-7308

Subchapter I. Transmission and Distribution

16 TAC §25.221

This section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.002, 32.101, 38.001, 38.002, and 38.003 (Vernon 1998) (PURA). Section 14.002 provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. Section 32.101 requires an electric utility to file tariffs with each regulatory authority showing each rate that is in effect for a utility service, product, or commodity. Section 38.001 requires an electric utility to furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable. Sections 38.002 and 38.003 provide the commission with authority to adopt reasonable standards and classifications with respect to electric services.


§25.221. Electric Cost Separation.

(a) Purpose. The purpose of this section is to identify the costs incurred by electric utilities that provide retail electric utility service, and to separate such costs into six categories: generation service, transmission service, distribution service, metering and billing service, customer service, and energy service. This section establishes procedures for cost separation.
(b) Application. This section shall apply to electric utilities that provide retail electric utility service in Texas.

(c) Definitions. As used in this section, the following terms have the following meanings unless the context clearly indicates otherwise:

(1) Affected utilities - shall refer to all utilities to which this section applies.

(2) Customer service - A service that is related to the provision of electric service by a retail electric utility in Texas. Customer service does not include generation service, transmission service, distribution service, metering and billing service, or energy service. Customer service consists of the following services:

(A) preparation and maintenance of the tariff book;
(B) explanation of the tariff options to customers and determination of the appropriate rate schedule for a retail customer;
(C) low-income programs and activities;
(D) electrical pulse service and the communication of information relating to customer usage;
(E) general customer education, school programs, and community education activities;
(F) safety advertising or other advertising required by the commission;
(G) economic development and community affairs;

and,

(H) materials, accounting, and administrative support required to carry out the functions in subparagraphs (A) - (G) of this paragraph.

(3) Distribution service - A service that ensures delivery of electric power from the transmission system to retail customers. Distribution service consists of the following services:

(A) the safe delivery of electric power to retail customers, generally, but not exclusively, below 60 kilovolts;
(B) the regulation and control of electricity in the distribution system;
(C) distribution system reliability;
(D) distribution system voltage and power continuity;
(E) initiation of service, including installation and activation of facilities;
(F) monitoring of power delivery at the distribution feeder level;
(G) line extensions;
(H) underground service;
(I) access to and use of rights of way and distribution facilities by telephone, cable, security, wireless, and other non-electric services;

(J) response to electric delivery problems, including outages, interruptions, and voltage variations, and restoration of service in a timely manner; and

(K) materials, accounting, and administrative support required to carry out the functions in subparagraphs (A) - (J) of this paragraph.

(4) Energy service - A service that is related to the provision of electric service by a Texas retail electric utility. Energy service does not include generation service, transmission service, distribution service, metering and billing service, or customer service. Energy service includes, but is not limited to:

(A) installation, sale, financing, repair, operation, or warranty of energy-consuming, customer-premise equipment;
(B) energy efficiency and load management programs and activities;
(C) technical assistance relating to any customer-premises process or device that consumes electricity;
(D) activities related to customer-premises power quality and reliability services;
(E) trade group, builder, and developer activities;
(F) comprehensive or walk-through energy audits;
(G) customer-premises power-generation equipment and related services;
(H) building or facility design and related engineering services, or analysis and design of energy-related industrial processes;
(I) hedging and risk management services;
(J) propane, liquid propane gas, and other energy-based services;
(K) retail marketing, selling, demonstration, and merchant activities; and,

(L) materials, accounting and administrative support required to carry out the functions in subparagraphs (A) - (K) above.

(5) Generation service - The production and purchase of electricity for retail customers and the production, purchase, and sale of electricity in the wholesale power market.

(6) Metering and billing service - A service that ensures that electricity delivered to retail customers is accurately measured and billed to customers. Metering and billing service consists of the following services:

(A) measurement or estimation of the electricity consumed or demanded by a retail electric customer during a specified period;
(B) meter calibration and testing;
(C) meter reading, including remote meter reading;
(D) individual customer outage detection and usage monitoring;
(E) theft detection and prevention;
(F) presentation of charges to customers for the actual services provided and the rendering of bills;
(G) extension of credit and collection of payments from customers;
(H) disbursement of funds collected;
(I) uncollectible accounts;
(J) customer account data management;
(K) response to customer inquiries and complaints in an appropriate and timely manner concerning generation service,
transmission service, distribution service, or metering and billing service; and

(L) materials, accounting, and administrative support required to carry out the functions in subparagraphs (A) - (K) of this paragraph.

(7) Transmission service - As defined in §23.67(b) and §23.70(b) of this title (relating to Open-access Comparable Transmission Service and Terms and Conditions of Open-access Comparable Transmission Service). For the purpose of this section, ancillary service, as defined in §23.67(b) of this title, is a component of transmission service.

(8) Working day - A day on which the commission is open for the conduct of business.

(d) Cost separation. Affected utilities shall maintain a cost-accounting and records system based on the Federal Energy Regulatory Commission chart of accounts system, as it may be updated, to ensure that the costs associated with generation service, transmission service, distribution service, metering and billing service, customer service, and energy service are accurately and separately identified. Affected utilities shall create and maintain any additional accounts to identify and separate all costs incurred to provide retail electric utility service into six functions: generation service, transmission service, distribution service, metering and billing service, customer service, and energy service. The commission may adopt rate-filing requirements that require affected utilities to provide additional details concerning the separation of costs into these six categories, and the manner in which such costs should be reported in the compliance filing.

(e) Compliance filing. Affected utilities shall make a filing to comply with the cost separation requirements of this section. The filing shall conform to the procedures and guidelines set forth in the commission’s rate-filing package for cost separation pursuant to this section. The compliance filing of affected utilities owning transmission facilities may be based on the cost data underlying the unbundling cost-of-service study approved by the commission in its most recent transmission cost-of-service proceeding. The compliance filing of other affected utilities may be based on the cost data underlying the cost-of-service study approved in the utility’s most recent rate case; however, utilities which have not received commission approval of a cost-of-service study within five years of the effective date of this section may be required to prepare a new cost-of-service study.

(f) Compliance filing date. Affected utilities shall make a compliance filing according to the following schedule:

(1) Any affected utility with more than one million retail electric meters shall file within 60 days of the effective date of this section. Any jurisdictional electric utility affiliated with such a utility shall file at that time.

(2) Any affected utility with more than 100,000 meters but fewer than or equal to one million meters shall file within 150 days of the effective date of this section. Any jurisdictional electric utility affiliated with such a utility shall jointly file with the utility.

(3) All other affected utilities shall file within one year of the effective date of this section.

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 27, 1998.

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Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7308

TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 5. Program Development

Subchapter A. General Provisions

19 TAC §5.10

The Texas Higher Education Coordinating Board proposes to add a new §5.10, concerning General Provisions (Student Transcripts). The proposed rules are being made to implement provisions of the Texas Education Code related to tuition rebates and the TASP, some additional information must be included on student transcripts. The proposed rules would accomplish three things: (a) they would require that transcripts from public institutions contain a record of all courses attempted at that institution; (b) they would require that transcripts indicate when and how students had satisfied TASP requirements; and (c) they would require that institutions maintain transcripts in a compatible electronic format by fall 2000.

Roger Elliott, Assistant Commissioner for Financial Planning, Campus Planning and Research has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Dr. Elliott also has determined that for the first five years the rule is in effect the public benefit will be that the institutions will be required to contain records of all courses attempted at that institution. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

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

The new amendments to the rules are proposed under Texas Education Code, Section 54.0065, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning General Provisions (Student Transcripts).

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

§5.10. Student Transcripts.

(a) Student transcripts shall contain a record of each state funded course attempted by a student at the transferring institution after January 1, 1998. This includes all courses for which the student was enrolled as of the official census date each term, including
developmental education courses, courses that were not completed, courses that were dropped, and courses that were repeated.

(b) After September 1, 1998, the student transcript or an addendum to the transcript certified by the appropriate institutional official shall contain a record of the student’s status in regard to the Texas Academic Skills program (TASP). Depending on the status of the individual student, the document should include the status for each section of the test (reading, mathematics, writing) with information as to how the student met the TASP requirement (TASP test or other test scores, “B” or better courses with grades and course numbers, or other assessment procedures used to fulfill the requirement stipulated by law). The information provided should enable receiving institutions to use the transcript or the addendum as a single source of information to determine the student’s TASP status.

(c) Student transcripts created after September 1, 2000 should be maintained by the institutions in a format suitable for electronic interchange. The format of transcripts shall be the format that is used to store the most transcripts by Texas institutions of higher education as of September 1, 1998 or another format adopted by a majority of the members of the Texas Association of Collegiate Registrars and Admissions Officers prior to that date.

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 23, 1998.

TRD-9802657
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Proposed date of adoption: April 24, 1998
For further information, please call: (512) 483–6162

Subchapter M. Approval and Operation of Community/Junior College Branch Campuses

19 TAC §§5.261–5.267

(Editor’s note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of Chapter 5, Subchapter M, §§5.261 - 5.267 concerning Approval and Operation of Community/Junior College Branch Campuses. The repeal of the rules are as a result of a complete review, rewriting, and restructuring of current Board rules affecting public two-year degree granting institutions. The changes will replace repealed rules to improve readability, consistency, and uniformity, and will add rules to address legislation not previously included in Board rules. The proposed amendments will not substantially change the operation of public two-year degree granting institutions since many of the functions not previously addressed by Board rules were in place.

Glenda Barron, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Dr. Barron also has determined that for the first five years the rule is in effect the public benefit will be that the changes will eliminate oversight by the Board that is not statutorily authorized, allowing local control to be effective where appropriate while providing the appropriate level of state supervision. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

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

The repeal of the rules are proposed under Texas Education Code, Sections 61.061, 61.062, 130.001, and 130.087 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Approval and Operation of Community/Junior College Branch Campuses.

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

§5.261. Purpose.
§5.262. Authority.
§5.263. Definitions.
§5.265. Application and Approval Procedures.
§5.266. Continuing Coordinating Board Supervision.
§5.267. Reclassification.

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 23, 1998.

TRD-9802806
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Proposed date of adoption: February 25, 1998
For further information, please call: (512) 483–6162

Subchapter P. Testing and Developmental Education

19 TAC §§5.311, 5.312, 5.314–5.318

The Texas Higher Education Coordinating Board proposes amendments to Chapter 5, Subchapter P, §§5.311, §5.312, §5.314 - §5.318 concerning Testing and Developmental Education. The proposed changes would implement provisions of legislation contained in Senate Bill 148 passed by the 75th Legislature. Most of those provisions became effective in the fall of 1997, but several significant provisions were not to become effective until fall 1998. The amendments under consideration at this time relate primarily to the fall 1998 provisions. The provisions in the proposed amendments would: eliminate the nine-hour rule and consequently require each undergraduate student who enters a public institution of higher education to be tested for reading, writing and mathematics skills prior to enrolling in
any collegiate-level courses; provide alternative test instruments to be used to test a student initially when taking the TASP Test is not possible prior to the beginning of collegiate-level work; provide for standards for the alternative test instruments; establish other assessment procedures, as required by Texas Education Code, Section 51.306(g), to be used by institutions to determine whether students who cannot pass the TASP Test may enroll in upper-division courses or graduate; clarify rules permitting students who earn a grade "B" or better in specified freshman-level credit courses and who have not passed the TASP Test to enroll in collegiate-level courses; specify the time period to be used to determine state funding limits for developmental education under the 18/27 credit hour funding cap; and clarify, add or delete terms and definitions.

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

Dr. Sanford also has determined that for the first five years the rule is in effect the public benefit will be that these changes update Board rules to bring them into alignment with amendments to state law. They clarify alternative ways to meet the requirements of the law, thereby providing the potential for better access and retention in higher education. The changes also require students to test earlier which will result in developmental assistance being applied earlier which should reduce the need for developmental education in higher education. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, R.O. Box 12788, Capitol Station, Austin, Texas 787711.

The amendments to the rules are proposed under Texas Education Code, Section 51.307, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Testing and Developmental Education.

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

§5.311. Purpose.

In accordance with, and under the authority of Texas Education Code (TEC) Section 51.306 and 51.403, this subchapter is intended to delineate policies relating to the Texas Academic Skills Program (TASP) and the treatment of students in public institutions of higher education who do not pass one or more sections of an approved test given for TASP purposes [the Texas Academic Skills Program Test].

§5.312. Definitions.

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

(1) Alternative Test—A test instrument approved by the Board for use by an institution to initially test a student.

(2) Blind student and Deaf student—For the purpose of this subchapter blind student and deaf student mean students who are blind or deaf persons as defined by the Texas Education Code, Section 54.205(a).

(3) Developmental Education—For the purposes of this subchapter is defined as courses, tutorials, laboratories, or other efforts to bring student skill levels in reading, writing and mathematics to entering college level. The term does [does not] include courses in English as a Second Language (ESL), study skills or thinking skills.

(4) Extension requests—Requests to extend TASP compliance deadlines for students who have not taken the test due to circumstances beyond their control.

(5) Freshman—A matriculated student who has accumulated fewer than thirty college-level semester credit hours or the equivalent.

(6) Minimum Passing Standard—Statewide testing standard each undergraduate student who enters a public institution of higher education [include: postsecondary students] unless exempt, must meet or exceed on measures of reading, writing and mathematics skills in order to fulfill requirements specified in Texas Education Code, Section 51.306 [each section of the TASP Test to leave state mandated developmental education or to progress to upper division course work or to graduate from a Texas public postsecondary institution].

(7) Non-Degree Credit Course—A course which may not be counted toward a degree or certificate. The term includes developmental, pre-collegiate and continuing education courses.

(8) Testing irregularity—Any occurrence in the course of administering the TASP Test or detected after administration of the test that violates rules of test participation, standards of test security and/or academic honesty.

(9) Texas Academic Skills Program (TASP) Test—The test required by Texas Education Code, Section 51.306 which shall be uniformly administered statewide on days prescribed by the Board and shall be scored by the testing contractor. The test measures college readiness in reading, writing and mathematics and includes a written essay. It is administered under secure conditions and each student is provided with diagnostic information regarding test performance.

(10) Upper-division course—Any degree credit course beyond the sophomore level as defined by a four-year senior university, and any degree credit course offered by an upper-level institution.

[Pre-TASP Test—A local placement test that may be administered and scored by qualified campus personnel on a schedule determined by the institution.]

§5.314. Administration.

(a) Testing [All institutions shall use the TASP Test and testing] procedures for the TASP Test are prescribed by the Board. Testing procedures for the approved alternative tests are the purview of each institution and must include reasonable and appropriate accommodations for students with disabilities and internal policies for testing irregularities and academic dishonesty. [The same instrument shall be used at all public institutions of higher education.]

(b) (No Change)

(c) Once a student has passed any section of the TASP Test or an approved alternative test, his or her score shall remain active. Test sections passed while a student is in high school are valid for a period of five years per Section 5.313(a)(4)(D) [Section 5.313(a)(2)(D) of this title (relating to Eligibility and Exemptions).

(d) (No Change)
[e] An institution may not charge a student more than $4.00 for the administration and scoring of the Pre-TASP Test.

(e) [42] Policies relating to these rules must be followed as they are described and further extended in the TASP Policy Manual.

(f) [42] Each institution of higher education shall provide information in the institution’s catalog relating to the testing and developmental education requirements of TASP and of the rules adopted by the Board.

(g) [44] TASP Test scores may be withheld and/or canceled for any student who is suspected of committing a testing irregularity during the TASP Test administration. A student whose TASP Test scores have been withheld shall receive prompt notification of the reasons why the scores have been withheld and shall be entitled to due process of law prior to any cancellation of scores. Institutions may be notified in the event the student is found to have committed a testing irregularity.

(h) [44] The Commissioner of Higher Education has the authority to grant or reject extension requests.

§5.315 Standards.

(a) Effective 9/16/95 and until amended by the Board, minimum passing scaled score standards for the TASP Test are set at: Reading - 230; Mathematics - 230; Writing - 220.

(b) Minimum passing standards for approved alternative tests shall be set to provide a 95 percent probability of passing appropriate sections of the TASP Test. Until amended by the Board, minimum passing standards for the approved alternative tests are:

1. ASSET,
2. COMPASS,
3. MAPS, and
4. ACCUPLACER.

(c) Institutions may require higher performance standards.

§5.316 Developmental Education and Advisement.

(e) For initial placement of a student, an institution may use any appropriate diagnostic assessment procedures.

(f) [44] A student whose performance is below the minimum passing standard set by the Board for a tested skill area on the TASP Test or approved alternative test must participate continuously in a developmental education program. Continuously means that until the institution certifies that a student has successfully completed developmental education, a student, during each enrolled term, [semester in which a student is enrolled, be or she] must participate and be enrolled in a developmental course or other developmental program prescribed by the institution.

(g) [44] Alternative tests are to be used only for initial testing; the TASP Test must be used for all retakes. If the initial TASP Test or alternative test results indicate that developmental education is necessary in any area tested, the institution shall refer the student to developmental courses or other types of developmental programs made available by the institution. Developmental education must begin upon enrollment for any collegiate-level work [as soon as possible, but not later than the beginning of the next semester]. On successful completion of the developmental coursework or program prescribed by the institution, the student shall retake those portions of the TASP Test for which developmental education was required.

(h) Each institution shall make available those courses and programs on the same campus or center at which the student would otherwise attend classes. Where there are multiple centers or sites for classes, an institution may designate a principal site or sites where developmental education will be conducted.

(d) [44] An institution may elect to provide developmental programs or courses on its campus by contracting with a second institution to deliver the instruction. If such an arrangement is made, the host institution will be responsible for the quality and effectiveness of developmental education.

(e) [44] An upper level institution or health science center that admits a student who has not passed the TASP Test is responsible for providing developmental instruction on campus either through the provision of non-degree credit developmental programs or by contracting with another institution, as provided in subsection (d) of this section.

(f) Developmental courses and programs may not be considered as credit toward completion of degree or certificate requirements.

(g) [44] Each institution shall establish an advising program to advise students at every level of undergraduate courses and degree options that are appropriate for the individual student.

(h) [44] Each institution shall formulate policies to require and monitor students’ [continuous] participation in appropriate developmental courses and/or other types of programs until such students have fulfilled the requirements specified in Texas Education Code, Section 51.306 [passed all sections of the TASP examination]. A student who has successfully completed an institution’s developmental requirements during any term does not have to be in developmental education during the next enrolled term as long as the student retakes the TASP Test or attempts one of the approved courses in an effort to earn a grade of “B” or better. Should the student fail to retake the TASP Test, complete the “B” course or earn a “B” or better, institutions must evaluate the student to determine subsequent action keeping in mind that the overall goal is to help the student complete the TASP requirements as soon as possible. Failure to meet all TASP requirements will bar students from graduation at a community or technical college and upper-division work at a university.

(i) [44] The faculty of each institution should review its degree credit and certificate courses, and may identify those courses for which students must demonstrate prior successful performance on one or more parts of the TASP examination or an approved alternative test. Each institution adopting such a placement plan shall file it with the Board. In the absence of such a placement plan, students would be eligible to enroll concurrently in developmental programs and college level courses, subject to appropriate advisement.

(j) [44] When students are concurrently enrolled in multiple Texas public institutions of higher education, the institution where the student first registers and pays full tuition charges (Texas Education Code, Section 54.062) takes precedence for the provision of developmental education in accordance with subsections (d) and (e) of this section.

§5.317 Reporting and Funding.

(a) Institutional Reporting

(1) (No Change)

(2) Each institution of higher education shall report to the Board (in accordance with Texas Education Code, Section 51.403e) the following information on student performance during the first year enrolled after graduation from high school: TASP Test scores, alternative test scores, developmental education courses required, and grade point average.
Students enrolling at Texas public institutions of higher education who enter a public institution of higher education to be tested for reading, writing and mathematics skills prior to enrolling in any developmental education under the 18/27 credit hour funding time period to be used to determine state funding limits for TASP Test to enroll in collegiate-level courses; specify the TASP Test is not possible prior to the beginning of collegiate-level work; provide for standards for the alternative test instruments; establish other assessment procedures, as required by Texas Education Code, Section 51.306(g), to be used by institutions to determine whether students who cannot pass the TASP Test may enroll in upper-division courses or graduate; clarify rules permitting students who earn a grade of “B” or better in specified freshman-level credit courses and who have not passed the TASP Test to enroll in collegiate-level courses; specify the time period to be used to determine state funding limits for developmental education under the 18/27 credit hour funding cap; and clarify, add or delete terms and definitions.

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

Dr. Sanford also has determined that for the first five years the rule is in effect the public benefit will be that these changes update Board rules to bring them into alignment with amendments to state law. They clarify alternative ways to meet the requirements of the law, thereby providing the potential for better access and retention in higher education.
The changes also require students to test earlier which will result in developmental assistance being applied earlier which should reduce the need for developmental education in higher education. There will be noeffect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station; Austin, Texas 78771.

The repeal of the rules is proposed under Texas Education Code, Section 51.307, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Testing and Developmental Education.

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

§5.313. Eligibility and Exemptions.

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 23, 1998.

TRD-9802655
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed date of adoption: April 24, 1998
For further information, please call: (512) 483–6162

19 TAC §5.313

The Texas Higher Education Coordinating Board proposes to Chapter 5, Subchapter P, new §5.313 concerning Testing and Developmental Education (Eligibility and Exemptions). The proposed changes would implement provisions of legislation contained in Senate Bill 148 passed by the 75th Legislature. Most of those provisions became effective in the fall of 1997, but several significant provisions were not to become effective until fall 1998. The amendments under consideration at this time relate primarily to the fall 1998 provisions. The provisions in the proposed amendments would: eliminate the nine-hour rule and consequently require each undergraduate student who enters a public institution of higher education to be tested for reading, writing and mathematics skills prior to enrolling in any collegiate-level courses; provide alternative test instruments to be used to test a student initially when taking the TASP Test is not possible prior to the beginning of collegiate-level work; provide for standards for the alternative test instruments; establish other assessment procedures, as required by Texas Education Code, Section 51.306(g), to be used by institutions to determine whether students who cannot pass the TASP Test may enroll in upper-division courses or graduate; clarify rules permitting students who earn a grade "B" or better in specified freshman-level credit courses and who have not passed the TASP Test to enroll in collegiate-level courses; specify the time period to be used to determine state funding limits for developmental education under the 18/27 credit hour funding cap; and clarify, add or delete terms and definitions.

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

Dr. Sanford has also determined that for the first five years the rule is in effect the public benefit will be that these changes update Board rules to bring them into alignment with amendments to state law. They clarify alternative ways to meet the requirements of the law, thereby providing the potential for better access and retention in higher education. The changes also require students to test earlier which will result in developmental assistance being applied earlier which should reduce the need for developmental education in higher education. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station; Austin, Texas 78771.

The amendments to the rules are proposed under Texas Education Code, Section 51.307, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Testing and Developmental Education.

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

§5.313. Eligibility and Exemptions.

(a) Eligibility

(1) Beginning in the fall semester of 1998, each undergraduate student, unless otherwise exempt, who enters a public institution of higher education must be tested for reading, writing and mathematics skills prior to enrolling in any collegiate-level coursework. The unit cost of each test shall be borne by the student. A student who has accumulated at least one but fewer than nine semester credit hours or the equivalent of collegiate level work must be tested prior to the end of the enrollment period of the fall 1998 term. A student who has not been tested may be permitted to enroll in coursework only under the circumstances provided in Section 5.313(a)(2) of this title (relating to Eligibility and Exemptions), but must take the TASP Test not later than the end of the first semester of enrollment.

If any student under this section fails to take the TASP Test during the designated semester, the student will not be permitted to re-enroll or to enroll in any Texas public higher education institution in any courses other than non-degree credit courses until he or she has taken the examination. Students may retake courses for which credit has already been granted (for no additional credit), and may also audit courses.

(2) Circumstances under which a student who has not been tested may enroll in college-level coursework are as follows:

(A) Documented illness, injury or other bonafide emergency which prevents a student from testing;

(B) Diagnosed and documented disability for which reasonable and appropriate accommodations could not be provided by the institution in a timely manner;

(3) The Board has approved alternative test instruments that an institution may use as it chooses to initially test students. Sections of those tests which are passed will count as passing the TASP Test and those sections failed or not attempted will result in required enrollment in developmental education.
(A) Each alternative test instrument shall be correlated with the TASP Test in that it must be of a diagnostic nature and be
designed to provide a comparison of the skill level of the individual
student with the skill level necessary for a student to perform
effectively in an undergraduate degree program.

(B) Alternative tests must include sections measuring
reading, mathematics and writing skills and a multiple-paragraph
written essay of about 300 to 600 words on an assigned topic.
A student shall be permitted at least one hour to complete the
essay portion of the test. The writing prompt shall be academic
in nature where the assignment, audience and purpose of the essay
shall be provided and the student required to choose and support
a position with logical arguments and appropriate examples. The
objective portion of the writing test may be used for placement and
devvelopmental education purposes, but the essay shall be the primary
criterion for passing the writing section. Essays must be scored by
the appropriate testing company and may not be scored locally.

(C) Alternative tests are to be used only for initial
testing; the TASP Test must be used for all retakes. Therefore, on
completion of the developmental coursework or program, the student
shall take that portion of the TASP Test for which developmental
education was required.

(D) Institutions may or may not choose to offer an
alternative test; however, students may not enroll in any collegiate-
level coursework until they have been tested unless they meet one of
the circumstances listed in Subsection (2) of this section. Institutions
which choose not to offer an alternative test must make every effort
to ensure that students take the TASP Test prior to beginning collegiate
coursework. Students who do not meet the requirements of Texas
Education Code, Section 51.306(b) must be limited to developmental
or non-credit coursework only.

(E) The alternative tests approved by the Board are:

(i) ASSET offered by ACT

(ii) COMPASS offered by ACT

(iii) Multiple Assessment Programs and Services
(MAPS) offered by The College Board

(iv) ACCUPLACER offered by The College Board

(F) The unit costs of each alternative test shall be
borne by the student.

(4) A high school student who has passed the exit-level
assessment required under Texas Education Code, Section 39.023
(TAAS) shall be encouraged to take the TASP Test while enrolled
in high school unless otherwise exempt. The Board shall work with
the Texas Education Agency to encourage eligible students to take
the test; however, taking the test shall be voluntary.

(A) Each eligible high school student shall pay for the
cost of taking the test unless funds are appropriated for that purpose.
If funds are appropriated for that purpose, the Board and the Texas
Education Agency shall develop a mechanism for the payment of the
cost of the test.

(B) The test shall be offered to high school students
outside of regularly scheduled school days and at locations throughout
the state.

(C) A high school student who fails to achieve the
minimum passing standard set by the Board may not be required to
take developmental classes while in high school and may not take
collegiate level classes related to portions of the test that have not
been passed. However, after graduation from high school, a student
who enters a public institution of higher education must comply with
the provisions in Texas Education Code, Section 51.306.

(D) A high school student who achieves the minimum
passing standard set by the Board shall be deemed to have met
the requirements of Texas Education Code, Section 51.306 when
enrolling at a public institution of higher education, provided that
the student enrolls in the institution not later than five years from the
date the test is taken and the set score level is achieved. A student
enrolling for the first time in a public institution of higher education
after the five-year period has elapsed must comply with all provisions
of Texas Education Code, Section 51.306. The five-year period will
begin on the date when the minimum passing standard is achieved
on each test section.

(E) The Board shall work with the Texas Education
Agency to provide high school students, their parents, and their
schools with information about the TASP and assist them in inter-
preting the results of the test.

(F) Institutions of higher education shall actively
encourage eligible students from area high schools to take the TASP
Test while still in high school and shall provide TASP information to
those high schools.

(G) A high school student who enrolls in dual credit
(or is concurrently enrolled in college-level coursework) must take
the TASP Test or, under the circumstances specified in Section 5.313(a)(3), of this title (relating Eligibility and Exemptions) to an
alternative test prior to enrolling in coursework.

(5) No student may graduate from a Level-Two certificate
program (43-59 semester credit hours or the equivalent), an associate
degree program or baccalaureate degree program or enroll in any
upper-division course completion of which would give the student
60 or more college-level semester credit hours or the equivalent (the
student may continue to enroll in lower-division or non-degree credit
courses only) without having:

(A) passed all sections of the TASP Test (or an
alternative test on initial attempt only) unless the student is exempted
under subsection (b) of this section; or

(B) earned a grade of "B" or better in a freshman-level
credit course in the skill area of the assessed deficit in accordance with
Section 5.318 of this title (relating to Students Who Earn a "B"
Or Better in Freshman-Level Credit Courses).

(6) After successful completion of an appropriate develop-
mental program, a student must retake appropriate sections of the
TASP Test.

(7) An institution which by law may not offer lower-
division courses may use performance on the TASP Test as a condi-
tion of admission.

(8) A health science center may use performance on the
TASP Test as a condition of admission only to upper-level programs.

(9) Blind students will take the TASP Test with appropriate
accommodations and deaf students will take the Stanford Achieve-
ment Test nationally normed on the hearing impaired population by
Gallaudet University. Deaf students who fail portions of the Stanford
Achievement Test must enroll in developmental education each term
and may not graduate until all sections of the test are passed. Until
amended by the Board, minimum passing standards on the Stanford
Achievement Test to be used in lieu of the TASP Test are:
(A) Reading Comprehension - 652 scaled score, 29 raw score;
(B) Mathematics Total - 682 scaled score, 66 raw score;
(C) Language Total - 662 scaled score, 37 raw score; and
(D) Study Skills - 663 scaled score, 19 raw score.

(10) Texas public institutions of higher education offering collegiate-level credit to students via Multi-Institution Teaching Centers (MITCs) or to in-state students by distance learning delivery systems must meet all TASP requirements specified in Texas Education Code, Section 51.306.

(b) Exemptions

(1) Any student with at least three college-level semester credit hours or the equivalent from an accredited institution accumulated prior to the fall of 1989 shall not be required to take the TASP Test regardless of any election of academic fresh start (Texas Education Code, Section 51.929). Such credit hours must be certified as college-level by the granting institution and need not be applicable toward a degree or certificate.

(2) Students who perform at or above a level set by the Coordinating Board on the ACT, Scholastic Assessment Test (SAT) or exit-level Texas Assessment of Academic Skills (TAAS) shall be exempt from the TASP Test requirement. This exemption will be in effect for five years from the date the ACT or SAT was taken and for three years from the date the TAAS Test was taken. While tests may be retaken, ACT or SAT scores meeting or exceeding the standard set by the Board must be achieved on a single test administration. TAAS scores must meet or exceed exemption standards on the first attempt. The standard set by the Board may not exceed a level that is equivalent to a 95 percent probability of passing the TASP Test. Effective fall 1997 and until amended by the Board, standards for exemption from the TASP are:

(A) ACT: composite score of 23 with a minimum of 19 on both the English and the mathematics tests; or
(B) SAT: combined verbal and mathematics score of 1070 with a minimum of 500 on both the verbal and the mathematics tests (recentered scale for tests taken April 1995 and thereafter); or
(C) SAT: for tests taken prior to April 1995, a combined verbal and mathematics score of 970, with a minimum of 420 on the verbal test and 470 on the mathematics test; or
(D) TAAS: a minimum scale score of 1770 on the writing test, a Texas Learning Index (TLI) of 86 on the mathematics test and 89 on the reading test.

(3) An institution may exempt a non-degree-seeking or non-certificate-seeking student who will be 55 years of age or older on the first class day of a term or semester from the testing requirements imposed by this section as a condition for enrollment during that term or semester in a course.

(4) Students who enroll on a temporary basis in an institution of higher education, and are also enrolled in a private or independent institution of higher education or an out-of-state institution of higher education or have graduated from an institution of higher education, a private or independent institution of higher education, or an out-of-state institution of higher education may be exempt from the requirements of Texas Education Code, Section 51.306.

(5) TASP requirements do not apply to students enrolled in certificate programs of one year or less (Level-One, 42 or fewer semester credit hours or the equivalent).

(6) Texas Education Code, Section 51.306(a) specifies that a student who has been diagnosed as having dyslexia or a related disorder, as those terms are defined by Texas Education Code, Section 38.003, or a specific learning disability in mathematics by a qualified professional whose license or credentials are appropriate to diagnose the disorder or disability as determined by the board, who takes the TASP Test and completes the developmental program prescribed by the institution may be required to retake the TASP Test once but may not be required to take an additional developmental course or other developmental program or preclude from enrolling in an upper-division course or graduating because of the student’s performance on the test. The alternative tests specified in Section 5.313(a)(3) of this title (relating to Eligibility and Exemptions) will not qualify a student for the provisions of Texas Education Code, Section 51.306.

(7) A student who is a citizen of a country other than the United States and is not seeking a degree or Level-Two certificate is exempt from the requirements of Texas Education Code, Section 51.306.

(8) A student who has graduated with a baccalaureate degree from an accredited institution of higher education is exempt from the requirements of Texas Education Code, Section 51.306. 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.
Glenda Barron, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Dr. Barron also has determined that for the first five years the rule is in effect the public benefit will be that the changes will eliminate oversight by the Board that is not statutorily authorized, allowing local control to be effective where appropriate while providing the appropriate level of state supervision. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under Texas Education Code, Sections 61.061, 61.062, 130.001, and 130.087, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Creation, Expansion, Dissolution, or Conservatorship of Public Community/Junior College Districts (Definitions).

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

§81. Definitions.

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

(1) Appropriate Authorities (for the purposes of certification of the petition) - The independent school district board of trustees, county school board or boards, or commissioners’ court or courts as outlined under Section 8.30 of this title (relating to Legality of the Petition).

(2) Board or Coordinating Board - The Texas Higher Education Coordinating Board.

(3) Branch Campuses of community/junior college districts - Operate as out-of-district units of existing community/junior college districts and provide programs as defined in Texas Education Code, Chapter 130 and set out in Section 8.25 of this title (relating to Provisions Applicable to Each Type of District) on an on-going and permanent basis.

(4) Commissioner of Higher Education or Commissioner - The chief executive officer of the Texas Higher Education Coordinating Board.

(5) Extension Center or Extension Facility - Any single or multiple location other than the main campus of a community/junior college district and is outside the boundaries of the taxing authority of a community/junior college district. Extension centers and extension facilities are subject to Chapter 5, Subchapter H of this title (relating to Approval of Distance Learning for Public Colleges and Universities).

(6) Full-time Equivalent Students (FTE) - The total number of semester credit hours reported by an institution for a long term divided by 15 semester credit hours, or total reported annually divided by 30; and for continuing education courses, the total number of contact hours reported quarterly by an institution divided by 300, or total reported annually divided by 900.

(7) Governing Board - The body charged with policy direction of any public community/junior college district, the technical college system, public lower-division institutions, public senior college or university, or other educational agency, including but not limited to boards of directors, boards of regents, boards of trustees, and independent school district boards.

(8) Gross fiscal mismanagement - Includes:
(A) failure to keep adequate fiscal records,
(B) failure to maintain proper control over assets,
(C) failure to discharge fiscal obligations in a timely manner, and
(D) misuse of state funds.

(9) Inactive Public Community/Junior College - A public community/junior college district that has failed to establish and maintain a community/junior college within three years from the date of its authorization.

(10) Scholastic Population of a proposed community/junior college district - Includes all students enrolled in K-12 for the area to be included in the district.

(11) State Conservatorship Board - Board that is appointed by the Governor with the consent of the Senate and has the authority, when appointed as conservator of an agency, to:
(A) terminate the employment of any employee whose conduct the board determines contributed to the condition that caused the conservatorship,
(B) employ personnel for the agency,
(C) change the agency’s organization or structure as necessary to alleviate the conditions that caused the conservatorship, and
(D) contract with persons for management or administrative services necessary to effect the conservatorship.

(12) Technical - Credit courses in programs of up to two years in length leading to applied associate degrees or certificates.

(13) Vocational - Terminal continuing education courses or programs leading directly to employment in semi-skilled and skilled occupations.

(14) Workforce Education - Vocational and technical courses and programs that lead to initial or continuing licensure, applied associate degrees, or certificates.

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 25, 1998.

TRD-9802811
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Proposed date of adoption: April 24, 1998

For further information, please call: (512) 483-6162

Subchapter B. Creation of a Public Community/Junior College District
The Texas Higher Education Coordinating Board proposes new Chapter 8, Subchapter B, §§8.21 - 8.36 concerning Creation, Expansion, Dissolution, or Conservatorship of Public Community/Junior College Districts (Creation of a Public Community/Junior College District). The new proposed rules are as a result of a complete review, rewriting, and restructuring of current Board rules affecting public two-year degree granting institutions. The changes will replace repealed rules to improve readability, consistency, and uniformity, and will add new rules to address legislation not previously included in Board rules. The proposed amendments will not substantially change the operation of public two-year degree granting institutions since many of the functions not previously addressed by Board rules were in place.

Glenda Barron, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule. Dr. Barron also has determined that for the first five years the rule is in effect the public benefit will be that the changes will eliminate oversight by the Board that is not statutorily authorized, allowing local control to be effective where appropriate while providing the appropriate level of state supervision. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under Texas Education Code, Sections 61.061, 61.062, 130.001, and 130.087, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Creation, Expansion, Dissolution, or Conservatorship of Public Community/Junior College Districts (Creation of a Public Community/Junior College District).

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

§8.21. Purpose.
This subchapter outlines the process the Coordinating Board shall use in determining the need for a new public community/junior college district, and provides specific procedures communities are to follow in requesting approval from the Board for the creation of a public community/junior college district and the holding of an election to establish the district.

§8.22. Authority.
Texas Education Code, Sections 61.051(b)(c), 61.053, 61.060, 61.061, 61.062, 130.001, 130.003, and 130.004, and Chapter 130, Subchapter B and C, authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for the creation of public community/junior college districts. The provisions direct the Board to determine the need for the public community/junior college district and the ability of the jurisdiction to provide adequate local financial support. The Board shall determine whether programs in the proposed institution will create unnecessary duplication or seriously harm programs in existing community/junior college districts. The Board must consider the needs and welfare of the state as a whole, as well as the welfare of the community involved, when authorizing the creation of a community/junior college district.

§8.23. A Community/Junior College District Coextensive with an Independent School District or a Union Community/Junior College District.
(a) A community/junior college district may be established by:
(1) any independent school district or city which has assumed control of its schools;
(2) any city which has assumed control of its schools;
(3) two or more contiguous common school districts; or
(4) a combination composed of one or more independent school districts with one or more common school districts of contiguous territory.

(b) The proposed community/junior college district must have a minimum assessed valuation (as defined in the Texas Tax Code, Chapter 1, Section 1.004) of not less than $2.5 billion and a total scholastic population of not less than 15,000 in the school year preceding the date of the Letter of Intent as set out in Section 8.27 of this title (relating to Application Procedures) for the proposed community/junior college district. A petition for an election to create a district of this type must be signed by not less than 10 percent of the qualified voters in the proposed district.

(a) A county community/junior college district may be established by any county in the state. The proposed community/junior college district must have a minimum assessed valuation (as defined in the Texas Tax Code, Chapter 1, Section 1.004) of not less than $2.5 billion, and a total scholastic population of not less than 15,000 in the school year preceding the date of the Letter of Intent as set out in Section 8.27 of this title (relating to Application Procedures) for the proposed community/junior college district. A petition for an election to create a district of this type must be signed by not less than 10 percent of the qualified voters of the county.

(b) A joint-county community/junior college district may be established by any combination of contiguous counties in the state. The proposed community/junior college district must have a minimum assessed valuation (as defined in the Texas Tax Code, Chapter 1, Section 1.004) of not less than $2.5 billion, and a total scholastic population of not less than 15,000 in the school year preceding the date of the Letter of Intent as set out in Section 8.27 of this title (relating to Application Procedures) for the proposed community/junior college district. A petition for an election to create a district of this type must be signed by not less than 10 percent of the qualified voters of each of the counties in the proposed district.

§8.25. Provisions Applicable to Each Type of District.
The following additional provisions are applicable to each type of proposed community/junior college district:

(1) The proposed community/junior college must be planned as a comprehensive two-year institution primarily serving its local taxing district and service area (as defined in the Texas Education Code, Chapter 130, Subchapter J), offering:
(A) technical programs up to two years in length leading to associate degrees or certificates;
(B) vocational programs leading directly to employment in semi-skilled and skilled occupations;
(C) freshman and sophomore courses in arts and sciences, including the state-mandated core curriculum;

(D) continuing adult education programs for occupational or cultural upgrading;

(E) compensatory education programs designed to fulfill the commitment of an admissions policy allowing the enrollment of disadvantaged students;

(F) a continuing program of counseling and guidance designed to assist students in achieving their individual educational goals;

(G) workforce development programs designed to meet local and statewide needs;

(H) adult literacy and other basic skill programs for adults; and

(I) such other programs as may be prescribed by the Coordinating Board or local governing boards in the best interest of postsecondary education in Texas.

(2) Substantial evidence must be presented indicating that the proposed community/junior college shall reach a minimum enrollment of 1,000 full-time equivalent students within three years of the date of its authorization.

(3) Evidence must be given that the proposed community/junior college district shall be eligible to receive a proportionate share of the legislative appropriation for public community/junior colleges. Eligibility criteria for legislative appropriations are set out in Texas Education Code, Section 130.003.


(a) A local group of citizens interested in establishing a community/junior college district shall appoint a Steering Committee of at least seven citizens to provide leadership on behalf of the community/junior college effort.

(b) The Steering Committee shall be composed of a cross-section of the population in the area, with representation from major civic groups and business and industry. A chair, co-chair, and secretary shall be appointed, along with any other officers who may be of assistance to the committee. Where the proposed community/junior college district is to be coextensive with the independent school district, the local board of trustees may serve as the Steering Committee.

(c) The duties of the Steering Committee shall include the following:

1. serve as liaison between the local community and the Board;

2. be responsible for conducting a feasibility study and survey of the needs and potential for a community/junior college district in the area;

3. provide information to the community which, at a minimum, describes the role, mission, and purpose of a public community/junior college;

4. summarize and evaluate the results of the feasibility study and survey and formulate conclusions for submission to the Commissioner;

5. prepare and circulate a petition for an election to establish a community/junior college district; and

6. present the appropriately signed petition as set out in Section 8.30(a) of this title (relating to Legality of the Petition) for certification in compliance with the Texas Education Code, Section 130.012, or Sections 130.033, 130.034, and 130.035.

§8.27. Application Procedures.

The Steering Committee shall file a Letter of Intent with the Commissioner as soon as practicable, but no less than six months prior to the quarterly Board meeting at which the Steering Committee elects to submit the certified petition and a request for approval to hold an election.

§8.28. Conduct of a Local Feasibility Study and Survey.

(a) A local feasibility study consisting of a survey of need, potential student clientele, and financial ability shall be carried out under the auspices of the Steering Committee. This feasibility study may be conducted either by the Steering Committee or by professionals.

(b) Board staff shall offer advice and technical assistance to the Steering Committee under the direction of the Commissioner. When the feasibility study is conducted by a professional individual or research organization, the Steering Committee shall fully advise the Commissioner prior to initiating the study.

(c) The feasibility study shall be made in consultation with the Board staff and, upon completion, be submitted to the Commissioner. The Commissioner, in consultation with Board staff, shall determine if further documentation or clarification is needed to supplement the information presented in the feasibility study.

(d) The feasibility study shall be reviewed by the Board, along with other information it deems appropriate, in determining whether the criteria as set out in Section 8.32 of this title (relating to Standards and Board Procedure for Approval) have been met.

§8.29. Circulation of the Petition.

(a) The Steering Committee shall be responsible for the circulation of a petition for authorization of an election to establish a community/junior college district. At a minimum, the petition shall include: the amounts of proposed bonds, bond tax rate ceiling to be proposed, and maintenance tax limits (not to exceed the limits provided in the Texas Education Code, Section 130.122) that shall appear on the ballot in the event an election is authorized.

(b) The petition must incorporate all requirements as set forth in the Texas Election Code, Chapter 277.

§8.30. Legality of the Petition.

(a) After the petition has been circulated among the electorate and has been signed by not less than 10 percent of the qualified electors of the proposed district, the petition shall be verified by the appropriate authorities who have the duty of verifying the legality of the petition.

1. In the case of community/junior college district coextensive with an independent school district or city which has assumed control of its school, the petition shall be presented to the school district’s board of trustees.

2. In the case of a union, single-county, or joint county community/junior college district, the petition shall be presented to the county school board if the proposed district encompasses a single county, or county school boards of the respective counties if the proposed district encompasses more than one county. If there is no county school board or school boards, the petition shall be presented to the commissioners’ court(s) of the county or counties involved.
(b) It shall be the duty of the appropriate authorities to pass upon the legality of the petition and the genuineness of the same.

§ 8.31. Presentation of the Certified Petition to the Board.

(a) When the petition has been certified, it shall be presented by the appropriate authorities to the Commissioner who then shall present it to the Board.

(b) After the petition and any additional documentation or information are presented to the Commissioner, a minimum of 90 days must elapse between the date on which the petition and supporting documents are received by the Commissioner and the quarterly meeting of the Board when the petition will be considered.

§ 8.32. Standards and Board Procedure for Approval.

(a) The Texas Education Code, Section 130.013 and Section 130.036, requires the Board to consider the needs and the welfare of the state as a whole, the geographic location of existing colleges, as well as the welfare of the community involved, before authorizing an election to create a new community/junior college district. The Board shall determine whether programs in a proposed community/junior college district will create unnecessary duplication or seriously harm programs in existing community/junior college districts.

(b) The Board shall apply the following criteria when considering the creation of a new community/junior college district:

(1) Demographic and economic characteristics of the proposed district, such as:
   (A) population trends by age group;
   (B) economic development trends and projections;
   (C) employment trends and projections (supply-demand data).

(2) Potential student clientele, including:
   (A) educational levels by age group; and
   (B) college-bound data (i.e., trends by age group).

(3) The financial status of the proposed district and the state as a whole, including:
   (A) any projected growth or decline in the tax base; and
   (B) trends in state appropriations for community/junior colleges and other institutions of higher education.

(4) Projected programs and services based on economic and population trends.

(5) Proximity and impediments to programs and services of existing institutions of higher education, such as:
   (A) identification of institutions that could be affected by a new community/junior college;
   (B) documentation of existing programs and services, on the campuses of nearby institutions of higher education,
      (i) available to citizens within a 50-mile radius of the proposed district, and
      (ii) offered in the proposed district by existing institutions of higher education;
   (C) financial limitations on existing institutions of higher education inhibiting the offering of programs and services in the proposed district;
   (D) availability of facilities, libraries, and equipment for institutions to offer classes in the proposed district;
   (E) distance and traffic patterns to existing institutions of higher education;
   (F) effect on enrollment patterns to existing institutions of higher education; and
   (G) effect on financing of existing institutions of higher education.

(6) Alternative approaches to meeting the need for educational services in the proposed community/junior college district include, but are not limited to:
   (A) out-of-district classes offered in the district by existing institutions of higher education;
   (B) transportation of students to nearby institutions of higher education; and
   (C) contract programs and services from combinations of institutions of higher education.

(c) The Board’s Committee on Community and Technical Colleges may conduct one or more public hearings in the proposed district to:

(1) assess public sentiment regarding creation of the district;
(2) determine whether programs in the proposed district would create unnecessary duplication or seriously harm programs in existing community/junior college districts or other institutions of higher education in the area; and
(3) assess the potential impact of the proposed district on existing community/junior colleges or other institutions of higher education in the area and on the State of Texas.

(d) After the feasibility study and other documentation and information have been reviewed by the Committee on Community and Technical Colleges and Board staff, a report from the Board staff shall be submitted to the Commissioner indicating whether the criteria as set out in Section 8.32 of this title (relating to Standards and Board Procedure for Approval) have been met. The report shall also include a recommendation for approval or denial of the request for approval to hold an election to create a public community/junior college district, but shall not be binding on the Commissioner or the Board.

§ 8.33. Action and Order of the Board.

(a) Board action on the request for approval to hold an election to create a public community/junior college district shall be taken at the next quarterly Board meeting. In making its decision, the Board shall consider the needs of the community, the potential impact on other institutions of higher education, and the welfare of the state as a whole.

(b) A resolution shall be entered in the minutes of the Board and conveyed in writing by the Commissioner to the Steering Committee.

§ 8.34. Calling the Election; Submission of Questions.

If the Board authorizes an election to establish a community/junior college district, it shall then be the duty of the district or city school board or the commissioners’ court or courts to enter an order for
an election to be held in the proposed district at the next authorized election date as provided in the Texas Election Code, Section 41.001, to determine whether or not such community/junior college district be created and formed, and to submit the questions of issuing bonds and levying bond taxes, and levying maintenance taxes in the event the district is created. The order shall contain a description of the independent school district or districts, county or counties whose boundaries shall be coextensive with the community/junior college district to be formed, and fix the date of the election.

§8.35. **Election.**

A majority of the electors in the proposed district, voting in the election, shall determine the question of creation of the community/ junior college district submitted in the order, the election of the original trustees, and the questions of issuing bonds and levying taxes. A majority of the electors voting in such election shall determine such questions submitted in the order.

§8.36. **Resubmissions of Applications.**

Should an election to create a new community/junior college district fail, a period of 12 months must elapse before resubmission of the proposition to the Board. The Board shall require a strong showing of need and unusual circumstances before approving resubmission before the 12 months have elapsed.

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

Subchapter C. Dissolution of an Inactive Public Community/Junior College District

19 TAC §§8.51–8.56

The Texas Higher Education Coordinating Board proposes new Chapter 8, Subchapter C, §§8.51 - 8.56, concerning Creation, Expansion, Dissolution, or Conservatorship of Public Community/Junior College Districts (Dissolution of an Inactive Public Community/Junior College District). The new proposed rules are as a result of a complete review, rewriting, and restructuring of current Board rules affecting public two-year degree granting institutions. The changes will replace repealed rules to improve readability, consistency, and uniformity, and will add new rules to address legislation not previously included in Board rules. The proposed amendments will not substantially change the operation of public two-year degree granting institutions since many of the functions not previously addressed by Board rules were in place.

Glenda Barron, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enacting or administering the rule.

Dr. Barron also has determined that for the first five years the rule is in effect the public benefit will be that the changes will eliminate oversight by the Board that is not statutorily authorized, allowing local control to be effective where appropriate while providing the appropriate level of state supervision. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under Texas Education Code, Sections 61.061, 61.062, 130.001, and 130.087, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Creation, Expansion, Dissolution, or Conservatorship of Public Community/Junior College Districts (Dissolution of an Inactive Public Community/Junior College District).

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

§8.51. **Purpose.**

This subchapter sets out the procedures for dissolution by the Coordinating Board of an inactive community/junior college district which has failed to maintain or establish a community/junior college within three years from the date of its authorization.

§8.52. **Authority.**

This subchapter is adopted pursuant to authority in Texas Education Code, Sections 61.060, 61.061, 61.062, and 130.001.

§8.53. **Initiation of Consideration of Action.**

(a) An action to dissolve an inactive public community/junior college district may be initiated:

(1) by the Commissioner of Higher Education;
(2) by petition signed by ten or more voting-eligible citizen residents in the district and delivered to the Commissioner;
(3) by a member of the Texas Legislature; or
(4) by any other party or individual authorized by the Commissioner.

(b) The Commissioner shall provide timely written notice of an action to dissolve an inactive public community/junior college district to the chair of the governing board of the district.

§8.54. **Action by the Board.**

(a) At its next scheduled meeting following initiation of an action to dissolve an inactive district, the Coordinating Board may pass a resolution dissolving the inactive public community/junior college district. The resolution must set forth:

(1) the legal history of the district, including the date of authorization, period of inactivity, and dissolution;
(2) the outstanding obligations of the district, if any, of which the Board has knowledge;
(3) the territory of the district; and
(4) the cause in dissolution.

(b) The resolution dissolving the inactive public community/junior college district shall be entered in the minutes of the Board and conveyed in writing by the Commissioner to the governing board or responsible officials of the affected district.

(a) Written protest of an action to dissolve an inactive public community/junior college district must be delivered to the Commissioner and may be made by:

1. any voting-eligible citizen resident in the inactive district;
2. any person, business, corporation, or governmental body holding bonds, debts, or valid contracts with the district;
3. any member of the Coordinating Board; or
4. any member of the governing board of the inactive district.

(b) Notice of protest must be sent to the Commissioner within 30 days after the date of the quarterly Coordinating Board at which the resolution to dissolve the inactive community/junior college district was passed. If no timely protest is received, the resolution shall become final without further Board action on the 31st day after the quarterly board meeting at which the resolution was passed.

§8.56. Action and Order of the Board.

(a) If a timely protest is made to the Commissioner, the Board shall consider it at its next quarterly meeting following filing of the notice of protest. The Board may:

1. hear cause for not dissolving the district;
2. delay consideration until all affected parties have been heard;
3. abandon consideration of the matter without action; or
4. affirm the dissolution.

(b) The Board’s decision regarding the protest shall be recorded in the minutes of the meeting and notice of the decision shall be sent by the Commissioner to the party filing the protest and to the chair of the governing board of the district.

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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Subchapter D. Formation of a Branch Campus

19 TAC §§8.71–8.76

The Texas Higher Education Coordinating Board proposes new Chapter 8, Subchapter D, §§8.71 - §8.76 concerning Creation, Expansion, Dissolution, or Conservatorship of Public Community/Junior College Districts (Formation of a Branch Campus). The new proposed rules are as a result of a complete review, rewriting, and restructuring of current Board rules affecting public two-year degree granting institutions. The changes will replace repealed rules to improve readability, consistency, and uniformity, and will add new rules to address legislation not previously included in Board rules. The proposed amendments will not substantially change the operation of public two-year degree granting institutions since many of the functions not previously addressed by Board rules were in place.

Glenda Barron, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Dr. Barron also has determined that for the first five years the rule is in effect the public benefit will be that the changes will eliminate oversight by the Board that is not statutorily authorized, allowing local control to be effective where appropriate while providing the appropriate level of state supervision. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, R.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under Texas Education Code, Sections 61.061, 61.062, 130.001, and 130.087, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Creation, Expansion, Dissolution, or Conservatorship of Public Community/Junior College Districts (Formation of a Branch Campus).

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

§8.71. Purpose.

This subchapter provides rules and regulations for requesting approval from the Coordinating Board to establish, authorize, and operate a branch campus.

§8.72. Authority.

Texas Education Code, Sections 61.051(c), 61.053, 61.061, 61.062(c)–(d), 130.001(b)(3)–(4), 130.086, and 130.87, authorize the Coordinating Board to adopt policies, enact regulations, and establish rules to define, establish, and authorize a branch campus and provide rules and regulations for a public community/junior college district to operate such a campus.

§8.73. Provisions for Conversion of an Out-of-District Extension Center or Extension Facility to a Branch Campus.

(a) The governing board of a community/junior college district may establish and operate a branch campus through conversion of an extension center or extension facility, provided that each course and program has been approved and is subject to the continuing approval of the Coordinating Board.

(b) Consistent with the statutory purposes and role and mission of a public community/junior college as set out under the Texas Education Code, Section 130.0011 and Section 130.003(c) and in accordance with Board rules and guidelines that no community/junior colleges be established without sufficient local support, whenever any out-of-district extension center or extension facility reaches an enrollment of 1,000 full-time equivalent students in state-supported credit and non-credit courses, one of the following options must be exercised:

1. The out-of-district extension center or extension facility shall establish its own community/junior college district;
(2) The out-of-district extension center or extension facility shall merge with the parent district by annexation; or

(3) An extension center or extension facility shall be converted to a branch campus if a local tax is levied or other local community and/or economic support is sufficient to, as determined by a Coordinating Board appointed team of community college presidents, offer an array of programs of quality and breadth, and maintain and operate the branch campus facilities and equipment.

§8.74. Application and Approval Procedures.

(a) Each institution operating an out-of-district extension center or extension facility that exceeds 1,000 full-time equivalent students in state-supported credit and non-credit courses and chooses neither to establish its own community/junior college district nor to annex to the parent district, must have its governing board submit a Letter of Application to the Commissioner for designation or conversion of the facility/center as a branch campus.

(b) A self-study must be performed by the district to assess whether the proposed branch campus meets the criteria outlined below. The self-study and the extension center or extension facility shall be reviewed by a Board-appointed team for the purposes of documenting that it meets the following standards and criteria for quality instruction and support services, and as specified in Section 5.153 of this title (relating to Standards and Criteria for Distance Learning), and as required by the Commission on Colleges of the Southern Association of Colleges and Schools.

1. Role and Mission; Purpose. In its program aspects, a branch campus shall be equivalent to a public community/junior college. Therefore, the branch campus must provide:

   (A) technical programs up to two years in length leading to associate degrees or certificates;

   (B) vocational programs leading directly to employment in semi-skilled and skilled occupations;

   (C) freshman and sophomore courses in arts and sciences, including the state-mandated core curriculum;

   (D) continuing adult education programs for occupational or cultural upgrading;

   (E) compensatory education programs designed to fulfill the commitment of an admissions policy allowing enrollment of disadvantaged students;

   (F) a continuing program of counseling and guidance designed to assist students in achieving their individual educational goals;

   (G) work force development programs designed to meet local and statewide needs;

   (H) adult literacy and other basic skills programs for adults; and

   (I) such other purposes as may be prescribed by the Coordinating Board or local governing boards in the best interest of postsecondary education in Texas.


   (A) The minimum enrollment necessary to establish a branch campus shall be 1,000 full-time equivalent students in state-supported credit and non-credit courses for the most recent fall semester.

   (B) Exceptions for approval by the Board of out-of-district branch campuses of less than 1,000 full-time equivalent students shall be considered only if:

      (i) there is a local tax to support the proposed branch campus, or

      (ii) the Board has determined that the community and/or economic support is sufficient to offer an array of programs of quality and breadth.

3. Programs and Courses. All courses, programs, and degrees shall be offered in the name of the parent district, and shall be subject to the following criteria:

   (A) Courses and programs must meet the role, mission, and purposes described in subsection (1) of this section.

   (B) Courses and programs must be developed and operated with the ongoing assistance and involvement of the parent district faculty and staff.

   (C) Instructional faculty credentials, full-time/part-time faculty ratios, teaching loads, faculty performance evaluation and effectiveness, student accessibility to faculty, etc., must be reviewed to ensure that these elements contribute to the quality of courses and programs offered.

4. Description of Staffing Plan. There must be sufficient support staff to meet the needs of faculty and students at the branch campus.

5. Funding.

   (A) The branch campus shall be supported either by means of a branch campus maintenance tax as set forth in Chapter 8, Subchapter E of this title (relating to Branch Campus Maintenance Tax), or by a continuing local source of community and/or economic support.

   (B) If a local tax is not levied, local community and/or economic support must be furnished at a level sufficient to provide an array of programs of quality and breadth and all facilities and equipment needed at the proposed branch campus location. “Facilities” include the operation and maintenance of the physical plant plus any rehabilitation and repairs. Local community and/or economic support may be “in-kind.” Local community and/or economic support may not be made up entirely of student tuition and fees, but out-of-district student charges should be set at an amount adequate to cover the direct and indirect costs of instruction and support services not covered by other local support or state funding generated by the out-of-district location.

   (C) Appropriate accounts for the branch campus must be kept and financial reports submitted as required for community/junior college districts.

   (D) State aid shall be earned according to appropriated formula rates for in-district courses.

6. Regional Higher Education Council Review and Certification. The Regional Higher Education Council within which the proposed branch campus is to be located must review the branch campus request only if the proposed branch campus is within a shared service area designated by statute. Member institutions must discuss the proposal with all Councils affected and the minutes shall reflect the discussions. If appropriate, a recommendation for approval or
disapproval shall be submitted to the Commissioner, but shall not be binding on the Commissioner or the Board.

(c) The Board’s Committee on Community and Technical Colleges may conduct one or more public hearings on the proposed branch campus to:

1. assess public sentiment regarding the proposed branch campus;
2. determine whether programs in the proposed branch campus will create unnecessary duplication or seriously harm programs in existing community/junior college districts or other institutions of higher education in the area; and
3. assess the potential impact of the proposed branch campus on existing community/junior colleges or other institutions of higher education in the area and on the State of Texas.

(d) After the self-study as outlined in Section 8.74(b) of this title (relating to Application and Approval Procedures) has been reviewed and a site visit conducted by the Committee on Community and Technical Colleges and Board staff, a report from the Board staff shall be submitted to the Commissioner indicating whether the criteria as set out in subsection (b) of this section have been met. The report shall include a recommendation for approval or denial of the request for the establishment of the proposed branch campus, but shall not be binding on the Commissioner or the Board.

§8.75. Action and Order of the Board.

(a) Board action on the request for approval for establishment of the branch campus shall be taken at the next regularly scheduled quarterly Board meeting. In making its decision, the Board shall consider the needs of the district, the needs of the community served by the proposed branch campus, the potential impact on other institutions of higher education, and the welfare of the state as a whole.

(b) A resolution shall be entered in the minutes of the Board and conveyed in writing by the Commissioner to the governing board of the community/junior college district.

(c) Branch campus designation shall be used only upon approval by the Board.

(d) If the Board approves establishment of a branch campus, the governing board of the community/junior college district may accept or acquire by purchase or rent land and facilities in the name of said institution.

§8.76. Reclassification.

(a) The territory within which a branch campus of a community/junior college operates may elect to apply to the Board to establish its own community/junior college district at any time in accordance with Board rules and guidelines for establishing such an institution.

(b) The Board may withdraw approval for a branch campus whenever the Board finds evidence of:

1. a local effort to:
   (A) establish its own community/junior college district (Such local effort shall be reviewed by the Board according to the criteria as set forth in Subchapter B of this title relating to the Creation of a Public Community/Junior College District) as to the feasibility of establishing a separate community/junior college district, or
   (B) merge with the parent district;

2. failure to maintain the required level of local community and/or economic support; or
3. failure to maintain the standards and criteria of Board rules and regulations.

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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Subchapter E. Branch Campus Maintenance Tax
19 TAC §§8.91–8.103

The Texas Higher Education Coordinating Board proposes new Chapter 8, Subchapter E, §§8.91 – 8.103 concerning Creation, Expansion, Dissolution, or Conservatorship of Public Community/Junior College Districts (Branch Campus Maintenance Tax).

The new proposed rules are as a result of a complete review, rewriting, and restructuring of current Board rules affecting public two-year degree granting institutions. The changes will replace repealed rules to improve readability, consistency, and uniformity, and will add new rules to address legislation not previously included in Board rules. The proposed amendments will not substantially change the operation of public two-year degree granting institutions since many of the functions not previously addressed by Board rules were in place.

Glenda Barron, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Dr. Barron also has determined that for the first five years the rule is in effect the public benefit will be that the changes will eliminate oversight by the Board that is not statutorily authorized, allowing local control to be effective where appropriate while providing the appropriate level of state supervision. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under Texas Education Code, Sections 61.061, 61.062, 130.001, and 130.087, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Creation, Expansion, Dissolution, or Conservatorship of Public Community/Junior College Districts (Branch Campus Maintenance Tax).

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

§8.91. Purpose.
This subchapter provides rules and regulations setting out the procedure by which a school district or county may levy a public community/junior college branch campus maintenance tax. The amount of a branch campus maintenance tax shall not exceed five cents on each $100 valuation of all taxable property in the jurisdiction.

§8.92. Authority.
Texas Education Code, Sections 61.053, 130.001(b)(3)-(4), and 130.087, authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for a school district(s) or county(ies) to request authorization from the Board to hold an election to establish and levy a branch campus maintenance tax.

§8.93. Creation of a Local Steering Committee.
(a) A local group of citizens interested in establishing a branch campus maintenance tax jurisdiction shall appoint a Steering Committee of at least seven citizens to provide leadership on behalf of the tax effort.

(b) The Steering Committee shall be composed of a cross-section of the population of the area, with representation from major civic groups and business and industry. A chair, co-chair, and secretary shall be appointed, along with any other officers who may be of assistance to the committee. Where the proposed branch campus maintenance tax jurisdiction is to be located in an independent school district, the district board of trustees may serve as the Steering Committee.

(c) The Steering Committee shall:

(1) serve as liaison between the local community, the college district which would operate the branch campus, and the Board;

(2) be responsible for conducting a feasibility study and a survey of the needs and potential of the area for a branch campus;

(3) provide information to the community which, at a minimum, describes the nature and purpose of a branch campus;

(4) summarize and evaluate the results of the feasibility study and survey and formulate conclusions for submission to the Commissioner;

(5) prepare and circulate a petition to obtain not fewer than five percent of the qualified voters of the proposed branch maintenance tax jurisdiction; and

(6) present the appropriately signed petition as set out in Section 8.30(g) of this title (relating to Legality of the Petition) to appropriate authorities for certification in compliance with Texas Education Code, Section 130.087.

§8.94. Application Procedures.
The Steering Committee and the community/junior college district that is planning the branch campus shall jointly file a Letter of Intent with the Commissioner as soon as practical. The staff of the Board shall offer advice and technical assistance to the Steering Committee under the direction of the Commissioner on procedures and requirements.

§8.95. Conduct of a Local Feasibility Study and Survey.
(a) A local feasibility study consisting of a survey of need, potential student clientele, financial ability of the jurisdiction, and other pertinent data must be carried out under the auspices of the Steering Committee and the college which shall operate the branch campus. This feasibility study may be conducted either by the Steering Committee or by professionals.

(b) Board staff shall offer advice and technical assistance to the Steering Committee under the direction of the Commissioner. When the feasibility study is conducted by a professional individual or research organization, the Steering Committee shall fully advise the Commissioner prior to initiating the study.

(c) The feasibility study shall be made in consultation with the Board staff and, upon completion, be submitted to the Commissioner. The Commissioner, in consultation with Board staff, shall determine if further documentation or clarification is needed to supplement the information presented in the feasibility study.

(d) The feasibility study shall be reviewed by the Board, along with other information it deems appropriate, in determining whether the criteria as set out in Section 8.89 of this title (relating to Standards and Board Procedure for Approval) have been met.

(a) The Steering Committee shall be responsible for the circulation of a petition for authorization of an election to levy a public community/junior college branch campus maintenance tax. At a minimum, the petition shall include the maintenance tax limits that shall appear on the ballot in the event an election is authorized.

(b) The petition must incorporate all requirements as set forth in the Texas Election Code, Chapter 277.

§8.97. Legality of the Petition.
(a) After the petition has been circulated among the electorate and has been signed by not less than five percent of the qualified electors of the proposed branch maintenance tax jurisdiction, the petition shall be presented to the appropriate authorities who have the duty of verifying the legality of the petition.

(b) It shall be the duty of the appropriate authorities to pass upon the legality of the petition and the genuineness of the same.

§8.98. Presentation of a Certified Petition to the Board.
(a) When the petition has been certified, it shall be presented by the appropriate authorities to the Commissioner who shall then present it to the Board.

(b) After the petition and any additional documentation or information are presented to the Commissioner, a minimum of 45 days must elapse between the date on which the petition and supporting documents are received by the Commissioner and the next quarterly meeting of the Board when the Board will consider the petition.

§8.99. Standards and Board Procedure for Approval.
(a) The Texas Education Code, Section 130.087, requires the Board to determine that

(1) the branch campus maintenance tax rate does not exceed five cents on each $100 valuation of all taxable property;

(2) a certified petition has been submitted by the appropriate authorities to the Board; and

(3) the proposed tax is feasible and desirable.

(b) The Board shall apply the following criteria when considering the appropriateness for the levying of a branch campus maintenance tax:

(1) Demographic and economic characteristics of the jurisdiction seeking to establish the maintenance tax, such things as:

(A) population trends by age group;

(B) economic development trends and projection; and
The Texas Higher Education Coordinating Board proposes new Chapter 8, Subchapter F, §8.121 - §8.123 concerning Creation,
Expansion, Dissolution, or Conservatorship of Public Community/Junior College Districts (Conservatorship of a Public Community/Junior College District). The new proposed rules are as a result of a complete review, rewriting, and restructuring of current Board rules affecting public two-year degree granting institutions. The changes will replace repealed rules to improve readability, consistency, and uniformity, and will add new rules to address legislation not previously included in Board rules. The proposed amendments will not substantially change the operation of public two-year degree granting institutions since many of the functions not previously addressed by Board rules were in place.

Glenda Barron, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Dr. Barron also has determined that for the first five years the rule is in effect the public benefit will be that the changes will eliminate oversight by the Board that is not statutorily authorized, allowing local control to be effective where appropriate while providing the appropriate level of state supervision. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under Texas Education Code, Sections 61.061, 61.062, 130.001, and 130.087, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Creation, Expansion, Dissolution, or Conservatorship of Public Community/Junior College Districts (Conservatorship of a Public Community/Junior College District).

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

§8.121. Purpose.

This subchapter outlines the procedures the Coordinating Board shall use with regard to the conservatorship of a public community/junior college.

§8.122. Authority.

Texas Education Code, Sections 61.051(b)(c)(e), 61.053, 61.060, 61.061, 61.062, and 130.001 and the Government Code, Section 2104.031, authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for action concerning the conservatorship of a public community/junior college when requested by the Governor and upon the advice and assistance of the State Auditor.

§8.123. Mismanagement Finding; Conservatorship Order.

(a) On the Governor’s request the Coordinating Board, with the advice and assistance of the State Auditor, shall determine if a condition of gross fiscal mismanagement exists at a public community/junior college.

(1) When a condition of gross fiscal mismanagement is suspected, the Board shall appoint a delegation to investigate the fiscal condition of the public community/junior college in question. The delegation shall include members of the Committee on Community and Technical Colleges and Board staff. The Board shall request assistance from the State Auditor’s Office to include one of its staff members as a member of the delegation.

(2) Based upon its review of the public community/junior college in the matter of gross fiscal mismanagement, the delegation as set out in subsection (1) of this section shall make a report to the Commissioner to include, if appropriate, a recommendation concerning conservatorship.

(3) The Commissioner shall make a report and recommendation concerning conservatorship to the Board for its consideration at the next quarterly Board meeting.

(b) If the Board finds a condition of gross fiscal mismanagement of a public community/junior college, the Governor, by proclamation, may order the State Conservatorship Board to act as conservator of the college.

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 23, 1998.

TRD-9802816
James McWhorter, Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed date of adoption: April 24, 1998
For further information, please call: (512) 483-6162

Chapter 9. Public Junior Colleges

Subchapter A. Criteria to be Met in the Creation of Public Junior Colleges

19 TAC §§9.1–9.4

(Editor’s note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of Chapter 9, Subchapter A, §9.1 - §9.4, concerning Criteria to be Met in the Creation of Public Junior Colleges. The repeal of the rules are as a result of a complete review, rewriting, and restructuring of current Board rules affecting public two-year degree granting institutions. The changes will replace repealed rules to improve readability, consistency, and uniformity, and will add rules to address legislation not previously included in Board rules. The proposed amendments will not substantially change the operation of public two-year degree granting institutions since many of the functions not previously addressed by Board rules were in place.

Glenda Barron, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Dr. Barron also has determined that for the first five years the rule is in effect the public benefit will be that the changes will eliminate oversight by the Board that is not statutorily authorized, allowing local control to be effective where appropriate
while providing the appropriate level of state supervision. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

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

The repeal of the rules is proposed under Texas Education Code, Sections 61.061, 61.062, 130.001, and 130.087, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Procedures to be Followed in the Creation of Public Junior Colleges.

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


§9.2. Union Junior College District.

§9.3. Single-County Or Joint-County Junior College Districts.

§9.4. Provisions Applicable to Each Type of District.

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 25, 1998.

TRD-9802807
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed date of adoption: April 24, 1998
For further information, please call: (512) 483–6162

Subchapter B. Procedures to be Followed in the Creation of Public Junior Colleges

19 TAC §§9.21–9.31

(Editor’s note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of Chapter 9, Subchapter B, §§9.21 - 9.31, concerning Procedures to be Followed in the Creation of Public Junior Colleges. The repeal of the rules are as a result of a complete review, rewriting, and restructuring of current Board rules affecting public two-year degree granting institutions. The changes will replace repealed rules to improve readability, consistency, and uniformity, and will add rules to address legislation not previously included in Board rules. The proposed amendments will not substantially change the operation of public two-year degree granting institutions since many of the functions not previously addressed by Board rules were in place.

Glenda Barron, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Dr. Barron also has determined that for the first five years the rule is in effect the public benefit will be that the changes will eliminate oversight by the Board that is not statutorily authorized, allowing local control to be effective where appropriate while providing the appropriate level of state supervision. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

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

The repeal of the rules is proposed under Texas Education Code, Sections 61.061, 61.062, 130.001, and 130.087, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Procedures to be Followed in the Creation of Public Junior Colleges.

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


§9.22. Contact with Coordinating Board.


§9.26. Presentation of Petition to the Coordinating Board.

§9.27. Action by the Board.


§9.29. Calling the Election; Submission of Questions.


§9.31. Required Taxing Authority.

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 25, 1998.

TRD-9802808
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed date of adoption: April 24, 1998
For further information, please call: (512) 483–6162

Subchapter C. Procedures for the Dissolution of Dormant Junior College Districts

19 TAC §§9.41–9.48

(Editor’s note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of Chapter 9, Subchapter C, §§9.41 - 9.48, concerning
Proposed rules for the Dissolution of Dormant Junior College Districts. The repeal of the rules are as a result of a complete review, rewriting, and restructuring of current Board rules affecting public two-year degree granting institutions. The changes will replace repealed rules to improve readability, consistency, and uniformity, and will add rules to address legislation not previously included in Board rules. The proposed amendments will not substantially change the operation of public two-year degree granting institutions since many of the functions not previously addressed by Board rules were in place.

Glenda Barron, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Dr. Barron also has determined that for the first five years the rule is in effect the public benefit will be that the changes will eliminate oversight by the Board that is not statutorily authorized, allowing local control to be effective where appropriate while providing the appropriate level of state supervision. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

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

The repeal of the rules is proposed under Texas Education Code, Sections 61.061, 61.062, 130.001, and 130.087, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Procedures for the Dissolution of Dormant Junior College Districts.

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

§9.231. Purpose.
§9.233. Contact with Coordinating Board.
§9.237. Presentation of Petition to the Coordinating Board.
§9.238. Action by the Board.

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 25, 1998.

TRD-9802809
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed date of adoption: April 24, 1998
For further information, please call: (512) 483-6162

Subchapter K. Guidelines to be Followed in Seeking Authorization to Hold a Public Community/Junior College Branch Campus Maintenance Tax Election

19 TAC §§9.231–9.238
(Editor’s note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of Chapter 9, Subchapter K, §9.231 - §9.238 concerning Guidelines to be Followed in Seeking Authorization to Hold a Public Community/Junior College Branch Campus Maintenance Tax Election. The repeal of the rules are as a result of a complete review, rewriting, and restructuring of current Board rules affecting public two-year degree granting institutions. The changes will replace repealed rules to improve readability, consistency, and uniformity, and will add rules to address legislation not previously included in Board rules. The proposed amendments will not substantially change the operation of public two-year degree granting institutions since many of the functions not previously addressed by Board rules were in place.

Glenda Barron, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Dr. Barron also has determined that for the first five years the rule is in effect the public benefit will be that the changes will eliminate oversight by the Board that is not statutorily authorized, allowing local control to be effective where appropriate while providing the appropriate level of state supervision. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

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

The repeal of the rules is proposed under Texas Education Code, Sections 61.061, 61.062, 130.001, and 130.087, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Procedures for the Dissolution of Dormant Junior College Districts.

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

§9.231. Purpose.
§9.233. Contact with Coordinating Board.
§9.237. Presentation of Petition to the Coordinating Board.
§9.238. Action by the Board.

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 25, 1998.
The Texas Higher Education Coordinating Board proposes new Chapter 10, Subchapter A, §10.1 - §10.3 concerning Institutional Effectiveness in Public Community/Junior College Districts and Technical Colleges (Purpose, Authority, and Definitions). The new proposed rules are as a result of a complete review, rewriting, and restructuring of current Board rules affecting public two-year degree granting institutions. The changes will replace repeated rules to improve readability, consistency, and uniformity, and will add new rules to address legislation not previously included in Board rules. The proposed amendments will not substantially change the operation of public two-year degree granting institutions since many of the functions not previously addressed by Board rules were in place.

Glenda Barron, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Dr. Barron also has determined that for the first five years the rule is in effect the public benefit will be that the changes will eliminate oversight by the Board that is not statutorily authorized, allowing local control to be effective where appropriate while providing the appropriate level of state supervision. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12768, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under Texas Education Code, Sections 61.061, 61.062, and 130.001, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Creation, Expansion, Dissolution, or Conservatorship of Public Community/Junior College Districts (Purpose, Authority, and Definitions).

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

§10.1. Purpose.
(a) The purpose of this chapter is to provide guidelines for the state-level evaluation of public community and technical colleges and other institutions providing certificate or associate degree programs through an institutional effectiveness process which:

(1) according to Board approved criteria, assesses and evaluates public community and technical colleges and other institutions providing certificate or associate degree programs in achieving their statutory missions; and

(2) provides for the systematic use of evaluation results to continuously improve institutional performance, programs, services, and standards of operation;

(b) State-level evaluation
(1) encourages the continuous improvement of Texas public community and technical colleges in response to federal and state legislation for higher education, including workforce education and training;

(2) provides accountability to the public, the Legislature, the Governor, and the U.S. Department of Education for expenditure of public funds; and

(3) enables Texas public community and technical colleges and other institutions providing certificate or associate degree programs to demonstrate that they are developing a well-educated citizenry and highly trained workforce.

§10.2. Authority.
Texas Education Code, Sections 61.051(c)(f)(g)(k)(m)(o), 61.054, 61.055, 61.061, 61.062(c)(d)(e), 61.063, 61.0651, 61.066, 130.001(b)(3)-(5), 130.003, and 135.01; authorize the Coordinating Board to adopt policies, enact regulations, and establish rules to provide for the review of the institutional effectiveness of programs, services, and standards of operation for Texas public community and technical colleges and other institutions providing certificate and associate degree programs.

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

(1) Associate Degree Program - A grouping of courses designed to lead the individual directly to employment in a specific career, or to transfer to an upper-level baccalaureate program. This specifically refers to the associate of arts, associate of science, associate of applied arts, associate of applied science, and the associate of occupational studies degrees. The term “applied” in an associate degree name indicates a program whose content primarily is technical.

(2) Board or Coordinating Board - The Texas Higher Education Coordinating Board.

(3) Certificate Program - A grouping of courses designed for entry-level employment or for upgrading skills and knowledge within an occupation. Certificate programs serve as building blocks and exit points for AAS degree programs. This award is approved by the Coordinating Board at one of three levels, appears on the Workforce Program Clearinghouse Inventory, and is subject to the Coordinating Board program evaluation process.

(4) Commissioner of Higher Education or Commissioner - The chief executive officer of the Texas Higher Education Coordinating Board.

(5) Governing Board - The body charged with policy direction of any public community/junior college district, the technical college system, public senior college or university, or other educational agency including but not limited to boards of directors, boards of regents, boards of trustees, and independent school district boards.

(6) Institutional Effectiveness - A comprehensive statewide evaluation process for Texas public community and
technical colleges and other institutions providing certificate or associate degree programs that takes into account the resources, processes, and results of an educational institution and its programs and services.

(7) Standards of Operation - The institutional policies and procedures in place which assist the institution in delivering quality educational programs. These standards are applicable to Texas public community and technical colleges and other institutions providing certificate or associate degree programs.

(8) Institutional Services - The services of an associate degree or certificate-granting institution to promote student access and achievement, retention, community service efforts, maintenance of facilities and equipment, quality academic areas, and success in transfer.

(9) ‘Programs’ - All certificate and associate degree programs. See ‘Associate Degree Program’ and ‘Certificate Program.’

This agency hereby certifies that the proposed rule has been reviewed by legal counsel and found to be within the agency’s authority to adopt. Issued in Austin, Texas on February 23, 1998.

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

Filed with the Office of the Secretary of State, on February 25, 1998.

TRD-9802817

James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Proposed date of adoption: April 24, 1998

For further information, please call: (512) 483-6162

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Subchapter B. General Provisions

19 TAC §§10.21–10.24

The Texas Higher Education Coordinating Board proposes new Chapter 10, Subchapter B, §10.21 - §10.24 concerning Institutional Effectiveness in Public Community/Junior College Districts and Technical Colleges (General Provisions). The new proposed rules are as a result of a complete review, rewriting, and restructuring of current Board rules affecting public two-year degree granting institutions. The changes will replace repealed rules to improve readability, consistency, and uniformity, and will add new rules to address legislation not previously included in Board rules. The proposed amendments will not substantially change the operation of public two-year degree granting institutions since many of the functions not previously addressed by Board rules were in place.

Glenda Barron, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enacting or administering the rule.

Dr. Barron also has determined that for the first five years the rule is in effect the public benefit will be that the changes will eliminate oversight by the Board that is not statutorily authorized, allowing local control to be effective where appropriate while providing the appropriate level of state supervision. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78771.

The amendments to the rules are proposed under Texas Education Code, Sections 61.061, 61.062, and 130.001, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Institutional Effectiveness in Public Community/Junior College Districts and Technical Colleges (General Provisions).

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


(a) Performance Measures and Standards. All certificate and associate degree programs and institutional services and standards of operation must meet performance measures and standards as established by the Board in consultation with an advisory committee appointed by the Commissioner of Higher Education and comprised of representatives from public institutions having certificate and associate degree programs. The measures shall assess the following:

(1) the institution’s overall quality and ability to produce desired results as outlined in Board-approved measures and standards; and

(2) the quality and ability to produce desired results as outlined in Board-approved measures and standards of certificate and associate degree programs.

(b) Reporting. The Board staff shall collect, analyze, and disseminate information and data pertinent to the evaluation of certificate and associate degree programs and institutional services and standards of operation through the institutional effectiveness process.

(c) Institutional Self-evaluation. Institutions shall conduct self-evaluations of certificate and associate degree programs and institutional services and standards of operation through the use of an instrument and in a time frame determined by the Board. The institution shall submit a report of its self-evaluation to the Board staff in a time period and format determined by the Board.

(d) Board Staff Review. The Board staff shall conduct a comprehensive review of institutional certificate and associate degree programs and institutional services and standards of operation within a time frame determined by the Board.

(e) Board Staff Recommendations. The Board staff shall provide a report with recommendations to the Commissioner regarding the review results and whether additional information is needed or improvements must be made in certificate and associate degree programs or institutional services and standards of operation. The Board staff may also recommend to the Commissioner the initiation, consolidation, or elimination of certain certificate or associate degree programs where or when that action:

(1) is in the best interest of the institution,

(2) is in the best interest of the general needs of the state,

(3) is in the best interest of the county in which the institution is located, or

(4) may contribute to excellence by the appropriate concentration of available resources.

PROPOSED RULES March 13, 1998 23 TexReg 2679
The Commissioner shall make recommendations to the Board regarding colleges’ compliance or non-compliance in the initiation, consolidation, or elimination of programs.

§10.22 Action and Order of the Board.

(a) Board action on the colleges’ compliance or non-compliance in the initiation, consolidation, or elimination of programs shall be taken at regularly scheduled quarterly Board meetings.

(b) A resolution shall be entered in the minutes of the Board and conveyed in writing by the Commissioner to the governing boards of the affected institutions.

§10.23 Compliance and Certification.

The Commissioner shall certify to the proper officials the names of those community/junior colleges that have complied with the provisions of this subchapter, as well as other rules and regulations of the Board. Only those institutions which are so certified shall be eligible for and may receive any appropriation made by the legislature to community/junior colleges as prescribed in the Texas Education Code, Section 130.003.

§10.24 Noncompliance.

(a) In the event of a finding of noncompliance, the chancellor, president, and the chair of the governing board shall be given notice of any finding and the provisions of this subchapter that have been violated, if applicable. The college shall be given a time frame to make satisfactory adjustments. If satisfactory adjustments are not made within the time frame, the Commissioner may elect not to certify the institution for purposes of state appropriations.

(b) Approval of new certificate or associate degree programs shall be contingent upon the institution’s compliance with provisions of this subchapter.

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 25, 1998.

TRD-9802818
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed date of adoption: April 24, 1998
For further information, please call: (512) 483–6162

Chapter 12. Proprietary Schools

Subchapter A. Purpose and Authority

19 TAC §12.24

The Texas Higher Education Coordinating Board proposes amendments to Chapter 12, Subchapter A, Section 12.24, concerning Purpose and Authority (Definitions). The amendments were made to include definitions of terms relevant to the TASP test as well as to specify circumstances under which students are exempt from the TASP requirement as it currently exists in Chapter 12. The amendments are informational and serve to clarify board rules regarding the TASP requirement as it exists in Chapter 12. Students in proprietary degree programs and proprietary school owners, directors, and other administrators will gain a better understanding of their obligations and responsibilities under the TASP requirement.

Glenda Barron, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Dr. Barron also has determined that for the first five years the rule is in effect the public benefit will be as a result of enhanced assurance that students who graduate from board-approved proprietary degree programs possess minimum skills in reading, writing, and mathematics. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

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

The amendments to the rules are proposed under Texas Education Code, Section 132.063, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Purpose and Authority (Definitions).

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

§12.24 Definitions.

The following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1–29) (No Change.)

(30) Testing Irregularity—an act of dishonesty involving the TASP test.

(31) Texas Academic Skills Program (TASP) Test—The test required by Texas Education Code, Section 51.306 which shall be uniformly administered statewide on days prescribed by the Board and shall be scored by the testing contractor. The test measures college readiness in reading, writing, and mathematics and includes a written essay. It is administered under secure conditions and each student is provided with diagnostic information regarding test performance.

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 25, 1998.

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

Subchapter B. Basic Standards

19 TAC §12.52

The Texas Higher Education Coordinating Board proposes amendments to Chapter 12, Subchapter B, Section 12.52, concerning Basic Standards (Texas Academic Skills Program TASP). The amendments were made to include definitions of terms relevant to the TASP test as well as to specify circumstances under which students are exempt from the
TASP requirement as it currently exists in Chapter 12. The amendments are informational and serve to clarify board rules regarding the TASP requirement as it exists in Chapter 12. Students in proprietary degree programs and proprietary school owners, directors, and other administrators will gain a better understanding of their obligations and responsibilities under the TASP requirement.

Glenda Barron, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Dr. Barron also has determined that for the first five years the rule is in effect the public benefit will be as a result of enhanced assurance that students who graduate from board-approved proprietary degree programs possess minimum skills in reading, writing, and mathematics. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

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

The amendments to the rules are proposed under Texas Education Code, Section 132.063, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Basic Standards (Texas Academic Skills Program TASP).

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

§12.52. Texas Academic Skills Program (TASP).

Each person who enrolls in an applied associate degree program at a proprietary institution on or after September 1, 1997 must pass all sections of the certification form of the Texas Academic Skills Program (TASP) examination at the level established by the Coordinating Board before the degree may be awarded.

(1) Exemptions:

(A) Any student with at least three college-level semester credit hours or the equivalent from an accredited institution accumulated prior to the fall of 1989 shall not be required to take the TASP test. Such credit hours must be certified as college-level from the granting institution and need not be applicable toward a degree or certificate.

(B) Students who perform at or above a level set by the Coordinating Board on the American College Test (ACT), Scholastic Assessment Test (SAT) or exit-level Texas Assessment of Academic Skills (TAAS) shall be exempt from the TASP test requirement. This exemption will be in effect for five years from the date the ACT or SAT was taken and for three years from the date the TAAS test was taken. While tests may be retaken, ACT or SAT scores meeting or exceeding the standard set by the Board must be achieved on a single test administration. TAAS scores must meet or exceed exemption standards on the first attempt. The standards set by the Board may not exceed a level that is equivalent to a 95 percent probability of passing the TASP test. Effective Fall 1997, and until amended by the Board, standards for exemption from the TASP are:

(i) ACT: composite score of 23 with a minimum of 19 on both the English and the mathematics test,

(ii) SAT: combined verbal and mathematics score of 1070 with a minimum of 500 on both the verbal and the mathematics test (recentered scale for tests taken April 1995 and thereafter),

(iii) SAT: for tests taken prior to April 1995, a combined verbal and mathematics score of 970, with a minimum of 420 on the verbal test and 470 on the mathematics test, or

(iv) TAAS: a minimum scale score of 1770 on the writing test, a Texas Learning Index (TLI) of 86 on the mathematics test and 89 on the reading test.

(C) A student who has graduated with a baccalaureate degree from a regionally accredited institution of higher education is exempt from the TASP requirements.

(2) Administration

(A) Once a student has passed any section of the TASP test, his or her score shall remain active. Test sections passed while a student is in high school are valid for a period of five years.

(B) A public institution of higher education serving as a testing site may not charge proprietary school degree-seeking students for site costs associated with the TASP test.

(C) If a student enrolled in a degree program at a proprietary institution wishes to take the Pre-TASP at a public institution of higher education, the public institution may not charge the proprietary institution student more than $4.00 for the administration and scoring of the Pre-TASP test.

(D) Each degree-granting proprietary institution shall provide information in the institution’s catalog relating to the testing and requirements of TASP as established by the Board.

(3) Testing Irregularities.

(A) TASP scores may be withheld and/or canceled for any student who is suspected of committing a testing irregularity during the TASP test administration.

(B) Institutions may be notified in the event the student is suspected of having committed a testing irregularity.

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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Chapter 21. Student Services

Subchapter A. General Provision

19 TAC §21.6

(Editor’s note: The Texas Higher Education Coordinating Board proposes for permanent adoption the new §21.6 it adopts on an emergency basis in this issue. The text of the new §21.6 is in the Emergency Rules section of this issue.)
The Texas Higher Education Coordinating Board proposes to Chapter 21, Subchapter A, new §21.6, concerning General Provisions (Student Compliance with Selective Service Registration). The new rule is being proposed to comply with House Bill 2061, passed by the 75th Legislature. The bill requires students to register with the Selective Service before they can receive a loan, grant, scholarship or other financial assistance funded by state revenue. Currently over 90 percent of students receiving financial assistance complete the Federal Application for Federal Student Aid. The federal government already has rules and guidelines in place to ensure that students receiving financial aid have complied with Selective Service requirements.

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

Ms. Cobb also has determined that for the first five years the rule is in effect the public benefit will be that students will have to register with Selective Service before receiving financial aid. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under Texas Education Code, Section 51.9095, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning General Provisions (Student Compliance with Selective Service Registration).

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

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

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Subchapter J. The Physician Education Loan Repayment Program

19 TAC §§21.251–21.265

(Per the Texas Register, March 13, 1998, p. 2682)

(1) The Texas Higher Education Coordinating Board proposes the repeal of Chapter 21, Subchapter J, §§21.251–21.265 concerning The Physician Education Loan Repayment Program. The rules are being repealed to eliminate the repetition of requirements and definitions shared by the three parts of the program and present the rules in a more logical order and in a manner that clearly distinguishes the requirements for one part of the program from the requirements for the other parts of the program. The proposed changes will include the elimination of a specific annual repayment amount. Current rules specify a $9,000 loan repayment per year. This prevents flexibility in adjusting to fluctuations in demand represented by the number of applications for participation in the program as well as increases in the amount of student loan indebtedness among applicants. Limiting the repayment amount to $9,000 for all physicians also prevents implementation of graduated annual repayment amounts, which could provide incentives for longer periods of service in economically depressed or medically underserved areas. Repayment amounts recommended by staff and approved by the Commissioner, as proposed in the amendments would facilitate full use of appropriated funds in the Family Practice Resident/Faculty portion of the program while ensuring that the funds are being spent to serve the purpose of the program, and qualify eligible physicians for increased repayment amounts drawn from federal matching funds.

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

Ms. Cobb also has determined that for the first five years the rule is in effect the public benefit will be that they will ensure that the purpose of the state-funded portion of the program and the National Health Service Corps Matching Loan Repayment portion of the program is served by allowing staff to implement increased repayment amounts for longer periods of service. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The repeal of the rules are proposed under Texas Education Code, Section 61.537, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning The Physician Education Loan Repayment Program.

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

§21.251. Purpose.
§21.252. Administration.
§21.255. State Recommended Health Professional Shortage Area.
§21.257. Eligible Lender or Holder.
§21.259. Eligible Education Loan.

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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19 TAC §§21.251–21.263

The Texas Higher Education Coordinating Board proposes new Chapter 21, Subchapter J, §21.251 - §21.263 concerning The Physician Education Loan Repayment Program. The new rules are being proposed to eliminate the repetition of requirements and definitions shared by the three parts of the program and present the rules in a more logical order and in a manner that clearly distinguishes the requirements for one part of the program from the requirements for the other parts of the program. The proposed changes will include the elimination of a specific annual repayment amount. Current rules specify a $9,000 loan repayment per year. This prevents flexibility in adjusting to fluctuations in demand represented by the number of applications for participation in the program as well as increases in the amount of student loan indebtedness among applicants. Limiting the repayment amount to $9,000 for all physicians also prevents implementation of graduated annual repayment amounts, which could provide incentives for longer periods of service in economically depressed or medically underserved areas. Repayment amounts recommended by staff and approved by the Commissioner, as proposed in the amendments would facilitate full use of appropriated funds in the Family Practice Resident/Faculty portion of the program while ensuring that the funds are being spent to serve the purpose of the program, and qualify eligible physicians for increased repayment amounts drawn from federal matching funds.

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

Ms. Cobb also has determined that for the first five years the rule is in effect the public benefit will be that they will ensure that the purpose of the state-funded portion of the program and the National Health Service Corps Matching Loan Repayment portion of the program is served by allowing staff to implement increased repayment amounts for longer periods of service. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The proposed new rules are proposed under Texas Education Code, Section 61.537, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning The Physician Education Loan Repayment Program.

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

§21.251. Purpose.

The purpose of the Physician Education Loan Repayment Program is to encourage qualified physicians to practice medicine in designated areas of the state or for specified state agencies. The purpose of the state-funded portion of the program is to encourage qualified physicians to practice medicine in a medically underserved area that is economically depressed or rural or for the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Criminal Justice, the Texas Youth Commission, or a Community Health Center. The purpose of the National Health Service Corps Matching Loan repayments is to encourage qualified physicians to practice in Health Professional Shortage Areas. The purpose of the family practice faculty and resident portion of the program is to encourage specializing in family practice and practicing in rural counties and Health Professional Shortage Areas in Texas.

§21.252. Administration.

The Texas Higher Education Coordinating Board, or its successor or successors, shall administer the Physician Education Loan Repayment Program.


The Board shall publish and disseminate information about the Physician Education Loan Repayment program to health-related institutions of higher education, appropriate state agencies, and any interested professional associations.


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

(1) Approved Texas Family Practice Residency Training Program — a graduate medical education program operated by a medical school, licensed hospitals or nonprofit corporations, which has been approved for training physicians in family practice and for the receipt of state funds for that purpose by the Coordinating Board after receiving the recommendation of the Board’s Texas Family Practice Residency Advisory Committee.

(2) Board — the Texas Higher Education Coordinating Board.

(3) Commissioner — the commissioner of higher education, the chief executive officer of the Board.

(4) Community Health Center — any facility in Texas funded under the provisions of the United States Public Health Services Act, Sections 329, 330, and 340, and providing health care to low-income communities, migrant farm workers, and the homeless.

(5) Economically Depressed or Rural Medically Underserved Area — any area that is a State Recommended Health Professional Shortage Area as defined in Section 21.257 of this title (relating to State Recommended Health Professional Shortage Area) or a practice that clearly serves the medically underserved population.

(6) Health Professional Shortage Area (HPSA) — an area of the state designated by the Division of Shortage Designation.
Bureau of Primary Health Care, of the U.S. Department of Health and Human Services or its successors as having a shortage of health professionals.

(7) **Program – The Physician Education Loan Repayment Program.**

(8) **Pro rata – a proportionate basis upon which payment amounts will be scaled, depending upon the share of a full work year for state employees.**

(9) **Service period – a twelve-month period during which a physician qualifies for repayment of education loans.**

§21.255. **Special Limitations.**

(a) **An eligible physician is one who:**

(1) **is not currently fulfilling an obligation to provide physician services in the eligible area or facility; and**

(2) **has not received start-up assistance from a sponsoring community and the State Board of Health under Chapter 46, Health and Safety Code;**

(b) **Not more than 20 percent of the amount appropriated for the Program each fiscal year shall be allocated to fund repayments to first-time applicants who are working for the state agencies.**

§21.256. **Priorities of Application Acceptance.**

Acceptance of applicants will depend on the availability of funds. Renewal applicants will be given priority treatment over first-time applicants.

§21.257. **State Recommended Health Professional Shortage Area.**

A State Recommended Health Professional Shortage Area shall be any area of the state recommended by the Texas Department of Health to the Division of Shortage Designation, Bureau of Primary Health Care, of the U. S. Department of Health and Human Services, or its successors, as having a shortage of health professionals.

(1) **Denial of designation by the Division of Shortage Designation does not remove a State Recommended Health Professional Shortage Area from the list of eligible areas in the state-funded portion of the program.**

(2) **A State Recommended Health Professional Shortage Area may be removed from the list of eligible areas in the state-funded portion of the program only after a recommendation to that effect by the Texas Department of Health to the Division of Shortage Designation.**

§21.258. **Eligible Education Loan.**

An education loan eligible for repayment is one that:

(1) **was obtained through an eligible lender for purposes of attending a post-secondary institution;**

(2) **is not an education loan made to oneself from one’s own insurance policy or pension plan or from the insurance policy or pension plan of a spouse or other relative;**

(3) **does not entail a service obligation, except in the case of a State Medical Education Loan Board whose recipient has provided the first two years of service required in order for the physician to repay the education loan without penalty; and**

(4) **is not in default at the time of the physician’s application.**

§21.259. **Eligible Lender or Holder.**

The Board shall retain the right of determining eligibility of lenders and holders of education loans to which payments may be made. An eligible lender or holder shall, in general, make or hold education loans made to individuals for purposes of attending post-secondary institutions and shall not be any private individual. An eligible lender or holder may be, but is not limited to, a bank, savings and loan association, credit union, institution of higher education, secondary market, governmental agency, pension fund, private foundation, or insurance company.

§21.260. **Repayment of Education Loans.**

Eligible education loans of qualified physicians shall be repaid under the following conditions:

(1) **the annual repayment(s) shall be made co-payable to the eligible physician and to any eligible lender(s) or holder(s), and must be applied only to the outstanding principal balance of the education loan, including capitalized interest;**

(2) **the total annual repayment to one or more eligible lenders or holders shall not exceed the applicant’s unpaid principal loan balance, including capitalized interest, from all sources; and**

(3) **the repayment may be made for verified full-time service or for verified part-time service on a pro rata basis.**

§21.261. **State-Funded Portion for Post-Residency Practice.**

(a) **An eligible physician is one who:**

(1) **has a current unrestricted license, or, in the case of a faculty member, a current unrestricted or institutional license to practice medicine in Texas from the Texas State Board of Medical Examiners;**

(2) **except in the case of general practitioners, has satisfactorily completed a postgraduate program approved by the Texas State Board of Medical Examiners and accredited by the Accreditation Council on Graduate Medical Education or the American Osteopathic Association or has earned and maintained certification from an American Specialty Board that is a member of the American Board of Medical Specialties or the Advisory Board of Osteopathic Specialties in one of the following specialties: family practice, osteopathic general practice, obstetrics/gynecology, general internal medicine, general pediatrics, emergency medicine, general surgery, and psychiatry;**

(3) **has submitted the appropriate application to the Board; and**

(4) **has completed at least one year of medical practice in:**

(A) **an economically depressed or rural medically underserved area of the state:**

(B) **the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Criminal Justice, or the Texas Youth Commission; or**

(C) **a Community Health Center in Texas.**

(b) **The Commissioner will determine the award amounts providing incentives for continuous service and service in the most underserved areas. Repayments shall be made after each year of eligible service has been completed. Education loan repayment may be renewed annually upon successful completion of the application process, but for no more than a total of five years, including any awards under Section 21.263 of this title (relating to Family Practice Resident and Faculty Participation).**

§21.262. **National Health Service Corps (NHSC) Matching Loan Repayments.**
NHSC loan repayments are matched with an equivalent amount awarded under the provisions of Section 21.261 of this title (relating to State-Funded Portion for Post-Residency Practice) or Section 21.263 of this title (relating to Family Practice Resident and Faculty Participation). A physician eligible for matching loan repayments is one who:

(1) has completed at least one year of medical practice in a Health Professional Shortage Area as defined in Section 21.254 of this title (relating to Definitions);

(2) has accepted Medicare and Medicaid assignment as full payment for medical services rendered to Medicaid and Medicare patients during the twelve month service period, as verified by Texas Department of Human Services;

(3) uses a sliding fee scale or a comparable method of determining payment arrangements for patients who are not eligible for Medicaid/Medicare benefits and who are unable to pay the customary fee for the physician’s services received; and

(4) practices in one of the practice specialties named by the U.S. Secretary of Health and Human Services for purposes of this program.

§21.263. Family Practice Resident and Faculty Participation.

The Texas Family Practice Residency Advisory Committee will establish priorities among eligible physicians for repayment assistance by taking into account the degree of physician shortage, geographic location, and other criteria the committee considers appropriate. The annual award amounts will be based on a point system that reflects the purpose of the program. A participant is eligible for no more than two awards.

(1) An eligible resident is a resident who has an unrestricted, temporary, or institutional license to practice medicine in Texas from the Texas State Board of Medical Examiners and is participating in an approved Texas Family Practice Residency Training Program in Texas. Residents ending their second and third years of training during any given state fiscal year are eligible.

(2) An eligible faculty member is one who practices at an approved Texas Family Practice Residency Training Program, has an unrestricted, temporary or institutional license to practice medicine in Texas from the Texas State Board of Medical Examiners, and has completed training in an approved Texas Family Practice Residency Training Program on or after July 1, 1984.

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

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TRD-9802658

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

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For further information, please call: (512) 483–6162

Subchapter K. The Good Neighbor Scholarship Program


The Texas Higher Education Coordinating Board proposes amendments to Chapter 21, Subchapter K, §21.285 and §21.288, concerning The Good Neighbor Scholarship Program. The amendments to the rules are being proposed to limit the number of scholarship recipients to 235 per year; to eliminate the requirement for the schools to process individual affirmations; and establish a deadline of October 15 for reallocating unused scholarships. The current rules allow 235 students per semester or term to receive the scholarship. This has resulted in exceeding the limit of 235 students per year established by Texas Education Code, Section 54.207. The amendments to the rules will bring this rule into compliance with the statute and limit the awards to a total of 235 students a year. The change will reduce the number of waivers granted by approximately 100 per year, which will result in a reduction to tuition waivers of approximately $420,600.

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

Ms. Cobb also has determined that for the first five years the rule is in effect the public benefit will be the streamline of the process used for granting the scholarships. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under Texas Education Code, Sections 54.207 and 61.027, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning The Good Neighbor Scholarship Program.

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


An eligible institution of higher education shall be any Texas public institution of higher education [general academic teaching institution, public junior or community college, public health science center, or the Texas State Technical Institute].


Each year eligible institutions may submit scholarship recommendations to the board. Applications for the 12-month fall/spring awards must be submitted to the board no later than March 15; summer awards, no later than March 1.

(1)-(2) (No Changes)

(3) Reallocation of unused scholarships. In the event any nation fails to have 10 students available and qualified for exemption, or if the designated country fails to have 35 such students, the commissioner may allocate such unused exemptions as he determines to be appropriate, with priority being given to students from Mexico, except that the total of such exemptions shall not exceed 235 in a year [semester or term]. If an institution notifies the board by October 15 of a selected student’s failure to use the offered exemption, the board will offer the exemption to the first statewide alternate for that country. Awards canceled after October 15 will be allowed to lapse.
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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19 TAC 21.289

(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 Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of Chapter 21, Subchapter K, §21.289, concerning The Good Neighbor Scholarship Program (Affirmation of Receipt of Scholarship). The repeal of the rule is being proposed to limit the number of scholarship recipients to 235 per year; to eliminate the requirement for the schools to process individual affirmations; and to establish a deadline of October 15 for reallocating unused scholarships. The current rules allow 235 students per semester or term to receive the scholarship. This has resulted in exceeding the limit of 235 students per year established by Texas Education Code, Section 54.207. The amendments to the rules will bring the rules into compliance with the statute and limit the awards to a total of 235 students a year. The change will reduce the number of waivers granted by approximately 100 per year, which will result in a reduction to tuition waivers of approximately $420,600.

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

Ms. Cobb also has determined that for the first five years the rule is in effect the public benefit will be that the refund process will be used by the institutions the same as for tuition and other financial aid programs. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

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

The amendments to the rules are proposed under Texas Education Code, Section 56.209 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Early High School Graduation Scholarship Program (Refunds). The amendments to the rules are being proposed to establish the same refund policy for this program as is used by the institutions for tuition, fees and other financial aid programs. The change will eliminate the need for the institutions to maintain two different refund processes.

Sharon Cobb, Assistant Commissioner for Student Services has determined that for the first five years the rule is in effect the public benefit will be that the refund process will be used by the institutions the same as for tuition and other financial aid programs. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under Texas Education Code, Section 56.209 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Early High School Graduation Scholarship Program (Refunds). The amendments to the rules are being proposed to establish the same refund policy for this program as is used by the institutions for tuition, fees and other financial aid programs. The change will eliminate the need for the institutions to maintain two different refund processes.


The institution attended by a Tuition Credit award recipient who withdraws from a class or drops classes during the first four weeks of class will be expected to make a refund to the Early High School Graduation Scholarship Program for tuition received for the dropped classes in accordance with the following schedule:

[(1)] If class is dropped before classes begin, refund full amount
[(2)] If drop is within 1st 5 days of classes, refund 80 percent
[(3)] If drop is within 2nd 5 days of classes, refund 20 percent

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Subchapter CC. Early High School Graduation Scholarship Program

19 TAC §21.958

The Texas Higher Education Coordinating Board proposes amendments to Chapter 21, Subchapter CC, §21.958 concerning Early High School Graduation Scholarship Program (Refunds). The amendments to the rules are being proposed to establish the same refund policy for this program as is used by the institutions for tuition, fees and other financial aid programs. The change will eliminate the need for the institutions to maintain two different refund processes.

Sharon Cobb, Assistant Commissioner for Student Services has determined that for the first five years the rule is in effect the public benefit will be that the refund process will be used by the institutions the same as for tuition and fees and other financial aid programs. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under Texas Education Code, Section 56.209 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Early High School Graduation Scholarship Program (Refunds). The amendments to the rules are being proposed to establish the same refund policy for this program as is used by the institutions for tuition, fees and other financial aid programs. The change will eliminate the need for the institutions to maintain two different refund processes.

Sharon Cobb, Assistant Commissioner for Student Services has determined that for the first five years the rule is in effect the public benefit will be that the refund process will be used by the institutions the same as for tuition and other financial aid programs. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

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Comments on the new proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

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Sharon Cobb, Assistant Commissioner for Student Services has determined that for the first five years the rule is in effect the public benefit will be that the refund process will be used by the institutions the same as for tuition and fees and other financial aid programs. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under Texas Education Code, Section 56.209 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Early High School Graduation Scholarship Program (Refunds). The amendments to the rules are being proposed to establish the same refund policy for this program as is used by the institutions for tuition, fees and other financial aid programs. The change will eliminate the need for the institutions to maintain two different refund processes.

Sharon Cobb, Assistant Commissioner for Student Services has determined that for the first five years the rule is in effect the public benefit will be that the refund process will be used by the institutions the same as for tuition and fees and other financial aid programs. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.
If drop is within 3rd 5 days of classes, refund 50 percent.

If drop is during 4th 5 days of classes, refund 25 percent.

If drop is after the 4th 5 days of classes, no refund required.

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 23, 1998.

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James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed date of adoption: April 24, 1998
For further information, please call: (512) 483-6162

Subchapter DD. Minority Doctoral Incentive Program of Texas

19 TAC §21.982

The Texas Higher Education Coordinating Board proposes to Chapter 21, Subchapter DD, new §21.982 concerning Minority Doctoral Incentive Program of Texas (Appeals for Exceptions). The new rule adds an appeal process for students in case they have unusual circumstances or hardships and are unable to meet all of the program requirements. The appeal process will allow the General Counsel and Director of Access and Equity and the Assistant Commissioner for Student Services to review the circumstances presented by the student and grant exceptions.

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

Ms. Cobb also has determined that for the first five years the rule is in effect the public benefit will be that it will help students that have unusual circumstances or hardships to meet the program requirements. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under Texas Education Code, Section 56.162 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Minority Doctoral Incentive Program of Texas (Appeals for Exceptions).

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

§21.982 Appeals for Exceptions.

In order to fulfill the intent of the Texas Education Code, Chapter 56, Subchapter J, the Assistant Commissioner of Student Services and the General Counsel and Director of Access and Equity may grant appeals for exceptions if they are in unanimous agreement.

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 23, 1998.

TRD-9802668
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed date of adoption: April 24, 1998
For further information, please call: (512) 483-6162

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


The Texas Higher Education Coordinating Board proposes amendments to Chapter 21, Subchapter HH, §21.1055 - 21.1060, §21.1062 - §21.1069 concerning Exemption Program for Texas Air and Army National Guard/ROTC Students. The amendments to the rules are being proposed to clarify the responsibilities of the Coordinating Board, the Adjutant General's Department and the recruiters; specify the amount to be included in the award for room and board; clarify repayment requirements if the student does not fulfill his/her contract; clarify requirements for eligibility to participate in the program; and clarify the application process and contract terms.

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

Ms. Cobb also has determined that for the first five years the rule is in effect the public benefit will be the clarification of the responsibilities of the various entities involved in the administration of the program and to address issues and questions that developed during the process of issuing these scholarships for the first time. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under Texas Education Code, Sections 54.212 and 61.027, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Exemption Program for Texas Air and Army National Guard/ROTC Students.

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

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

(1–5) (No Change.)
(6) Full-time Student – An individual enrolled for the equivalent of at least 12 semester credit hours each semester term, including military science courses and aerospace studies.
(7) (No Change.)
(8) Order of Merit List – A list of exemption program applicants, submitted on a form designed by the Adjutant General’s Office and signed by the program officer of an ROTC institution, ranking the applicants under consideration for awards through the program.
(9) (No Change.)
(10) Recruiter – An individual employed as a National Guard recruiter by the Adjutant General’s Office.
(11) Resident – A [ bona fide] resident of the State of Texas as determined in accordance with [by the board and reflected in] Chapter 21, Subchapter B of this title (relating to Determining Residence Status). Nonresident students eligible to pay resident tuition rates are excluded from this program.
(12–14) (No Change.)
(15) Texas National Guard ROTC Scholarship Volunteer Program (TXNG/RSVP) – A second name for the Exemption Program for Texas Air and Army National Guard/ROTC Students, the program described in this subchapter.
(16) (No Change.)

The [board shall enter into an agreement with the] Adjutant General’s Office shall be responsible for [considering the two agencies’ relative responsibilities for the exemption program. The agreement shall include provisions for:]
(1) (No Change)
(2) dissemination of accurate and up-to-date program information through the use of National Guard recruiting offices;
(3) the collection of payments made by exemption recipients [students] failing to complete the contractual obligations of the program;
(4) Projections of [projected] staffing requirements for the Texas Air and Army National Guard; and, on that basis, the share of each year’s 150 new awards to go to the Army ROTC and to the Air Force ROTC;
(5) (No Change)
(6) application [development] of rules and procedures governing leaves of absence, probations or waivers of repayment requirements under special circumstances when cases are forwarded by institution selection committees or National Guard Units; [of the program authorized under this subchapter for participants who are in the service phase of program participation].

§21.1057. Selection Committee.
(a) Membership. Each eligible institution shall create a three-member selection committee. Two members of the committee are to be nominated by the institution’s Chief Executive Officer and shall include a military or aerospace science faculty member. A commissioned officer of the Texas Air or Army National Guard shall be appointed to each committee by the Adjutant General [adjutant general]. Final membership of the committees shall be designated by the commissioner.

(b) Duties. The selection committee shall:
(1) review applications and conduct interviews of students who have applied for the exemption and determine which students qualify to receive the exemption, taking the following criteria into consideration:
(A)-(C) (No Change)
(D) projected staffing requirements for the Texas Air and Army National Guard; and
(E) the academic performance of the applicant.
(2) (No Change)
(3) determine whether probation [or a waiver of repayment [requirements of the program]] will be granted in accordance with ROTC guidelines to a student who has failed to meet program performance standards, and
(4) determine whether an exemption recipient who loses his/her exempt status may serve the remainder of his/her contractual obligation as an enlisted member of the Texas Air or Army National Guard, subject to being accepted into and maintaining active drilling membership in the Texas Air or Army National Guard in the same manner as any other person.
(5) refer special cases involving leaves of absence or a waiver of repayment to the Adjutant General’s Office for resolution.

(a) (No Change)

(b) The chief executive officer of an eligible institution which chooses to participate in the exemption program shall designate a Texas Air or Army National Guard/ROTC Exemption Program Officer. The program officer [Unless otherwise specified by the chief executive officer of the institution, the Professor of Military Science of the institution] shall be the board’s on-campus agent to certify all institutional activities with respect to this program.

An eligible student is an undergraduate student who meets the following requirements:
(1) is admitted to the institution’s Reserve Officers’ Training Corps program or is a participant in such a program; [if the student is attending another public institution of higher education which provides for cross enrollment in the ROTC institution’s ROTC program, the student may be considered for selection,]
(2) becomes a member of the Texas Army National Guard or the Texas Air National Guard and maintains satisfactory performance as prescribed by the Adjutant General’s department as a member in good standing during the terms of enrollment and service [length] of the student’s contractual obligation;
(3)–(4) (No Change)
(5) enters into a contract with the ROTC institution acting on behalf of the State of Texas to accept a commission in the Texas Air or Army National Guard as an officer [a second lieutenant] on graduation from the ROTC institution or completion of active duty with the United States Armed Forces and serves no less than four years as a commissioned officer;
(6) if in the Army National Guard and able to gain a contract into the advanced course of ROTC as a junior in college, no later than the beginning of the third year of ROTC, requests and acquires [enters into] a Guaranteed Reserve Forces Duty commission (as opposed to an active duty commission) during the accessions process upon graduation [contract from their institution’s ROTC department];

(7) if in the Army National Guard and unable to gain a contract into the advanced course of ROTC as a junior in college, enrolls in the Texas National Guard Officer Candidate School (OCS) in the summer following his/her junior year and continues in OCS until he/she graduates from OCS. Upon graduation from OCS accepts a commission in the Texas National Guard;

(8) [2] passes the physical examination and police records background check required for becoming a commissioned officer in the Texas Air or Army National Guard; [end]

(9) [§] has been accepted for admission to the participating ROTC institution; and

(10) if a member of the Reserve Forces of the United States Armed Forces at the time of application for an exemption, acquires a transfer to the Texas National Guard by the deadline set by the board.


The Adjutant General’s Office and the board shall provide for the distribution of information about the program to eligible institutions and [coordinate activities with the adjutant general’s office in the distribution of information] to high school students [schools].

§21.1062. Award Amounts.

(a) Tuition and fee exemption amounts. Selected recipients may receive an exemption for the amount of their actual tuition and fee charges at their institution for up to four full academic years (including summer terms) while enrolled as undergraduates. If the student’s program of study extends to more than four years [a fifth year], the exemption will not be extended to that additional time period [year].

(b) Room and board exemption amounts. Selected recipients may receive an exemption for an amount equal to their actual dormitory room and board expenses but not to exceed the average on-campus room and board figure reflected in the college’s typical student budget on file at the board for up to two years [their first two years at the institution]. If the student is not living in campus housing, but the institution does have such housing, the amount to be awarded as a room and board exemption is the average charged for a student in that institution’s campus housing. If the institution does not have campus housing, the exemption may equal the average room and board allowance reported to the board by public universities for that year for students who are receiving some type of financial assistance.

(c) Exemptions and reimbursements to students. If student selection is completed prior to the payment of tuition and fees or room and board for a particular term, the institution is to exempt the selected students from the payment of the appropriate charges. If selection is completed after the payment of such charges, the board [institutions] shall reimburse students for the appropriate amounts as indicated in Section 21.1062 (a) and (b) of this title (relating to Award Amounts).

(d) (No Change)


(a) The maximum number of new exemptions that can be awarded statewide each year is 150. Each participating ROTC institution shall be allocated exemptions for at least two new students each academic year. The maximum number of exempt students for each ROTC institution will be determined by the percentage of the institution’s Army and Air Force Reserve Officers’ Training Corps enrollment in relation to statewide Army and Air Force Reserve Officers’ Training Corps [Reserve Officers’ Training] enrollment. [The total number of enrolled students receiving exemptions through the program at any one time shall not exceed 100].

(b) (No Change)

(c) Institutions will have until May 15 [October 15] of each year to inform the Adjutant General’s Office [board] of their ranking [selection] of exemption applicants for the following year [recipient]. If they fail to have enough screened and ranked applicants to use their full allotment [awards] as of that date, the board will reallocate the unused slots to other eligible institutions which have used their full allotments.

§21.1064. Awards for Less than Four Years. [Partial Awards].

(a) Partial awards. An institution’s selection committee may re-award the unused portion of an exemption left when an exemption recipient drops out of the program. However, the student selected to fill the unfinished exemption must meet [the following criteria]:

(1) must have originally applied for an exemption in the same year as the student who dropped out of the program applied, i.e., was an alternate for that year,]

(2) meet the eligible student requirements as outlined in Section 21.1059 of this title (relating to Eligible Student);

(b) Contractual obligations. Upon graduation from college, a participant receiving fewer than four years’ tuition and fee exemption and/or less than two years’ room and board exemption will have [shall agree] to meet the same contractual obligations as students receiving the exemptions as entering freshmen (i.e., four years’ service as a commissioned officer in the Texas Air or Army National Guard, or full repayment of the value of the exemptions extended, plus interest, if he/she fails to complete the requirements of the contract.)


(a) To apply for an exemption, the student must complete the full application packet for the Texas Air or Army National Guard/ROTC Exemption Program and submit it to a recruiter or to a full, assistant or associate professor of military or aerospace science at a participating ROTC institution by the deadline designated by the institution for which he/she wishes to receive an exemption award. The packet includes an exemption program application, an essay form, a listing of extracurricular activities and an official transcript (including but all the current term’s grades) from the most recent school attended [to the program officer at the ROTC institution he/she plans to attend].

(b) If the packet is given to a professor, the professor will review it for completeness and forward it to a recruiter.

(c) The recruiter will pre-screen applicants for their acceptability for the National Guard and forward paperwork for applicants passing the pre-screening process to the Adjutant General’s Office as soon as possible, but no later than May 1.

(d) The Adjutant General’s Office will check the application packets for completeness and forward them as soon as possible to the relevant institution’s selection committee. [After the interviews, top ranking candidates will be required to take the physical examination]
(e) [ub] The selection committee at the institution will review [all] applications and rank applicants according to a set of criteria developed by the board and the Adjutant General’s [adjunct general’s] Office.

(f) [ub] Top candidates will be asked to sit for at least one interview, to be conducted using a set of questions provided [developed] by the board and Adjutant General’s Office.

(g) [ub] By May 15, the [The] selection committee will finalize its decisions and send the Education Office of the Adjutant General’s Office an Order of Merit List certified by the institution’s program officer [notify the board of its selections no later than October 15].

(h) Selected students will be notified by the program officer of their awards pending successful induction into the Texas National Guard.

(i) Once selected students are inducted into the Texas National Guard, the program officer and students are to sign the exemption program contracts, finalizing the award process.

(j) No school may add students to its Order of Merit List after May 15, but if a top-ranked student fails to use an offered award, the school may offer his/her award to an alternate from its May 15 listing. If no additional alternates are on the list, the award will be reallocated to another institution.

§21.1066. The Texas Air or Army National Guard/ROTC Exemption Program Contract.

(a) Each participating student must enter into a contract with the ROTC institution acting on behalf of the State of Texas. In the contract,

(1) the student must agree to:

(A) [No Change]

(B) become a member of the Texas Army National Guard or the Texas Air National Guard and maintain satisfactory performance as prescribed by the Adjutant General’s [adjunct general’s] department as a member in good standing during the enrollment and service terms [two] of his/her contractual obligation;

(C)-[D] [No Change]

(E) immediately upon graduation from the ROTC institution or upon completion of active duty with the United States Armed Forces, accept a commission in the Texas Air or Army National Guard as a second lieutenant and serve no less than four years as a commissioned officer;

(F) repay to the state the amount of tuition, fees and other charges for which he/she received an exemption [and which he/she has not yet repaid through service]; plus interest as determined by the board, should the student fail to [maintain exemption status or fail to accept a commission in the Texas Air or Army National Guard, or otherwise fail to] meet the obligations of the contract;

(G) agree to graduate and be commissioned as an officer in the Texas National Guard or enter into active duty with the United States Armed Forces within 6 years of the original exemption received, unless the period is extended with permission of the Adjutant General’s Office; and

(H) [ub] understand that under circumstances requiring repayment, the full amount of his/her obligation is to be repaid by no later than the fifth anniversary of the date of the circumstances which required him/her to begin [make] repayment.

(2) the institution must agree to:

(A) provide the students selected for exemptions through this program a statement of the Adjutant General’s [adjunct general’s] criteria for maintaining satisfactory performance as a member in good standing during the term of the student’s contractual obligation;

(B) [No Change]

(C) if reimbursement funding is provided by the state, award exemptions for the actual tuition and fees paid by the selected student at this institution for up to four years while the student meets the program’s requirements. Should the student be called into active military service during his/her enrollment at this institution, the four year time frame may be extended at the institution’s selection committee’s discretion; and

(D) if reimbursement funding is provided by the state, award exemptions for room and board as indicated in Section 21.1062 (b) of this title (relating to Award Amounts) to eligible students enrolled in their first two years of [at] the ROTC exemption program [institution].


(a) If the student/participating Air or Army National Guardsman fails to fulfill any obligation outlined in the exemption program contract, he or she shall be in noncompliance with the contract and will be required to repay [any remaining portion of the] his/her contractual obligation to the state unless the student has been granted probationary status by his/her institution’s selection committee or the participating Air or Army National Guardsman is granted probationary status by the Adjutant General’s Office. Such repayment requirements will be outlined in the promissory note signed by the student upon receipt of an exemption under this program.

(b) [No Change]

(c) If an exemption recipient, after graduation, leaves the Texas National Guard to serve in another component of the United States Military, [accepts a commission in a National Guard unit which is not a Texas Air or Army National Guard unit], the exemption recipient [Student] will be obligated to serve for four years in the Texas Army or Air National Guard prior to separation from the military or repay the State of Texas for the funds awarded him/her through the Exemption Program for Texas Air and Army National Guard/ROTC Students.

(d) If an exemption recipient fails to qualify for a commission as a participant in this program, fulfillment of his/her obligation to Texas may be accomplished through service for an equivalent number of years as an enlisted member of the Texas National Guard. [If a graduate of the exemption program chooses to enter active duty service rather than serve in the Texas Air or Army National Guard, the exemption recipient will be obligated to repay the State of Texas for the funds awarded him/her through the Exemption Program for Texas Air and Army National Guard/ROTC Students.]


(a) If an exemption recipient fails to meet the performance standards of the program, he/she will [may apply to his/her institution’s selection committee to] be placed on probationary status by the Professor of Military Sciences or Professor of Aerospace Studies serving on the selection committee. Such status shall not last for more than two terms [one term].
§21.1070. Program Reviews.

Any student whose students receive exemptions through this program will be subject to an annual program review.

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 23, 1998.

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

19 TAC §21.1070

The Texas Higher Education Coordinating Board proposes to Chapter 21, Subchapter HH, new §21.1070 concerning Exemption Program for Texas Air and Army National Guard/ROTC Students (Program Reviews). The amendments to the rules are being proposed to clarify the responsibilities of the Coordinating Board, the Adjutant General’s Department and the recruiters; specify the amount to be included in the award for room and board; clarify repayment requirements if the student does not fulfill his/her contract; clarify requirements for eligibility to participate in the program; and clarify the application process and contract terms.

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

Ms. Cobb also has determined that for the first five years the rule is in effect the public benefit will be the clarification of the responsibilities of the various entities involved in the administration of the program and to address issues and questions that developed during the process of issuing these scholarships for the first time. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The amendments to the rules are proposed under Texas Education Code, Sections 54.212 and 61.027, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Exemption Program for Texas Air and Army National Guard/ROTC Students.

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


(a) (No Change)

(b) (No Change)


(a) (No Change)

(b) By May 15 [October 15] of each year, the institution is to notify the Adjutant General’s Office of the ranking of its applicants. If it fails to have enough screened and ranked applicants to use its full allotment by this date, [board of its selection], if selections have not been made by this date, the unused exemptions will be reallocated by the board to other eligible institutions.

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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The Texas Higher Education Coordinating Board proposes new Chapter 21, Subchapter HH, new §21.2001 concerning Exemption Program for Texas Air and Army National Guard/ROTC Students (Program Reviews). The new rules are being proposed to allow awards to be made to students enrolled in graduate degree programs in the areas of public affairs, public service or public administration who intend to work in Texas after completing their graduate studies. The funds for the fellowship have been provided by gifts. The fund balance is currently $42,359. The awards would be made annually from the earnings generated by the fund.

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

Ms. Cobb also has determined that for the first five years the rule is in effect the public benefit will be that awards will be made to graduate students in the areas of public affairs, public service or public administration. There will be no effect on state or local government or small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the new proposed amendments may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The proposed new rules are proposed under Texas Education Code, Section 61.068 and 61.027 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning The Kenneth H. Ashworth Fellowship Program.

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


The purpose of the Kenneth H. Ashworth Fellowship Program is to provide financial assistance to students with financial need entered in graduate programs in public affairs, public service or public administration.

To be eligible to participate in the program, an institution must be a general academic teaching institution as defined in Texas Education Code, Chapter 61.003 or an independent college or university which is a member of Independent Colleges and Universities of Texas, Inc.

(a) A committee is established to accept and evaluate applications from institutions and to select fellowship award recipients.
(b) The committee consists of three members of the coordinating board staff appointed by the commissioner, including one representative from the universities division, one from the student services division and one from another division of the agency.

(a) To qualify for an award, a student must be a Texas resident identified by the dean of his/her program of study as needing financial assistance. The student must be enrolled as a graduate student in public affairs, public service or public administration and intend to work in Texas after completing his/her graduate studies.
(b) In determining student eligibility the committee shall consider the following factors relating to each applicant:
   (1) academic ability and promise;
   (2) career plans; and
   (3) individual qualifications, with emphasis on leadership and communication skills.

No annual award received through this program may exceed $2,000.

Donations and gifts are the sources of funds for the Kenneth H. Ashworth Fellowship fund, which will be deposited (along with its earnings) in the Texas Opportunity Plan Fund. Awards will be made from the earnings of the fund.

(a) Deans of colleges of public affairs, public service and public administration at eligible institutions will each be invited to submit applications and supportive documentation for up to two applicants per year. Applications for the awards must be submitted to the committee each year by February 20.
(b) The committee, following guidelines previously developed and shared with institutions, will rank applicants and select the recipients of awards for the following academic year.
(c) The commissioner will then announce award recipients to all participating institutions.

As soon as possible after the announcement of award recipients, funds representing the full annual award will be sent to the business offices of the relevant institutions for disbursement to the recipients of the awards.

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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James McWhorter
Assistant Commissioner for Administration

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For further information, please call: (512) 483–6162

Title 22. Examining Boards

Part XV. Texas State Board of Pharmacy

Chapter 309. Generic Substitution

22 TAC §309.3

The Texas State Board of Pharmacy proposes an amendment to §309.3, concerning prescription drug orders. The amendments, if adopted, will establish a list of narrow therapeutic index drugs subject to the provisions of §40(m) of the Texas Pharmacy Act.

The rules implement recommendations of a Task Force composed of representatives from the Board of Pharmacy, Board of Medical Examiners, pharmacy and medical associations, and generic and brand name manufacturers.

Gay Dodson, R.Ph., Executive Director/Secretary has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson also has determined that for each year of the first five-year period the rule will be in effect the public benefit anticipated as a result of enforcing the rule will be the establishment of a list of Narrow Therapeutic index drugs subject to §40(m) of the Texas Pharmacy Act.

There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Gay Dodson, R.Ph., Executive Director/Secretary, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Box 21, Austin, Texas, 78701-3942. A public hearing to receive oral comments will be held at 9:00 a.m., Tuesday, May 5, 1998, 333 Guadalupe Street, Tower 2 Room 225, Austin, Texas.

The amendment is proposed under the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes): Section 4 which specifies that the purpose of the Act is to protect the public through the effective control and regulation of the practice of pharmacy; Section 16(a) which gives the Board the authority to adopt rules for the proper administration and enforcement of the Act; and; Section 40(m) which specifies that the Board in consultation with the Board of Medical Examiners shall establish a list of narrow therapeutic index drugs.

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

§309.3. Prescription Drug Orders.
(a)-(c) No change.
(d) Refills.
   (1) Original substitution instructions. Refills shall follow the original substitution instructions unless otherwise indicated by the practitioner or practitioner’s agent.
   (2) Narrow therapeutic index drugs.
The Texas Real Estate Commission (TREC) proposes an amendment to §535.71, concerning approval of mandatory continuing education (MCE) providers, courses and instructors. The amendment replaces the term salesman with salesperson to comply with House Bill 814, 75th Legislature (1997), which requires TREC to use the term salesperson in all its rules and documents no later than January 1, 1999.

Mark A. Moseley, general counsel, 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. There is no anticipated impact on local or state employment as a result of implementing the section.

Mr. Moseley also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be consistency between the section and the agency's enabling legislation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute that is affected by this section is Texas Civil Statutes, Article 6573a.

§535.71. Mandatory Continuing Education: Approval of Providers, Courses and Instructors.

(a)-(k) (No change.)

(l) A course must be devoted to one or more of the subjects specified under the course titles in the Act, §7(a)(2)-(4) and §7(a)(7)-(10), to real estate professionalism and ethics or to other subjects approved by the commission for MCE credit. MCE courses must be presentations of relevant issues and changes within the subject areas as they apply to the practice of real estate in the current market or topics which increase or support the licensee’s development of skill and competence. The commission shall periodically publish lists of subjects other than legal topics which are approved for MCE credit. Courses approved by the commission for prelicensing education or salesperson [salesman] annual education requirements provided in the Act, §7(d)-(e), may be accepted for satisfying MCE requirements provided the student files an MCE Form 13, MCE Credit Request for Core Courses, and course meets all of the requirements of the commission for core real estate course credit, and MCE courses may be accepted by the commission as real estate related courses for satisfying the education requirements of §7(d)-(e) of the Act. The commission may not approve a course which promotes the sale of goods or services by the provider or by a vendor affiliated or associated with the provider. Providers may sell educational materials, such as textbooks or recordings, related to the subjects of the course. Courses related to technology, such as the use of personal computers, must be primarily devoted to the application of technology to the practice of the licensee.

(m)-(r) (No change.)

Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Mandatory Continuing Education

22 TAC §535.71
Recovery Fund

22 TAC §535.81

The Texas Real Estate Commission (TREC) proposes an amendment to §535.81, concerning fees paid by real estate licensees for the real estate recovery fund. The amendment replaces the term salesman with salesperson to comply with House Bill 814, 75th Legislature (1997), which requires TREC to use the term salesperson in all its rules and documents no later than January 1, 1999. The amendment also replaces the gender specific term he with a person for consistency.

Mark A. Moseley, general counsel, 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. There is no anticipated impact on local or state employment as a result of implementing the section.

Mr. Moseley also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

On or before February 26, 1998, the Texas Real Estate Commission published its proposal to amend its rules, in the Texas Register, to replace the gender specific term salesman with salesperson for the real estate recovery fund. The amendments replace the gender specific term salesman with salesperson to comply with House Bill 814, 75th Legislature (1997), which requires TREC to use the term salesperson in all its rules and documents no later than January 1, 1999. The amendments also replace the gender specific term his with terms which are not gender specific for consistency.

Mark A. Moseley, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There is no anticipated impact on local or state employment as a result of implementing the sections.

Mr. Moseley also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute that is affected by these sections is Texas Civil Statutes, Article 6573a.


(a) If a person licensed as a real estate salesperson [salesman] has paid the recovery fund fee, the person [he] would not be required to pay a recovery fund fee in connection with the processing of an application for real estate broker licensure.

(b) 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.

(c) Filed with the Office of the Secretary of State, on February 26, 1998.

Mark A. Moseley

General Counsel
Texas Real Estate Commission

Earliest possible date of adoption: April 12, 1998

For further information, please call: (512) 465-3900

Licenses

22 TAC §§535.92, 535.93, 535.95

The Texas Real Estate Commission (TREC) proposes amendments to §§535.92, 535.93 and 535.95, concerning license renewals for real estate licensees. The amendments replace the term salesman with salesperson to comply with House Bill 814, 75th Legislature (1997), which requires TREC to use the term salesperson in all its rules and documents no later than January 1, 1999. The amendments also replace the gender specific term his with terms which are not gender specific for consistency.

Mark A. Moseley, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There is no anticipated impact on local or state employment as a result of implementing the sections.

Mr. Moseley also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute that is affected by these sections is Texas Civil Statutes, Article 6573a.

§535.92. Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements.

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

(d) An inactive broker or inactive salesperson [salesman] may renew a license by complying with the renewal procedures established by the commission. An inactive licensee shall furnish a residence address at the time the licensee becomes inactive and report all subsequent address changes.

(e) (No change.)

(f) Each licensee shall, as a condition of maintaining a license, pay the renewal fee no later than the day the current license expires. A licensee who fails timely to pay a renewal fee must apply for and receive a new active license in order to act as a real estate broker or salesperson [salesman]. If the application is filed within one year after the expiration of an existing license, the commission may issue the new license prior to completing the investigation of any complaint pending against the applicant or of any matter revealed by the application without waiving the right to initiate an action to suspend or revoke the license after notice and hearing in accordance with the Act, §17.

Mark A. Moseley

General Counsel
Texas Real Estate Commission

Earliest possible date of adoption: April 12, 1998

For further information, please call: (512) 465-3900

Mark A. Moseley

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Texas Real Estate Commission

Earliest possible date of adoption: April 12, 1998

For further information, please call: (512) 465-3900
(g) The commission shall advise each licensee of the time period for filing a renewal application and paying the renewal fee by mailing an appropriate notice to the licensee’s last known business address, or if the licensee is an inactive salesperson [salesman], to the licensee’s last known residence address. The notice shall be mailed at least three months before expiration of the current license. If the licensee is subject to mandatory continuing education (MCE) requirements, the notice must also contain the number of MCE hours for which the licensee has been given credit and the number of additional MCE hours required for renewal of the license. The commission shall have no obligation to so notify an inactive salesperson [salesman] who has failed to furnish the commission with the salesperson’s [salesman’s] residence address or a corporation, limited liability company or partnership that has failed to designate an officer, manager or partner who meets the requirements of the Real Estate License Act (the Act). The commission may not renew a license issued to a corporation, limited liability company or partnership unless the corporation, limited liability company or partnership has designated an officer, manager or partner who meets the requirements of the Act, including satisfaction of MCE requirements. No person may act as designated officer, manager or partner if the person has failed to meet MCE requirements. For the purpose of this section, MCE requirements for the designated officer, manager or partner must be satisfied during the term of any individual broker license held by the officer, manager or partner. A designated partner who is not licensed individually as a broker on September 1, 1991, shall be considered to have been licensed as a broker on that date and must complete MCE required for a two-year license expiring on August 31, 1993, and for every two years thereafter in order to renew the license of the partnership. The commission shall assign a number to an unlicensed designated partner to use in lieu of an individual license number when completing MCE forms required by the commission. If the individual real estate broker license of a designated partner expires, the partnership may only renew its license if the designated partner has satisfied MCE requirements that would have been imposed if the license of the designated partner had not expired.

(h)-(k) (No change.)

§535.93. Licensing: Possession of License as Prerequisite.

An applicant for.salesperson [salesman] licensure may not perform any act as a real estate agent until the applicant’s [his] sponsoring broker has actually received the license.

§535.95. Miscellaneous Provisions Concerning License Renewals.

(a) (No change.)

(b) Salesperson [Salesman] annual education (SAE) requirements that would have been imposed for a timely renewal shall be deferred under this section to the next renewal of the license.

(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 February 26, 1998.

TRD-9802879
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: April 12, 1998
For further information, please call: (512) 465–3900

Fees

22 TAC §535.101

The Texas Real Estate Commission (TREC) proposes an amendment to §535.101, concerning fees paid by real estate licensees and applicants. The amendment replaces the term ‘salesman’ with salesperson to comply with House Bill 814, 75th Legislature (1997), which requires TREC to use the term salesperson in all its rules and documents no later than January 1, 1999.

Mark A. Moseley, general counsel, 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. There is no anticipated impact on local or state employment as a result of implementing the section.

Mr. Moseley also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be consistency between the section and the agency’s enabling legislation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute that is affected by this section is Texas Civil Statutes, Article 6573a.

§535.101. Fees.

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

(c) The commission shall charge and collect the following fees:

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

(3) a fee of $50 for the filing of an original application for a real estate salesperson [salesman] license;

(4) a fee of $28 for annual renewal of a real estate salesperson [salesman] license;

(5)-(13) (No change.)

(d)-(e) (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 26, 1998.

TRD-9802880
Mark A. Moseley
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465–3900
**Place of Business**

22 TAC §§535.111-535.113

The Texas Real Estate Commission (TREC) proposes amendments to §§535.111-535.113, concerning a real estate broker’s place of business. The amendments replace the term salesman with salesperson to comply with House Bill 814, 75th Legislature (1997), which requires TREC to use the term salesperson in all its rules and documents no later than January 1, 1999. The amendments also replace the gender specific term his with terms which are not gender specific for consistency.

Mark A. Moseley, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There is no anticipated impact on local or state employment as a result of implementing the sections.

Mr. Moseley also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be consistency between the sections and the agency’s enabling legislation. 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.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute that is affected by these sections is Texas Civil Statutes, Article 6573a.

§535.111. Residence.

(a) A broker may designate the broker’s [his] home as the broker’s [his] fixed office.

(b) (No change.)

§535.112. Branch Office.

(a) A branch office license is required when the public would reasonably construe that the broker has an office at a location other than the location of the broker’s [his] main office address.

(b) A branch office license must be applied for and obtained if a broker maintains more than one place of business. Even though an office is used only by salesmen, it remains the broker’s office as the broker [he] is responsible for all business activities conducted from it.

(c) (No change.)

(d) A licensed broker may have as many offices and use as many assumed business names as the broker [he] desires, provided branch office licenses are obtained and the assumed names are filed with the commission.

(e) (No change.)

§535.113. Display of Licenses.

If a broker maintains more than one office, it is sufficient for the broker to display a salesperson’s [salesman’s] license in only one of the offices.

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 26, 1998.

TRD-9802881
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: April 12, 1998
For further information, please call: (512) 465–3900

Termination of Salesperson’s [Salesman’s] Association with Sponsoring Broker

22 TAC §§535.121-535.123

The Texas Real Estate Commission (TREC) proposes amendments to §§535.121, concerning inactive salesperson license, §535.122, concerning reactivation of salesperson’s license, and §535.123, concerning inactive broker license. The amendments replace the term salesperson with salesperson to comply with House Bill 814, 75th Legislature (1997), which requires TREC to use the term salesperson in all its rules and documents no later than January 1, 1999.

Mark A. Moseley, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There is no anticipated impact on local or state employment as a result of implementing the sections.

Mr. Moseley also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be consistency between the sections and the agency’s enabling legislation. 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.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute that is affected by these sections is Texas Civil Statutes, Article 6573a.

§535.121. Inactive License.

(a) (No change.)

(b) Death of a sponsoring broker places the salesperson’s [salesman’s] license on inactive status, and the salesperson [salesman] is not authorized to act as a salesperson [salesman] until the salesperson [salesman] becomes sponsored by another broker.

(c) When the sponsorship of a salesperson [salesman] ends, the broker shall immediately return the salesperson’s [salesman’s] license to the commission. If the sponsorship has ended because the broker has terminated the sponsorship, the broker shall immediately so notify the salesperson [salesman] salesman in writing. If the
sponsored by the broker and who has not engaged in the activity of a real estate agent, the broker is no longer subject to the MCE requirements.

(d) This agency is not authorized to enforce agreements between brokers and salespersons concerning obligations incident to their working relationships.

§535.122. Reactivation of License.

(a) When a salesperson whose license status is active enters the sponsorship of a broker, the salesperson and broker whose sponsorship the salesperson’s has entered shall notify the commission within 10 days, submit the appropriate fee, and request issuance of a new license reflecting the new association. The salesperson may act as the broker’s salesperson from the date the notice and fee are mailed or delivered to the commission.

(b) When a salesperson whose license status is inactive enters the sponsorship of a broker and the salesperson is subject to mandatory continuing education (MCE) requirements, the salesperson is not returned to active status until MCE requirements are satisfied. A salesperson whose license from an original application was effective prior to August 31, 1991, or whose license was issued from a renewal of a license expiring prior to November 30, 1991, or whose original application or renewal application was subject to educational requirements imposed by the Real Estate License Act (Act) §7, is not subject to MCE requirements as a condition of returning to active status during the term of the license issued from the original application or renewal application. The commission may not issue a license reflecting the sponsorship or otherwise confirm that the salesperson is authorized to act as a real estate agent until the license has been issued and the commission has received documentation of satisfaction of any required MCE courses in a form acceptable to the commission and all other requirements have been met to return the salesperson’s license to active status. For the purposes of this section, the commission may accept as documentation a course completion certificate or letter from an approved MCE provider or such other proof as is satisfactory to the commission.

§535.123. Inactive Broker Status.

(a) For the purposes of this section, "inactive broker" means a licensed broker who does not sponsor salespersons or perform any activities for which a broker license is required and who has been placed on inactive status by the commission.

(b) To be placed on inactive status, a broker must do the following:

1. (No change.)

2. Confirm in writing that the broker has given any salespersons notice of termination of sponsorship at least 30 days prior to filing the request for inactive status; and

3. (No change.)

4. (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 February 26, 1998.

TRD-9802882

Mark A. Moseley

General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: April 12, 1998
For further information, please call: (512) 465-3900

Nonresidents
22 TAC §535.131, §535.133

The Texas Real Estate Commission (TREC) proposes amendments to §535.131, concerning the splitting of fees by real estate licensees with nonresidents, and §535.133, concerning the consent to service filed by a nonresident licensee. The amendments replace the term salesman with salesperson to comply with House Bill 814, 75th Legislature (1997), which requires TREC to use the term salesperson in its rules and documents no later than January 1, 1999. For consistency, the amendment to §535.131 also replaces the gender specific term he with a term which is not gender specific.

Mark A. Moseley, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There is no anticipated impact on local or state employment as a result of implementing the sections.

Mr. Moseley also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be consistency between the sections and the agency’s enabling legislation. 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.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Civil Statutes, Article 6573a. §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute that is affected by these sections is Texas Civil Statutes, Article 6573a.

§535.131. Unlawful Conduct; Splitting Fees.

(a)-(c) (No change.)

(d) If a member of a partnership or an officer of a corporation does not engage in the activity of a real estate agent, the person is not required to be licensed and may share in the income earned by the partnership or corporation.

§535.133. Consent to be Sued; Exception to Requirements.

A consent to service of legal process must be filed with the commission by a broker or salesperson who moves to another state.

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 26, 1998.

TRD-9802884

Mark A. Moseley

PROPOSED RULES  March 13, 1998  23 TexReg 2697
Suspension and Revocation of Licensure


The Texas Real Estate Commission (TREC) proposes amendments to §535.141, concerning initiation of investigations, §535.143, concerning fraudulent procurement of a license, §535.144, concerning a licensee acting as a principal, §535.146, concerning failure properly to account for or remit money, §535.150, concerning acting in a dual capacity, §535.154, concerning misleading advertising, §535.155, concerning association with an unlicensed person, §535.156, concerning dishonesty, bad faith or untrustworthiness, §535.157, concerning negligence or incompetence, §535.158, concerning violations of The Real Estate License Act, §535.159, concerning failure properly to deposit escrow monies and §535.160, concerning failure properly to dispose escrow monies. The amendments replace the term salesman with salesperson to comply with House Bill 814, 75th Legislature (1997), which requires TREC to use the term salesperson in all its rules and documents no later than January 1, 1999. The amendments also replace gender specific terms such as his with terms which are not gender specific for consistency or revise the sections so as not to use terms limited to a single gender.

Mark A. Moseley, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There is no anticipated impact on local or state employment as a result of implementing the sections.

Mr. Moseley also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be consistency between the sections and the agency’s enabling legislation. 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.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute that is affected by these sections is Texas Civil Statutes, Article 6573a.

§535.141. Initiation of Investigation.

(a) (No change.)

(b) The commission, on its own motion, with reasonable cause, may initiate an investigation of the actions and records of a real estate broker or real estate salesperson [salesman].

(c) A real estate broker is responsible for all acts and conduct performed by a real estate salesperson [salesman] associated with or acting for the broker. A complaint which names a licensed real estate salesperson [salesman] as the subject of the complaint but does not specifically name the salesperson’s [salesmen’s] sponsoring broker, is a complaint against the broker sponsoring the salesperson [salesman] at the time of any alleged violation for the limited purposes of determining the broker’s involvement in any alleged violation and whether the broker fulfilled his or her professional responsibilities to the commission, members of the public, and his or her clients, provided the complaint concerns the conduct of the salesperson [salesman] as an agent for the broker.

(d) The person designated by a licensed corporation, limited liability company or partnership to act as its officer, manager or partner is responsible for all acts and conduct as a real estate broker performed by or through the business entity. A complaint which names a corporation, limited liability company or partnership licensed as a broker as the subject of the complaint but which does not specifically name the designated officer, manager or partner of the business entity, is a complaint against the broker acting as the designated officer, manager or partner at the time of any alleged violation for the limited purposes of determining the designated person’s involvement in any alleged violation and whether the designated person fulfilled his or her professional responsibilities to the commission, members of the public, and his or her clients. A complaint which names a salesperson [salesman] sponsored by a licensed corporation, limited liability company or partnership but which does not specifically name the designated person of the business entity is a complaint against the broker who was acting as designated person at the time of any alleged violation by the salesperson [salesman] for the limited purposes of determining the designated person’s involvement in any alleged violation and whether the designated person fulfilled his or her professional responsibilities to the commission, members of the public, and his or her clients, provided the complaint concerns the conduct of the salesperson [salesman] as an agent of the business entity.

(e)-(g) (No change.)

(h) A person whose license or certification has been suspended may not during the period of any suspension:

(1) (No change.)

(2) unless instructed otherwise by the principals to the transaction, continue to hold any funds received in a real estate transaction in which the person acted as a real estate broker or salesperson [salesman].

(i) A person whose license is subject to an order suspending the license must prior to the suspension taking effect:

(1) if the person is a real estate salesperson [salesman], notify his or her sponsoring broker in writing that his or her license will be suspended;

(2) if the person is a real estate broker, notify in writing any salespersons [salesman] he or she sponsors, or any corporation, limited liability company or partnership for which the person is designated as an officer, manager or partner that:

(A) (No change.)

(B) once the suspension is effective any salesperson [salesman] salesmen he or she sponsors or who are sponsored by the corporation, limited liability company or partnership will not be authorized to engage in real estate brokerage unless the salespersons [salesmen] associate with another broker and file a change of
sponsoring with the commission or the business entity designates a new person and files a change of designated officer, manager or partner with the commission;

(3) (No change.)

(4) if the person is a real estate salesperson [salesperson] and is directly involved in any real estate transaction in which the salesperson [salesperson] acts as an agent, notify in writing all other parties, including principals and other real estate brokers, that the person cannot continue performing real estate brokerage services due to the suspension; and

(5) (No change.)

(j) (No change.)

§535.143. Fraudulent Procurement of License.

(a) A violation of the Act, §15(a)(2), occurs if an applicant for licensure for the applicant [himself or a salesperson] makes material misstatements, written or oral, in connection with the filing of an application to obtain licensure. This does not include an unintentional mistake of fact; however, a broker submitting an application as sponsor of a proposed salesperson [salesperson] has an affirmative duty to ascertain that all information called for in the application is given and is true, correct and complete, whether the application is filled out by the broker [his] or the prospective salesperson [salesperson].

(b) (No change.)

§535.144. When acquiring or disposing of own property.

A licensee, when engaging in a real estate transaction on his or her own behalf, is obligated to inform any person with whom the licensee [he] deals that he or she is a licensed real estate broker or salesperson [salesperson] for the principal in that transaction. If any or all of the parties to a real estate transaction make demand for the money, the licensee must, within a reasonable time, properly account for or remit the money. "Reasonable time" means 30 days after demand is made for an accounting or for remittance of money belonging to others.

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

(f) If, by virtue of closing a sales transaction, or by virtue of default of one of the parties, a licensee acquires ownership of money in the licensee’s [his] escrow account that was originally held in trust for another, such money must be removed from the escrow account within a reasonable time. "Reasonable time" in this context means within 30 days after the licensee acquires ownership of the money.

(g) Paying operating expenses or making withdrawals from a broker’s escrow account for any purpose other than proper disbursement of escrow money is prima facie evidence of commingling money held in trust with the broker’s [his] own funds.

§535.150. Acting in Dual Capacity.

A licensee may not covertly or through a third party purchase a [his] principal’s property and recover a commission from the principal [hims]. A licensee must disclose to the other party to a transaction that the licensee [he] is acting in the dual capacity of both agent and principal in that transaction.


(a) (No change.)

(b) A broker must file an assumed name certificate with the commission if the broker [he] transacts real estate business under a name other than the broker’s [his] legal name.

(c) (No change.)

(d) A listing may be solicited and accepted only in a broker’s name. Advertisements concerning a broker’s listings must include information identifying the advertiser as a real estate broker or agent. The name of a salesperson sponsored by the broker, [his] salesperson’s [salesperson] name may also be included in the advertisement, but in no case shall a broker or salesperson [salesperson] place an advertisement which contains only the salesperson’s [salesperson] name or in any way implies that the salesperson [salesperson] is the person responsible for the operation of a real estate brokerage.

(e) Where a business name includes the name of a licensed salesperson [salesperson] as well as a licensed broker, the broker’s name should appear first to avoid the possibility that the public would be misled to believe that the salesperson’s [salesperson] is a broker. A licensee may not conduct business solely under the name of a real estate salesperson [salesperson]; provided, however, that a corporation licensed as a real estate broker may do business in the name in which it was incorporated by the Secretary of State.

(f)-(g) (No change.)

§535.155. Associating with Unlicensed Person; Conspiring to Violate Act.

It is a violation of this section for a broker to allow unlicensed personnel employed by the broker [him] or associated with the broker [him] to engage in activity for which licensure is required. Unlicensed activity by employees, associates or any other person under the control of said broker shall constitute a prima facie violation of this section. Aiding, abetting or conspiring with any person to circumvent the provisions of the Act constitutes a violation of this section.

§535.156. Dishonesty: Bad Faith; Untrustworthiness.

(a) A licensee’s relationship with the licensees’ [his] principal is that of a fiduciary. A licensee shall convey to the licensees’ [his] principal all known information which would affect the principal’s decision on whether or not to accept or reject offers; however, the licensee shall have no duty to submit offers to the principal after the principal has accepted an offer.

(b) The licensee must put the interest of the licensees’ [his] principal above the licensees’ [his] own interest. A licensee must deal honestly and fairly with all parties; however, the licensee [he] represents only the [his] principal and owes a duty of fidelity to such principal.

(c) A licensee has an affirmative duty to keep the [his] principal informed at all times of significant information applicable to the transaction or transactions in which the licensee is acting as agent for the principal.

(d) A licensee has a duty to convey accurate information to members of the public with whom the licensee [he] deals.


A licensee should not undertake to perform a service or handle a transaction for which the licensee [he] lacks the requisite knowledge or expertise.
§535.158. Violation of Act.

If a licensee fails to perform any duty imposed by any other section of the Act or acts in contravention of any other provision of the Act, such shall be cause for the suspension or revocation of the person’s [his] license.

§535.159. Failing to Properly Deposit Escrow Monies.

(a) A broker is not required to maintain a trust account unless the broker [he] undertakes to accept monies belonging to others.

(b) (No change.)

(c) It is up to principals to a transaction to decide who shall act as escrow agent or them. A broker may not require the principals to a real estate transaction to designate the broker [his] as their escrow agent.

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

(f) A salesperson [salesman] may not maintain an escrow account or act as an escrow agent. Any money received by a real estate salesperson [salesman] which is to be held in trust pursuant to a real estate transaction must be delivered to the salesperson’s [salesman’s] sponsoring broker to be deposited in accordance with the agreement of the principals in the transaction.

(g)-(i) (No change.)

(k) If a broker accepts a check as escrow agent and later finds that such check has been dishonored by the bank on which it was drawn, the broker [he] shall immediately notify all parties to the transaction.

§535.160. Failing to Properly Disburse Escrow Money.

A broker shall make no disbursal from the broker’s [his] escrow account except in accordance with the agreement under which the money was received.

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 SState, on February 26, 1998.

TRD-9802883
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: April 12, 1998
For further information, please call: (512) 465–3900

Residential Rental Locators

22 TAC §535.300

The Texas Real Estate Commission (TREC) proposes an amendment to §535.300, concerning advertising guidelines for residential rental locators. The amendment replaces the term salesperson with salesperson to comply with House Bill 814, 75th Legislature (1997), which requires TREC to use the term salesperson in all its rules and documents no later than January 1, 1999.

Mark A. Moseley, general counsel, 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. There is no anticipated impact on local or state employment as a result of implementing the section.

Mr. Moseley also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be consistency between the section and the agency’s enabling legislation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §§(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute that is affected by this section is Texas Civil Statutes, Article 6573a.

§535.300. Advertising by Residential Rental Locators.

(a) This section is intended to establish standards relating to permissible forms of advertising by a person licensed as a real estate broker or salesperson [salesman] and functioning as a residential rental locator ("locator"). For the purposes of this section, the term "residential rental locator" shall have the meaning provided by Texas Civil Statutes, Article 6573a, (the Act), §24. For the purposes of this section, the term "advertisement" includes, but is not limited to advertising in printed form, signs, or advertising using radio, television or personal computers.

(b)-(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 February 26, 1998.

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Mark A. Moseley
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 465–3900

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 404. Protection of Clients and Staff

Subchapter A. Abuse, Neglect, and Exploitation in TDMHMR Facilities

25 TAC §§404.1–404.17

(Editor’s note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Mental Health and Mental Retardation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)
The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeals of §§404.1 - 404.17, concerning abuse, neglect, and exploitation in TDMHMR facilities. New §§417.501 - 417.518, concerning the same, which would replace the repealed sections, are contemporaneously proposed in this issue of the Texas Register.

The repeals would allow for the adoption of new sections.

Don Green, chief financial officer, has determined that for each year of the first five years the sections as proposed will be in effect, there will be no significant fiscal cost to state or local government or small businesses as a result of administering the sections as proposed because the sections represent a reorganization of the provisions in the subchapter proposed for repeal. Additionally, the proposed new provisions that represent an expansion of the existing required procedures do not result in an increase in administrative, human resources, or operational costs. There will be no local employment impact. There is no anticipated cost to individuals required to comply with the proposed sections.

Karen Hale, assistant commissioner, has determined that for the first five year period the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the adoption of new sections with clear delineation of changes in TDMHMR and TDPRS protocols and responsibilities both as a result of Senate Bill 115 of the 75th Texas Legislature and as a result of the MOU. Because the safety and protection of persons with mental illness and mental retardation residing in department facilities is fundamental in the delivery of services, the procedures described in the subchapter ensure that mechanisms are in place to address and investigate allegations of abuse, neglect, and exploitation in department facilities. The new sections also provide the public with an opportunity to review and comment on important provisions of the interagency MOU, which is required to be adopted by rule in Section 48.022 of the Human Resources Code.

Comments on the proposed repeals may be submitted to Linda Logan, director, Policy Development, Texas Department Mental Health and Mental Retardation, P.O. Box 12668, Austin, TX 78711-2668, within 30 days of publication.

The sections are proposed under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Mental Health and Mental Retardation Board with rulemaking powers; §161.132, which requires the board to adopt rules that prescribe procedures for the investigation and referral of reports of abuse and neglect or illegal, unprofessional, or unethical conduct of a person served in a health care facility; Texas Human Resources Code, Chapter 48, which requires the reporting and investigations of abuse, neglect, and exploitation of elderly and disabled persons; Texas Family Code, Chapter 261, which requires the reporting and investigations of abuse or neglect of a child; and Civil Practice and Remedies Code, §81.006, which requires the reporting of alleged sexual exploitation by a mental health services provider to the county prosecuting attorney.

The proposal would affect §§161.132 and 532.015 of the Texas Health and Safety Code; Texas Human Resources Code, Chapter 48; Texas Family Code, Chapter 261; and Civil Practice and Remedies Code, §81.006.

§404.4. Purpose.
§404.5. Reporting Responsibilities of All TDMHMR Employees: Reports to Texas Department of Protective and Regulatory Services (TDPRS).
§404.6. Reporting of Aggressive Action by Persons Served Other Than Sexual Abuse.
§404.7. Responsibilities of the Head of the Facility.
§404.8. Peer Review.
§404.9. Completion of the Investigation.
§404.10. Disciplinary Action.
§404.13. Prohibition Against Retaliatory Action.
§404.15. Confidentiality of Investigative Process and Report.
§404.16. References.
§404.17. Distribution.

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

Filed with the Office of the Secretary of State, on February 27, 1998.

TRD-9802941
Charles Cooper
Chairman
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: April 12, 1998
For further information, please call: (512) 206-4516

Chapter 417. Abuse, Neglect, and Exploitation in TDMHMR Facilities
Subchapter K. Abuse, Neglect, and Exploitation in TDMHMR Facilities
25 TAC §§417.501-417.518

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§417.501-417.518, concerning abuse, neglect, and exploitation in TDMHMR facilities, with the contemporaneous repeal of Chapter 404, Subchapter A, concerning abuse, neglect, and exploitation in TDMHMR facilities.

The general repeal and readoption of the sections is undertaken pursuant to the Appropriations Act, Article IX, Section 167, which requires agencies to repeal or to readopt all rules that were in effect prior to September 1, 1997, by September 1, 2001.

The same sections of new Chapter 417, Subchapter K, concerning abuse, neglect, and exploitation in TDMHMR facilities,
which were previously proposed for public comment in the December 5, 1997, issue of the Texas Register, are withdrawn in this issue of the Texas Register. Many issues raised during the public comment period are addressed in this subsequent proposal.

The subchapter defines abuse, neglect, and exploitation, and describes the procedures for reporting allegations; ensuring the safety and protection of persons served involved in allegations; facilitating proper investigations/peer reviews; notifying organizations and appropriate persons of issues relating to an allegation; contesting the finding of an investigation; ensuring proper disciplinary action is taken; collecting data regarding allegations; and training staff in identifying, reporting, and preventing abuse, neglect, and exploitation.

The proposal incorporates the portions of a pending interagency memorandum of understanding (MOU) between TDPRS concerning coordination of agency responsibilities. The new sections also include the general content of the subchapter proposed for repeal, with minor changes, and a number of additional changes which are discussed in this preamble.

Portions of the proposed subchapter would be reorganized for clarity. Clarifying language would be added to the definitions of "contractor" and "unconfirmed." The definition of "neglect" would be reorganized and modified to clarify that the term is related to a specific person served. The definitions of "abuse of a child" and "neglect of a child" would be modified to include the statutory amendments to the Texas Family Code, Chapter 261.

All language referencing a person served as the alleged perpetrator would be deleted because the definitions of "abuse," "neglect," and "exploitation" only allow for the perpetrator to be an employee, agent, contractor, or unknown. The section describing the reporting of aggressive action by persons served would be revised for clarity. Language regarding dismissing an employee involved in an allegation in accordance with procedures outlined in §3.112 of the Human Resources Operating Instruction (relating to Separations, Suspensions, and Demotions) would be deleted because the statement implies an employee may be dismissed based upon an allegation. (The department notes that any employee may be dismissed in accordance with procedures outlined in §3.112 of the Human Resources Operating Instruction, regardless of whether the employee is involved in an allegation.)

Language would be added clarifying that the head of the facility may elect to confirm the APS investigator’s unconfirmed, inconclusive, or unfounded finding. If the head of the facility confirms an unconfirmed, inconclusive, or unfounded finding, the confirmed finding can not be appealed to TDPRS. A mechanism and time frames for resolving disagreements regarding findings and methodology would be added. Language would also be added stating that the head of the facility ensures that the (alleged) victim or guardian, if appropriate, is notified of the right to receive a copy of the investigative report.

New language would be added stating that the head of the facility could not change a recommended classification to a lower classification (e.g., Class I to Class II), but may change a recommended classification to a higher classification (e.g., Class II to Class I) in accordance with the evidence and the defined classifications. Permissive language regarding disciplinary action for confirmed Class III abuse and neglect would be replaced with mandatory language. Language would be added stating that the head of the facility is responsible for ensuring that contractors take appropriate disciplinary or other action as a result of confirmed abuse or neglect by their employees.

The section concerning investigative procedures for facility contractors, agents, and independent school district employees, which is proposed for repeal, would instead require each facility contract to describe the procedural responsibilities of the facility and the contractor in order to ensure the contractor's compliance with the subchapter. Language would be added to §417.511 stating that upon request, the head of the facility may release a copy of the investigative report to the (alleged) victim or guardian provided the identities of other persons served and any information determined confidential by law are concealed. Language would also be added to §417.511 stating that Advocacy, Inc. is entitled to access the records of the (alleged) victim in accordance with its enabling federal statute.

Don Green, chief financial officer, has determined that for each year of the first five years the sections as proposed will be in effect, there will be no significant fiscal cost to state or local government or small businesses as a result of administering the sections as proposed because the sections represent a reorganization of the provisions in the subchapter proposed for repeal. Additionally, the proposed new provisions that represent an expansion of the existing required procedures do not result in an increase in administrative, human resources, or operational costs. There will be no local employment impact. There is no anticipated cost to individuals required to comply with the proposed sections.

Karen Hale, assistant commissioner, has determined that for the first five year period the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the clear delineation of changes in TDMPHR and TDPRS protocols and responsibilities both as a result of Senate Bill 115 of the 75th Texas Legislature and as a result of the MOU. Because the safety and protection of persons with mental illness and mental retardation residing in department facilities is fundamental in the delivery of services, the procedures described in the subchapter ensure that mechanisms are in place to address and investigate allegations of abuse, neglect, and exploitation in department facilities. The new sections also provide the public with an opportunity to review and comment on important provisions of the interagency MOU, which is required to be adopted by rule in Section 48.022 of the Human Resources Code.

Comments on the proposed new sections may be submitted to Linda Logan, director, Policy Development, Texas Department Mental Health and Mental Retardation, P.O. Box 12668, Austin, TX 78711-2668, within 30 days of publication.

The sections are proposed under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Mental Health and Mental Retardation Board with rulemaking powers; §161.132, which requires the board to adopt rules that prescribe procedures for the investigation and referral of reports of abuse and neglect or illegal, unprofessional, or unethical conduct of a person served in a health care facility; Texas Human Resources Code, Chapter 48, which requires the reporting and investigations of abuse, neglect, and exploitation of elderly and disabled persons; Texas Family Code, Chapter 261, which requires the reporting and investigations of abuse or neglect of a child; and Civil Practice and Remedies Code, §81.006, which
requires the reporting of alleged sexual exploitation by a mental health services provider to the county prosecuting attorney.

The proposal would affect §§161.132 and 532.015 of the Texas Health and Safety Code; Texas Human Resources Code, Chapter 48; Texas Family Code, Chapter 261; and Civil Practice and Remedies Code, §81.006.

§417.501. Purpose
The purpose of this subchapter is:

(1) to define and prohibit abuse, neglect, and exploitation of persons served by a facility or contractor of the Texas Department of Mental Health and Mental Retardation; and

(2) to prescribe procedures:

(A) for the effective reporting of allegations of abuse, neglect, and exploitation;

(B) for ensuring the safety and protection of persons served involved in allegations;

(C) which facilitate proper investigations/peer reviews and preserve the integrity of investigations/peer reviews;

(D) for notifying appropriate organizations and persons of issues relating to an allegation;

(E) for contesting the finding of an investigation;

(F) for ensuring proper disciplinary action is taken;

(G) for collecting data regarding allegations; and

(H) for training staff in identifying, reporting, and preventing abuse, neglect, and exploitation.

§417.502. Application
(a) The provisions of this subchapter apply to all facilities of the Texas Department of Mental Health and Mental Retardation and their agents.

(b) All facilities are responsible for amending the contracts of their contractors to ensure compliance as specified in this subchapter.

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

(1) Adult Protective Services (APS) investigator - An employee of the Texas Department of Protective and Regulatory Services (TDPRS) with expertise and demonstrated competence in conducting investigations.

(2) Agent - Any individual not employed by the facility but working under the auspices of the facility, (e.g., a volunteer, a student).

(3) Allegation - A report by a person suspecting or having knowledge that a person served has or is in a state of abuse, neglect, or exploitation as defined in this subchapter.

(4) Child - A person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

(5) Clinical practice - Relates to issues of potentially or allegedly unsafe nursing, dental, or medical practice or violations of the Nursing Practice Act, Licensed Vocational Nurse Title Act, Dental Practice Act, or Medical Practice Act. These include acts or omissions of the physician, dentist, or nurse which result from a lack of competence in his/her profession, impaired status, or failure to provide adequate medical, nursing, or dental care to a person served.

(6) Confirmed - Term used to describe an allegation which is determined to be supported by the preponderance of evidence.

(7) Contractor - Any organization, entity, or individual who contracts with a facility and who comes into contact or may come into contact with persons served.

(8) Department - The Texas Department of Mental Health and Mental Retardation (TDMHR).

(9) Designee - A staff member immediately available who is temporarily or permanently appointed to assume designated responsibilities of the head of the facility.

(10) Facility - A state hospital, state school, state center, or state-operated community services (SOCs). The term does not include a state-funded community hospital (which is an inpatient mental health facility licensed by the Texas Department of Health under the Texas Health and Safety Code, Chapter 242, or operated by a university health system and exempted from licensure, that provides TDMHR-funded inpatient mental health services pursuant to a contract between TDMHR and a local authority), nor does the term include a psychiatric hospital (which is licensed by the Texas Department of Health (TDH) under Chapter 577 of the Texas Health and Safety Code).

(11) Head of the facility - The superintendent or executive director of a facility, or designee.

(12) Incitement - To spur to action or instigate into activity; implies responsibility for initiating another’s actions.

(13) Inconclusive - Term used to describe an allegation leading to no conclusion or definite result due to lack of witnesses or other relevant evidence.

(14) Mental health services provider - An individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:

(A) licensed social worker as defined by Section 50.001, Human Resources Code;

(B) chemical dependency counselor as defined by Section 1, Chapter 635, Acts of the 72nd Legislature, Regular Session, 1991 (Article 4512o, Texas Civil Statutes);

(C) licensed professional counselor as defined by Section 2, Licensed Professional Counselor Act (Article 4512g, Texas Civil Statutes);

(D) licensed marriage and family therapist as defined by Section 2, Licensed Marriage and Family Therapist Act (Article 4512c-1, Texas Civil Statutes);

(E) member of the clergy;

(F) physician who is “practicing medicine” as defined by Section 1.03, Medical Practice Act (Article 4495b, Texas Civil Statutes);

(G) psychologist offering "psychological services" as defined by Section 2, Psychologists’ Certification and Licensing Act (Article 4512c, Texas Civil Statutes); and

(H) registered nurse as defined by law.

(15) Nonserious physical injury - Any injury determined not to be serious by the examining physician. Examples of nonserious

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injury may include the following: superficial laceration, contusion, abrasion.

(16) Office of Consumer Services and Rights Protection - The office located at the Texas Department of Mental Health and Mental Retardation’s Central Office.

(17) Peer review - A review of clinical and/or medical practice(s) by peer physicians and/or dentists, or a review of clinical nursing practices by nurses.

(18) Perpetrator - The person who has committed an act of abuse, neglect, or exploitation.

(19) Perpetrator unknown - Term used to describe instances in which abuse, neglect, or exploitation is evident but positive identification of the responsible person cannot be made, and in which self-injury has been eliminated as the cause.

(20) Person served - Any person receiving services from a facility or contractor, including those persons who are physically away from the facility/contractor but who are still carried on the rolls of the facility/contractor.

(21) Preponderance of evidence - The greater weight of evidence, or evidence which is more credible and convincing to the mind.

(22) PMAB or Prevention and Management of Aggressive Behavior - The department’s proprietary risk management program which uses the least intrusive, most effective options to reduce the risk of injury for persons served and for staff from acts or potential acts of aggression.

(23) Reporter - The person filing a report of alleged abuse, neglect, or exploitation.

(24) Retaliatory action - Any action intended to inflict emotional or physical harm or inconvenience on a person that is taken because the person has reported abuse, neglect, or exploitation. This includes but is not limited to harassment, disciplinary measures, discrimination, reprimand, threat, and criticism.

(25) Review authority - An individual or panel of individuals who, at the discretion and request of the head of the facility, reviews selected cases of abuse, neglect, or exploitation, including those that are confirmed, unconfirmed, unfounded, or inconclusive. The review authority may include a member of the facility’s public responsibility committee.

(26) Serious physical injury - An injury determined to be serious by the examining physician. Examples of serious injury may include the following: fracture; dislocation of any joint; internal injury; any contusion larger than two and one half inches in diameter; concussion; second or third degree burn.

(27) Sexual abuse - Any sexual activity involving an employee, agent, or contractor and a person served. Sexual activity includes, but is not limited to:

(A) kissing with sexual intent;
(B) hugging with sexual intent;
(C) stroking with sexual intent;
(D) fondling with sexual intent;
(E) oral sex or sexual intercourse;
(F) request or suggestion or encouragement for the performance of sex;

(G) sexual exploitation as defined in this section; and
(H) sexual assault as defined in §22.011 of the Texas Penal Code (referred to as Exhibit A in §417.516 of this title (relating to Exhibits)).

(28) Sexual exploitation - A coercive or manipulative pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. The term does not include obtaining information about a patient’s sexual history within standard accepted clinical practice.

(29) Sexually transmitted disease - Any infection, with or without symptoms or clinical manifestations, that is or may be transmitted from one person to another as a result of sexual contact between persons.

(30) TDPRS - The Texas Department of Protective and Regulatory Services.

(31) Unconfirmed - Term used to describe an allegation in which a preponderance of evidence exists to prove that abuse, neglect, or exploitation did not occur.

(32) Unfounded - Term used to describe an allegation that is spurious or patently without factual basis.

§417.504, Prohibition and Definitions of Abuse, Neglect, and Exploitation.

(a) Abuse, neglect, and exploitation of any person served is prohibited.

(b) For the purposes of this subchapter, the terms "abuse," "neglect," and "exploitation" are defined as follows when the alleged perpetrator is an employee, agent, contractor, or is unknown.

(1) Abuse includes:

(A) any act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused physical injury or death to a person served;

(B) any act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in an injury to a person served;

(C) any use of chemical or bodily restraints not in compliance with federal and state laws and regulations;

(D) sexual abuse as defined in §417.503 of this title (relating to Definitions); or

(E) any act or use of verbal or other communication (including gestures) to:

(i) curse, vilify, or degrade a person served; or

(ii) threaten a person served with physical or emotional harm.

(2) Abuse of a child includes the following acts or omissions:

(A) mental or emotional injury to a child that results in an observable and material impairment in the child’s growth, development, or psychological functioning;

(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child’s growth, development, or psychological functioning;
(C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;

(D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

(E) sexual contact harmful to a child’s mental, emotional, or physical welfare;

(F) failure to make a reasonable effort to prevent sexual contact harmful to a child;

(G) compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code;

(H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Section 43.21, Penal Code, or pornographic;

(I) the current use by a person of a controlled substance as defined by Chapter 481, Texas Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;

(J) causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Texas Health and Safety Code.

(3) Neglect means a negligent act or omission by any person responsible for providing services, which caused or may have caused physical or emotional injury or death to a person served, or which placed a person served at risk of physical or emotional injury or death. Neglect includes, but is not limited to:

(A) the failure to establish or carry out an appropriate individual program plan or treatment plan for a specific person served;

(B) the failure to provide adequate nutrition, clothing, or health care to a specific person served;

(C) the failure to provide a safe environment for a specific person served, including the failure to maintain adequate numbers of appropriately trained staff.

(4) Neglect of a child includes the following acts or omissions:

(A) placing the child in or failing to remove the child from a situation that a reasonable person would realize requires judgment or actions beyond the child’s level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;

(B) the failure to seek, obtain, or follow through with medical care for the child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;

(C) the failure to provide the child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused;

(D) placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or

(E) the failure by the person responsible for a child’s care, custody, or welfare to permit the child to return to the child’s home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away.

(5) Exploitation means the illegal or improper act or process of using a person served or the resources of a person served for monetary or personal benefit, profit, or gain.

(c) In this subchapter, the terms "abuse" and "neglect" incorporate "abuse of a child" and "neglect of a child."

(d) Abuse, neglect, or exploitation does not include:

(1) the proper use of restraints and seclusion, including PMAB, and the approved application of behavior modification techniques as described in:

(A) Chapter 405, Subchapter F of this title, relating to Voluntary and Involuntary Behavioral Interventions in Mental Health Programs;

(B) Chapter 404, Subchapter E of this title, relating to Rights of Persons Receiving Mental Health Services; and

(C) Chapter 405, Subchapter H of this title, relating to Behavior Management - Facilities Serving Persons With Mental Retardation;

(2) other actions taken in accordance with the rules of the department;

(3) such actions as an employee/agent/contractor may reasonably believe to be immediately necessary to avoid imminent harm to self, persons served, or other individuals if such actions are limited only to those actions reasonably believed to be necessary under the existing circumstances. Such actions do not include acts of unnecessary force or the inappropriate use of restraints and seclusion, including PMAB; or

(4) general complaints (e.g., regarding rights violations, theft of property, the daily administrative operations of a facility, the failure to carry out individual program/treatment plans, or the failure to maintain adequate numbers of appropriately trained staff) that do not relate to a specific incident or allegation involving a specific person served. (Within 24 hours of receipt of such a complaint, the APS investigator refers the complaint to the head of the facility using the Adult Protective Services Referral Form, referenced as Exhibit B in §417.516 of this title (relating to Exhibits), who ensures the complaint is investigated administratively by the head of the facility, the facility rights officer, or other appropriate parties.)

§417.505. Reporting Responsibilities of All TDMHMR Employees, Agents, and Contractors: Reports to Texas Department of Protective and Regulatory Services (TPDRS).

(a) Reporting suspected abuse, neglect, or exploitation.

(1) Each employee/agent/contractor who suspects or has knowledge that a person served is being abused, neglected, or exploited shall make a verbal report to TPDRS immediately, if possible, but in no case more than one hour after suspicion or after learning of the incident, by calling 1-800-647-7418.

(2) Each employee/agent/contractor who suspects or has knowledge that a person served has been abused, neglected, or exploited, including prior to admission, during an absence, or while
in residence at the facility, shall make a verbal report to TDPRS immediately, if possible, but in no case more than one hour after suspicion or after learning of the incident, by calling 1-800-647-7418.

(3) If the person making the allegation is not an employee/agent/contractor (e.g., a person served, a guest), staff shall assist the person in making the report, if necessary.

(b) Any pregnancy of a person served, provided there is medical verification that there is reasonable expectation that conception could have occurred while the person was a resident of the facility or contractor, or any diagnosis of a sexually transmitted disease in a person served who could have occurred while the person was a resident of the facility or contractor, shall be reported in keeping with the provisions of this subchapter as possible abuse or neglect. Additional reporting requirements are described in Chapter 404, Subchapter G of this title (relating to Unusual Incidents Involving Persons Served by TXMHR Facilities).

(c) Failure to make reports as required by this section within the allotted time period without sufficient justification is considered a violation of this section and makes the employee/agent subject to disciplinary action and possible criminal prosecution. An employee/agent found to have made a false statement of fact during an investigation is also subject to disciplinary action.

(d) In addition to reporting to TDPRS, employees shall take appropriate steps to secure evidence related to an allegation, if any, consistent with "Guidelines for Securing Evidence," referenced as Exhibit C in §417.516 of this title (relating to Exhibits).


(a) If an aggressive action by a person served, including non-consensual sexuality activity between persons served, occurs as a result of possible neglect, then the action is reported as neglect in accordance with this subchapter.

(b) If an aggressive action by a person served, including non-consensual sexuality activity between persons served, is an unusual incident as defined in Chapter 404, Subchapter G of this title (relating to Unusual Incidents Involving Persons Served by TXMHR Facilities), then the action is reported in accordance with that subchapter.

§417.507. Prohibition Against Retaliatory Action.

(a) Retaliatory action. Any employee/agent or any individual affiliated with an employee/agent is prohibited from engaging in retaliatory action against an employee/agent or person served who in good faith reports an allegation.

(1) Any person who believes he or she is being subjected to retaliatory action upon reporting an allegation, or who believes an allegation has been ignored without cause, should immediately contact the head of the facility. The person may also contact:

(A) the Office of Consumer Services and Rights Protection at the dedicated toll-free number for state hospital, state schools, state centers, and state-operated community services at 1-800-252-8154; or

(B) the Office of the Attorney General at 512/463-2120 which, under the Whistleblower Act, Texas Civil Statutes, Article 6252-16a, may prosecute a supervisor who suspends or terminates a public employee for reporting a violation of law to law enforcement authorities.

(2) Retaliatory action against a person served which might be considered abuse, neglect, or exploitation is reported to TDPRS in accordance with this subchapter.

(b) Disciplinary action. Any employee/agent found to have engaged in retaliatory action is subject to disciplinary action.

§417.508. Responsibilities of the Head of the Facility.

(a) All allegations are investigated in accordance with Texas Administrative Code, Chapter 710, Subchapter A, Title 40 (relating to Abuse, Neglect, and Exploitation of Persons Served by TDMHR Facilities). Upon receiving a report of an allegation the APS investigator immediately notifies the head of the facility of the allegation and whether or not the allegation will be reported to a law enforcement agency.

(b) Immediately upon notification of an allegation, if possible, but in no case more than one hour later, the head of the facility takes measures to ensure the safety of the person(s) served involved in the allegation, including the following actions:

(1) The head of the facility ensures immediate and on-going medical attention is provided to the alleged victim and any other person served involved in the incident (e.g., treatment for injuries, physician’s exam, screening and treatment for sexually transmitted diseases). The physician’s exam and treatment of abuse/neglect-related injuries is documented on the Client Injury/Incident Report form (referenced as Exhibit D in §417.516 of this title (relating to Exhibits)), with a copy submitted to the APS investigator. The physician’s documentation during or following the examination should address the injury’s cause, age, and treatment, to the extent that the information can be determined, as well as the timing of the medical exam with regard to the date the injury was received. All issues relating to clinical practice are referred to the medical/clinical director for consultation.

(2) The head of the facility ensures the protection of the alleged victim in keeping with "Guidelines for Separation of Alleged Victim and Alleged Perpetrator During Abuse/Neglect Investigations" (referenced as Exhibit E in §417.516 of this title (relating to Exhibits)), which may include, but is not limited to, the following actions:

(A) reassignment of the employee/agent to a non-direct care area;

(B) allowing the employee/agent to remain in his or her current position pending investigation;

(C) granting the employee emergency leave; or

(D) suspending the agent pending investigation.

(3) The head of the facility ensures psychological counseling is provided to the alleged victim and, as necessary, to any other person served who may have witnessed or been affected by the incident. The counseling shall be provided in a timely manner while preserving the integrity of the investigation.

(4) If the alleged perpetrator is known but is not an employee/agent (e.g., family member, friend, guest), the head of the facility imposes a restriction on the alleged perpetrator’s access to the alleged victim pending investigation. The restriction should be documented in the record of the alleged victim.

(5) Immediately, but in no case later than 24 hours after notification of an allegation, the head of the facility notifies the following individuals of the allegation:

(A) the alleged victim (if appropriate);

(B) the guardian; and
any other person designated as having the authority to know as indicated in the alleged victim’s records (e.g., spouse, parent).

(c) The head of the facility designates a contact staff person to coordinate with the APS investigator to ensure private interview space, private telephones, and employees/agents are available to the APS investigator. The head of the facility shall require employees/agents to cooperate with APS investigators so that the investigators are afforded immediate access to all records and evidence and provided keys as are necessary to conduct an investigation in a timely manner. The head of the facility shall assist in whatever way possible to make employees/agents who are relevant to the investigation available in an expeditious manner. Employees/agents who fail to cooperate with an investigation are subject to disciplinary action.

(d) In accordance with the Civil Practice and Remedies Code, §81.006, the head of the facility ensures that allegations of sexual exploitation by a mental health services provider (as defined) are reported, not later than the 30th day after the date the head of the facility became aware of the allegation, to the prosecuting attorney in the county in which the alleged sexual exploitation occurred and any state licensing board that has responsibility for the mental health services provider’s licensing. The report includes:

   (1) the reporter’s name, as released by TDPRS in accordance with §710.7(c)(1) of title 40 (relating to Adult Protective Services (APS) Investigator);
   (2) the alleged victim’s name, unless the alleged victim wishes to remain anonymous; and
   (3) the reasons for suspicion that sexual exploitation has occurred.

§417.509. Peer Review.

(a) If the allegation involves the actions of a physician, dentist, registered nurse, or licensed vocational nurse, then a determination of whether the allegation involves the clinical practice, as defined in §417.503 of this title (relating to Definitions), of the physician, dentist, registered nurse, or licensed vocational nurse is made by the head of the facility, the APS investigator, and the facility medical/dental/nursing director, as appropriate to the discipline involved.

   (1) If the allegation does not involve clinical practice, the APS investigator pursues an investigation.
   (2) If the allegation does involve clinical practice the APS investigator refers the allegation to the head of the facility, who immediately refers the allegation to the facility medical/dental/nursing director, as appropriate to the discipline involved, for review for possible peer review as follows:

   (A) for allegations involving physicians and dentists, Investigative Medical Peer Review Operating Instruction 408-2; and
   (B) for allegations involving registered nurses and licensed vocational nurses, Investigative Nursing Peer Review Operating Instruction 408-1.

(b) If the allegation involves the facility medical/dental/nursing director, the head of the facility refers the allegation to the TDHMHR medical/dental/nursing director, as appropriate to the discipline involved, for review for possible peer review in accordance with subsection (a)(2)(A) and (B) of this section.

(c) All allegations involving physicians, nurses (RN or LVN), and dentists, regardless of type or clinical/nonclinical practice, are reported by the head of the facility to the TDHMHR medical/nursing/dental director, as appropriate to the discipline, within five working days of the allegation. The report may be brief, but will include:

   (1) the date of the alleged incident;
   (2) name of the alleged victim and alleged perpetrator;
   (3) a brief description of the incident; and
   (4) a brief description of the investigation planned.

(d) The TDHMHR medical/dental/nursing director, as appropriate to the discipline involved, ensures that reports of allegations of abuse and neglect are made if required by law to the licensing authority for the discipline under review, i.e., the Board of Medical Examiners for physicians, the Board of Dental Examiners for dentists, the Board of Nurse Examiners for registered nurses, or the Board of Licensed Vocational Nurses for licensed vocational nurses.

(e) When an allegation is determined to involve the clinical practice of a physician, nurse (RN or LVN), or dentist, then the head of the facility ensures that the alleged victim and/or guardian or parent (if the alleged victim is a child) are informed that the allegation has been referred for peer review.


(a) Upon completion of the investigation in accordance with Chapter 710, Subchapter A, Title 40 (relating to Abuse, Neglect, and Exploitation of Persons Served by TDHMHR Facilities), the APS investigator submits to the head of the facility a copy of the complete investigative report, with any information that would reveal the identity of the reporter concealed, including:

   (1) a statement of the allegation;
   (2) a summary of the investigation;
   (3) an analysis of the evidence, including factual information related to what occurred, how the evidence was weighed, and what testimony was considered credible;
   (4) the investigator’s finding that the allegation is confirmed, unconfirmed, inconclusive, or unfounded;
   (5) a recommendation of how the allegation should be classified in accordance with the classification system outlined in §417.512(a) of this title (relating to Classifications and Disciplinary Actions);
   (6) the name of the (alleged) perpetrator, if known;
   (7) the physician’s exam and treatment of abuse/neglect-related injuries documented on the department’s client injury/incident report;
   (8) photographs relevant to the investigation, including photographs depicting the existence of injuries (taken within 24 hours after the report of the allegation) or the non-existence of injuries, when appropriate;
   (9) all witness statements and supporting documents;
   (10) any recommendations resulting from the investigation; and
   (11) a Client Abuse and Neglect Report (AN-1-A) form, referenced as Exhibit G in §417.516 of this title (relating to Exhibits), reflecting the information contained in paragraphs (4)-(6) of this subsection.

(b) Upon receiving the written investigative report from the APS investigator, the head of the facility may submit the report and
concerns articulated by the APS investigator to a review authority for review.

(1) The review authority may interview witnesses in the course of its review.

(2) If the review authority is reviewing a case determined by the APS investigator to be unfounded, it may consult with the APS investigator if appropriate. If the review authority determines that there is good cause to reopen the investigation (e.g., new evidence or information that was not previously available during the investigation), the head of the facility may contact the local APS supervisor to request that the case be re-opened.

(3) The review authority submits a report of its review to the head of the facility.

(c) The head of the facility:

(1) reviews the APS investigator’s report;

(2) reviews the review authority’s report, if applicable; and

(3) interviews witnesses, if necessary.

(d) The rights of employees who appear before the review authority or the head of the facility are outlined in “Procedures in Facility Abuse, Neglect, and Exploitation Investigations and Thurston Rebuttal Proceedings,” referenced as Exhibit H in §417.516 of this title (relating to Exhibits).

(e) A confirmed finding cannot be changed by the head of the facility. However, if the head of the facility disagrees with the APS investigator’s unconfirmed, inconclusive, or unfounded finding, the head of the facility may elect to confirm the finding. If the head of the facility elects to confirm the finding, then the finding can not be appealed to TDPERS.

(f) If the head of the facility believes that the methodology used in conducting the investigation was flawed (e.g., failure to collect or consider evidence, such as witnesses’ statement, progress notes, test results), the head of the facility may request a review by submitting a completed Request by Head of Facility/SOCS/Center for Review of Finding form to the regional APS program administrator. (The Request by Head of Facility/SOCS/Center for Review of Finding form is referenced as Exhibit F in §417.516 of this title (relating to Exhibits).) The request for review must be filed within 14 calendar days after receiving the investigative report.

(1) The regional APS program administrator reviews the case within 14 calendar days of receipt.

(2) The regional APS program administrator notifies the head of the facility in writing of the results of the review.

(3) If methodological concerns cannot be resolved at the regional level, the head of the facility sends the request to the APS director, along with a copy of the written investigative report and the regional APS program administrator’s review, for review by Adult Protection Services (APS).

(4) A review is completed by APS within 14 calendar days of receipt.

(5) APS notifies the head of the facility in writing of the results of the review.

(g) If the head the facility disagrees with:

(1) the APS investigator’s finding, the head of the facility may contest the finding by submitting a copy of the written investigative report and a completed Request by Head of Facility/ SOCS/Center for Review of Finding form to the APS Director, TDPERS, PO. Box 149030, E-561, Austin, TX 78714-9030. (The Request by Head of Facility/SOCS/Center for Review of Finding form is referenced as Exhibit F in §417.516 of this title (relating to Exhibits.) When filing the request for review, the head of the facility will include a copy of the report by the review authority, if applicable and relevant. The request for review must be filed within 14 calendar days after receiving the investigative report.

(A) A review is completed by APS within 14 calendar days of receipt.

(B) APS notifies the head of the facility in writing of the results of the review.

(2) the APS review as described in paragraph (1)(A) of this subsection, the head of the facility may contest the review by apprising the TDMHMR director of mental health facilities/mental retardation facilities/state-operated community MHMR services, as appropriate. If the TDMHMR director also disagrees with the APS review, the TDMHMR director may request a decision by the TDMHMR commissioner and the TDPERS executive director. The decision of the TDMHMR commissioner and the TDPERS executive director can not be contested.

(h) The final finding is the last uncontroverted finding, which may be:

(1) the APS investigator’s finding in accordance with subsection (a)(4) of this section;

(2) the head of the facility’s confirmed finding in accordance with subsection (c) of this section;

(3) the APS finding in accordance with subsection (g)(1) of this section; or

(4) the TDMHMR commissioner and the TDPERS executive director’s decision in accordance with subsection (g)(2) of this section.

(i) Within 30 calendar days of receipt of the investigative report or the final finding, the head of the facility is responsible for completing the Client Abuse and Neglect Report (AN-1-A) form, referenced as Exhibit G in §417.516 of this title (relating to Exhibits).

(i) The APS investigator promptly notifies the reporter in writing of the final finding and the method of appealing the final finding (if the final finding was not made by the head of the facility as provided by subsection (e) of this section).

(k) The head of the facility ensures that the (alleged) victim and/or guardian and any other person who was previously notified of the allegation (as provided for in §417.508(b)(5) of this title (relating to Responsibilities of the Head of the Facility)), are promptly notified of:

(1) the final finding;

(2) the method of appealing the final finding (if the final finding was not made by the head of the facility as provided by subsection (e) of this section); and

(3) information regarding findings that were contested.

(l) The head of the facility ensures that the (alleged) victim or guardian is notified of the right to receive a copy of the investigative report in accordance with §417.311(b) of this title (relating to Confidentiality of Investigative Process and Report) upon request.
(m) The head of the facility informs the alleged perpetrator of the final finding.

(n) The head of the facility shall establish a mechanism for evaluating any recommendations concerning problematic patterns or trends identified during the investigation by the APS investigator and the review authority, if applicable.


(a) The reports, records, and working papers used by or developed in the investigative process and the resulting written investigative report regarding allegations are confidential and may be disclosed only as provided under law. Information discussed during deliberations of abuse, neglect, and exploitation investigations may not be discussed outside the purview of those deliberations with the exception of the concerns and recommendations which are to be addressed by the appropriate person(s) or as otherwise allowed in §417.510 of this title (relating to Completion of the Investigation) and §417.512 of this title (relating to Classifications and Disciplinary Actions), or otherwise required by law.

(b) Upon request, the head of the facility may release a copy of the investigative report to the (alleged) victim or guardian provided the identities of other persons served and any information determined confidential by law are concealed.

(c) Advocacy, Inc. is entitled to access the records of the (alleged) victim in accordance with 42 USC §10806 or §6042(T).

§417.512. Classifications and Disciplinary Actions.

(a) Following an investigation, the APS investigator recommends a classification for all allegations according to the following system:

(1) Class I abuse means:

(A) any act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused serious physical injury to a person served; or

(B) any sexual abuse, without regard to injury.

(2) Class II abuse means:

(A) any act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused nonserious physical injury to a person served;

(B) any act of inappropriate or excessive force or corporal punishment, including striking or pushing a person served, regardless of whether the act results in nonserious physical injury to a person served; or

(C) exploitation.

(3) Class III abuse means any act or use of verbal or other communication (including gestures) to:

(A) curse, vilify, or degrade a person served; or

(B) threaten a person served with physical or emotional harm.

(4) Neglect means a negligent act or omission by any person responsible for providing services in a facility or contractor, which caused or may have caused physical or emotional injury or death to a person served, or which placed a person served at risk of physical or emotional injury or death.

(b) Under no circumstances may the head of the facility change a recommended classification to a lower classification (e.g., Class I to Class II). However, the head of the facility may change a recommended classification to a higher classification (e.g., Class II to Class I) in accordance with the evidence and subsection (a) of this section.

(c) The head of the facility is responsible for taking prompt and proper disciplinary action when an allegation involving an employee/agent is confirmed.

(1) Disciplinary action against an employee is based on criteria including, but not limited to:

(A) the seriousness of the abuse, neglect, and/or exploitation;

(B) the circumstances surrounding the incident;

(C) the employee’s work record;

(D) repeat offenses; and

(E) if a repeat violation, the length of time between violations.

(2) When an allegation has been confirmed the head of the facility takes the following disciplinary action.

(A) Class I abuse. The employee/agent is dismissed.

(B) Class II abuse.

(i) The employee is placed on suspension for up to 10 days, demoted, or dismissed. If the employee is exempt under the provisions of the Fair Labor Standards Act (FLSA), the suspension shall be in compliance with relevant provisions of the FLSA and current TDMHMR personnel policies.

(ii) The agent is dismissed.

(C) Class III abuse or neglect.

(i) The employee receives a written reprimand which becomes a part of the employee’s personnel file, or the employee is placed on suspension for up to 10 days, demoted, or dismissed. If the employee is exempt under the provisions of the FLSA the suspension shall be in compliance with relevant provisions of the FLSA and current TDMHMR personnel policies.

(ii) The agent is dismissed.

(d) When disciplinary action is taken against an employee based on confirmed abuse or neglect, the head of a facility notifies the employee in writing of the disciplinary action taken and any right to a grievance hearing the employee may have under the department’s internal policies and procedures relating to employee grievances. If the employee files a complaint in response to a written reprimand resulting from confirmed abuse or neglect, or if the employee files a grievance in response to disciplinary action resulting from confirmed abuse or neglect, the head of the facility, upon the employee’s written request, provides the employee with a copy of the investigative report. Before receiving the report, the employee is required to complete a document acknowledging that the report’s content must be kept confidential. Additional documentary evidence, if any, may be accessed by the employee in accordance with procedures outlined in Section 3.116 of the Human Resources Operating Instruction (relating to Employee Grievances).

(e) When disciplinary action is taken against an agent as a result of confirmed abuse or neglect, the head of a facility notifies the agent in writing of the disciplinary action taken.
(f) The head of the facility ensures the victim and/or guardian or parent (if the victim is a child) are promptly notified of:

(1) the disciplinary action taken against the employee/agent;

(2) the employee’s right to request a grievance hearing to dispute the disciplinary action; and

(3) an offer to inform the victim and/or guardian or parent (if the victim is a child) of the occurrence of a grievance hearing if requested.

(g) If Advocacy, Inc. informs TDMHMR that it represents the victim of confirmed Class I abuse, TDMHMR will notify Advocacy, Inc. if the dismissed employee requests a grievance hearing.

(h) If requested by the head of the facility, the APS investigator who conducted the investigation is responsible for providing consultation and testimony at the grievance hearing.

(i) The head of the facility provides the APS director with a copy of hearings officers’ decisions of employee grievances that involve TPRS investigations.

§417.513. Contractors.

The head of the facility is responsible for ensuring that all of the facility’s contractors comply with this subchapter with the exception of §417.512 of this title (relating to Classifications and Disciplinary Actions) and §417.514 of this title (relating to TDMHMR Administrative Responsibilities). Each contract shall describe the procedural responsibilities of the facility and the contractor regarding at least the following:

(1) the reporting of allegations of abuse, neglect, and exploitation;

(2) the safety and protection of persons served involved in allegations;

(3) the facilitation of proper investigations/peer reviews and the preservation of the integrity of investigations/peer reviews;

(4) the notification of appropriate organizations and persons of issues relating to an allegation;

(5) the ensuring a mechanism exists for taking proper disciplinary action or other appropriate action; and

(6) staff training in identifying, reporting, and preventing abuse, neglect, and exploitation.

§417.514. TDMHMR Administrative Responsibilities.

(a) Data collection.

(1) TDMHMR will use TPRS Child Abuse and Adult Protective Services System (CAPS) to record the data necessary to report and analyze information, including individual incidents, multiple incidents, group incidents, unconfirmed allegations, and pending cases when CAPS becomes available to TDMHMR. TDMHMR will use CANRS to record data until CAPS becomes available.

(2) TDMHMR and TPRS will create a quarterly and annual report, which includes:

(A) number of investigations completed by classification sorted by program type;

(B) number of confirmed investigations completed by classification sorted by program type.

(C) number of completed investigations by disposition;

(D) percent of completed investigations by disposition;

(E) number of completed investigations involving serious physical injuries sorted by program type;

(F) confirmation rate;

(G) average number of days to complete the investigations sorted by program type;

(H) total number of investigations that required an extension by TPRS sorted by program type;

(I) number of cases reported to law enforcement;

(J) number of pending investigations at the end of the report period; and

(K) disciplinary actions resulting from confirmed findings.

(3) TPRS will download CAPS information on facility investigations to TDMHMR who will add at least the following information:

(A) employee/agent disciplinary actions (added at the facility level);

(B) employee grievance dispositions (added by the Office of Consumer Services and Rights Protection); and

(C) employee/agent identification (added at the facility level).

(b) Coordination of oversight responsibilities. TDMHMR makes available to TPRS on an ongoing basis a list of:

(1) all programs operated by and under contract with facilities; and

(2) all private providers funded by Medicaid to provide home and community-based services (HCS) and home and community-based services-OBRA (HCS-O).

(c) TDMHMR implements systems to ensure that former employees who were dismissed because of confirmed abuse or neglect and whose dismissal is upheld at a grievance hearing or who fail to request a grievance hearing and former employees with confirmed Class I abuse are not eligible for reemployment at any facility.

§417.515. Staff Training in Identifying, Reporting, and Preventing Abuse, Neglect, and Exploitation.

(a) This subchapter shall be thoroughly and periodically explained to all employees/agents of each facility as follows:

(1) All new employees/agents who will provide direct services to persons served and all new employees/agents who will routinely perform job duties in proximity to persons served shall receive training on the contents of this subchapter prior to performing their duties and annually thereafter. The training will include:

(A) an explanation and examples of the acts and signs of possible abuse, neglect, and exploitation;

(B) the effects of abuse, neglect, and exploitation;

(C) an explanation that abuse, neglect, and exploitation of persons served is prohibited;

(D) the disciplinary consequences for:
(i) committing abuse, neglect, and exploitation; and
(ii) failure to cooperate with an investigation;
(E) the procedures for reporting allegations of abuse, neglect, and exploitation;
(F) a definition of retaliatory action, an explanation that retaliatory action is prohibited, and an explanation of the consequences of retaliatory action;
(G) practices and attitudes that support the prevention of abuse, neglect, and exploitation; and
(H) the Prevention and Management of Aggressive Behavior, the department’s proprietary risk management program.

(2) All new employees/agents who will not provide direct services to persons served and who will not routinely perform any job duty in proximity to persons served shall receive training on the contents of this subchapter within two months of employment or placement and every two years thereafter. The training will include:

(A) an explanation and examples of the acts and signs of possible abuse, neglect, and exploitation;
(B) the effects of abuse, neglect, and exploitation;
(C) an explanation that abuse, neglect, and exploitation of persons served is prohibited;
(D) the disciplinary consequences for:
   (i) committing abuse, neglect, and exploitation; and
   (ii) failure to cooperate with an investigation;
(E) the procedures for reporting allegations of abuse, neglect, and exploitation; and
(F) a definition of retaliatory action, an explanation that retaliatory action is prohibited, and an explanation of the consequences of retaliatory action.

(3) Physicians shall receive additional training on how to identify signs and symptoms of abuse, neglect, and exploitation.

(4) All new employees who will provide direct services to persons served shall receive training on the procedures for securing evidence in accordance with "Guidelines for Securing Evidence," referenced as Exhibit C in §417.516 of this title (relating to Exhibits) prior to performing their duties and annually thereafter.

(5) Within 90 days after the effective date of this subchapter, the head of the facility shall inform all current employees/agents/contractors of changes to policies and procedures as a result of this subchapter.

   (b) All supervisory personnel have a continuing responsibility to keep employees/agents informed of current rules and policies governing abuse, neglect, and exploitation and to ensure that employees/agents receive training in accordance with this section.

   (c) Instructional materials, audiovisual, and/or other training aids concerning this subchapter are developed and available through the Human Resource Development, Central Office.

   (d) Records of all training content and activities related to course titles shall be kept by each facility. Records shall also be kept on each employee/agent receiving training in compliance with this section, which include:

   (1) the employee/agent’s name and signature;
   (2) the course title;

(3) the result of any assessment;
(4) the date of the training; and
(5) the name of the person facilitating, monitoring, or conducting the training.

§417.516 Exhibits.
The following exhibits referenced in this subchapter are available from the Texas Department of Mental Health and Mental Retardation, Office of Policy Development, P.O. Box 12668, Austin, TX 78711-2668.

(1) Exhibit A - "Sexual assault" as defined the Texas Penal Code, §22.011;
(2) Exhibit B - Adult Protective Services Referral Form;
(3) Exhibit C - "Guidelines for Securing Evidence";
(4) Exhibit D - Client Injury/Incident Report form (PORS 5/16R);
(5) Exhibit E - "Guidelines for Separation of Alleged Victim and Alleged Perpetrator During Abuse/Neglect Investigations";
(6) Exhibit F - Request by Head of Facility/SOCS/Center for Review of Finding form;
(7) Exhibit G - Client Abuse and Neglect Report (AN-1-A) form; and
(8) Exhibit H - "Procedures in Facility Abuse and Neglect Investigations and Thurston Rebuttal Proceedings."

§417.517 References.
Reference is made to the following statutes and rules and operating instructions of the department:

(1) Texas Family Code, §261.001;
(2) Section 1, Chapter 635, Acts of the 72nd Legislature, Regular Session, 1991 (Article 4512o, Texas Civil Statutes);
(3) Section 2, Licensed Professional Counselor Act (Article 4512g, Texas Civil Statutes);
(4) Section 2, Licensed Marriage and Family Therapist Act (Article 4512c-1, Texas Civil Statutes);
(5) Section 1.03, Medical Practice Act (Article 4495b, Texas Civil Statutes);
(6) Section 2, Psychologists’ Certification and Licensing Act (Article 4512c, Texas Civil Statutes);
(7) Whistleblower Act, Texas Civil Statutes, Article 6252-16a;
(8) Texas Penal Code, §§22.011 and 43.01;
(9) Chapter 403, Subchapter K of this title (relating to Client-Identifying Information);
(10) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);
(11) Chapter 404, Subchapter G of this title (relating to Unusual Incidents Involving Persons Served by TXMHMR Facilities);
(12) Chapter 405, Subchapter F of this title (relating to Voluntary and Involuntary Behavioral Interventions in Mental Health Programs).
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: April 12, 1998
For further information, please call: (512) 206-4516

**TITLE 28. INSURANCE**

Part I. Texas Department of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter E. Texas Windstorm [Catastrophe Property] Insurance Association

Division 2. Reinsurance

28 TAC §5.4016

The Texas Department of Insurance proposes new §5.4016, concerning the issuance of windstorm and hail insurance policies written through the Texas Windstorm Insurance Association (Association) that include coverage for an amount in excess of the maximum limit of liability approved by the Commissioner. Created in 1971 by the Texas Legislature as the Texas Catastrophe Property Insurance Association, the Association is composed of all insurers authorized to transact property insurance in Texas and operates pursuant to Article 21.49 of the Insurance Code. The Texas Legislature in H.B. 1632 (Acts 1997, 75th Legislature, chapter 438, §1, eff. September 1, 1997) changed the name of the Texas Catastrophe Property Insurance Association to the Texas Windstorm Insurance Association. The purpose of the Association is to provide windstorm and hail insurance coverage to residents in designated catastrophe areas who are unable to obtain such coverage in the voluntary market. Since its inception, the Association has provided this coverage to residents of 14 coastal counties: Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio and Willacy. The Association also provides coverage to certain designated catastrophe areas in Harris County: (i) since March 1, 1996, the area located east of a boundary line of State Highway 146 and inside the city limits of the City of Seabrook and the area located east of the boundary line of State Highway 146 and inside the city limits of the City of La Porte (Commissioner’s Order No. 95-1200, November 14, 1995); (ii) since June 1, 1996, the City of Morgan’s Point (Commissioner’s Order No. 96-0380, April 5, 1996); and (iii) since April 1, 1997, the areas located east of State Highway 146 and inside the city limits of the City of Shoreacres and the City of Pasadena (Commissioner’s Order No. 97-0225, March 11, 1997). The legislature in 1997 passed H.B. 1853 which enacted a new §8E in Article 21.49 of the Insurance Code (Acts 1997, 75th Leg., ch. 642, §4, eff. Sept. 1, 1997). New §8E authorizes the Association to issue a policy of windstorm and hail insurance that includes coverage for an amount in excess of the maximum limit of liability approved by the Commissioner pursuant to Article 21.49, §8D of the Insurance Code. This will enable Association policyholders who need limits of liability in excess of the maximum limits of liability currently available through the Association to purchase additional windstorm and hail insurance coverage from the Association up to the amount of reinsured excess coverage available to the individual risk under the reinsured excess coverage program. Currently, this additional coverage is only available through the non-regulated surplus lines market at gen-
generally higher costs. Under Article 21.49, §8E(a), the Association must obtain such reinsured excess coverage from a reinsurer approved by the Commissioner. Article 21.49, §8E(b) provides that the premium charged by the Association for the excess coverage shall be equal to the amount of the reinsurance premium charged to the reinsurer, plus any payment to the Association that is approved by the Commissioner. Article 21.49, §8E(c) provides that the Commissioner shall adopt rules as necessary to implement new §8E and that the Association may not issue excess coverage until such rules are adopted. The proposed new section is necessary to provide these rules. Proposed subsection (a) specifies the purpose of the new section. Proposed subsection (b) defines terms used in the proposed new section. Proposed subsection (c) addresses the administration of the reinsured excess coverage program, including the requirement that the Association distribute the available reinsurance capacity in a fair and reasonable manner to risks qualifying under the Association’s reinsured excess coverage program and that the Association annually review the reinsured excess coverage program and the rules in the proposed new section and provide an annual review summary to the Commissioner. Subsection (d) proposes procedures for approval of the reinsurer by the Commissioner. Under these procedures, the Association would be required to submit a petition to the Commissioner requesting approval of the reinsurer before any excess per risk reinsurance contract or renewal of such contract could become effective. The proposed subsection provides that, after notice and hearing, the Commissioner shall issue an order approving or disapproving the proposed reinsurer, and that this order shall be issued no later than December 31 of each year preceding the calendar year in which the reinsured excess coverage program is operated except for the first year the program is operated when the order shall be issued following the adoption of the proposed new section. Proposed subsection (d)(4) further provides that the excess per risk reinsurance contract may not become effective until the Commissioner has issued an order approving the reinsurer. Proposed subsection (d)(4) specifies procedures for approval of the reinsurer in the event the existing excess per risk reinsurance contract is amended during the term of the contract. Proposed subsection (e) sets forth provisions applicable to issuance of coverage, including excess liability limits, policy provisions, and types of risks that may be eligible for the reinsured excess coverage. Proposed subsection (f) proposes procedures for premium computation and display of premium on the declarations page of the policy. Proposed subsection (g) specifies procedures for proposal of the payment to the Association that is required to be approved by the Commissioner pursuant to Article 21.49, §8E(b) before it can be included in the premium charge for the excess coverage. Under proposed subsection (g)(1), the payment to the Association that may be proposed by the Association for approval by the Commissioner may include the amount of the direct and indirect costs identified by the Association to administer the reinsured excess coverage program and may include costs for claims, underwriting, accounting, technical and administrative support, computer equipment, agent commissions, taxes, and any other administrative costs approved by the Commissioner. Proposed subsection (g)(2) provides that the Commissioner, after notice and hearing, shall issue an order approving or disapproving the proposed payment to the Association.

The department will consider the adoption of the new §5.4016 in a public hearing Under Docket No. 2345, scheduled for 9:00 a.m. on April 16, 1998, in Room 102 of the William P. Hobby State Office Building, 333 Guadalupe Street in Austin, Texas.

Lyndon Anderson, associate commissioner of the property and casualty division, has determined that for each year of the first five years that the proposed new section will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the new section and that there will be no effect on local employment or the local economy as a result of enforcing or administering the new section.

Mr. Anderson also has determined that for each year of the first five years the proposed new section will be in effect, the public benefit anticipated as a result of administering the section will be the availability of higher limits of liability under a single policy. Provisions of the proposed subsection (g) of this proposed section. In addition, there is no adverse impact on small businesses. As noted above, no entity is required to comply with the proposed rule. Further, the primary users of the new program will likely be individual homeowners. In the event that commercial coverage become available under the program, the impact is expected to be positive, in that users of the new program will likely pay lower costs for the coverage than would be paid for the coverage in the non-regulated market. Because the implementation of the reinsured excess coverage program pursuant to Article 21.49, §8E of the Insurance Code is also optional for the Association, there is no mandated economic cost to Association policyholders and, therefore, there is no mandated economic cost to Association policyholders as a result of the adoption of the proposed new section. Those policyholders, however, who opt to purchase the reinsured excess coverage will generally pay lower costs for the coverage than would be paid for the coverage in the non-regulated market.

Comments on the proposal must be submitted within 30 days after publication of the proposal in the Texas Register to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC #113-2A, Austin, Texas 78714-9104. An additional copy of the comment is to be submitted to Lyndon Anderson, Associate Commissioner, Property and Casualty Division, Texas Department of Insurance, P. O. Box 149104, MC #103-1A, Austin, Texas 78714-9104. Article 21.49, §5A of the
INSURANCE CODE requires a hearing to be held before any orders may be issued pursuant to Article 21.49 and provides that any person may appear and testify for or against the adoption of this proposal.

This section is proposed pursuant to the Insurance Code, Articles 21.49 and 1.03A, and in accordance with the Government Code §§2001.004-2001.038. Pursuant to Article 21.49, §8E of the Insurance Code (Acts 1997, 75th Leg., ch. 642, §4, eff. Sept. 1, 1997), the Association may issue a policy of windstorm and hail insurance that includes coverage for an amount in excess of the maximum limit of liability approved by the Commissioner pursuant to Article 21.49, §8D of the Insurance Code. Article 21.49, §8E(c) provides that the Commissioner shall adopt rules as necessary to implement new §8E and that the Association may not issue excess coverage until those rules are adopted. Article 21.49, §8 and §5A authorize the Commissioner to promulgate policy forms for use by the Texas Windstorm Insurance Association. Article 1.03A authorizes the Commissioner of Insurance to adopt rules and regulations, which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance 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 agency.

The following statute is affected by this proposal: Insurance Code, Article 21.49

§5.4016 Per Risk Reinsured Excess Coverage.

(a) Purpose. Pursuant to Article 21.49, §8E of the Insurance Code, the Texas Windstorm Insurance Association may issue a policy of windstorm and hail insurance that includes coverage for an amount in excess of the maximum limit of liability approved by the Commissioner pursuant to Article 21.49, §8D of the Insurance Code. The purpose of this section is to provide rules necessary to implement Article 21.49, §8E as authorized by Article 21.49, §8E(c) of the Insurance Code.

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


(2) Association– Texas Windstorm Insurance Association.

(3) Available reinsurance capacity– Amount of reinsurance purchased by the Texas Windstorm Insurance Association pursuant to the excess per risk reinsurance contract to provide reinsured excess coverage to Association policyholders as provided in Article 21.49, §8E.

(4) Commissioner– Texas Commissioner of Insurance.

(5) Excess per risk reinsurance contract– An agreement entered into by the Texas Windstorm Insurance Association with an approved reinsurer to provide coverage to Association policyholders for an amount in excess of the liability limits approved by the Commissioner pursuant to Article 21.49, §8D of the Insurance Code.

(6) Reinsured excess coverage– Coverage provided under a windstorm and hail insurance policy issued by the Texas Windstorm Insurance Association through a reinsurance agreement with an approved reinsurer for amounts of insurance that are in excess of the maximum limits of liability available to the individual risk from the Texas Windstorm Insurance Association.

(7) Reinsured excess coverage program– The program operated by the Texas Windstorm Insurance Association to provide reinsured excess coverage in accordance with Article 21.49, §8E; the excess per risk reinsurance contract or contracts entered into between the Association and the Commissioner-approved reinsurer or reinsurers, this section, and any orders issued pursuant to this section or to Article 21.49, §8E; this includes the collection of premium, issuance of coverage under the windstorm and hail insurance policy, and the processing and payment of claims for the reinsured excess coverage.

(c) Administration.

(1) The Association shall administer the reinsured excess coverage program on behalf of each policyholder of a windstorm and hail insurance policy to which reinsurance is provided by an approved reinsurer.

(2) The Association shall distribute the available reinsurance capacity for the reinsured excess coverage in a fair and reasonable manner to risks qualifying under the Association’s reinsured excess coverage program.

(3) The Association shall annually review the reinsured excess coverage program, including the rates, reinsurers, excess per risk reinsurance contracts, use of available reinsurance capacity, the Association’s costs to administer the reinsured excess coverage program, and the rules in this section, and shall provide an annual summary of such review to the Commissioner.

(d) Approval of Reinsurer. Pursuant to Article 21.49, §8E, before the Association may provide reinsurance coverage on an individual risk that is in excess of the maximum limit of liability approved by the Commissioner pursuant to Article 21.49, §8D, Insurance Code, the Association must first obtain from a reinsurer approved by the Commissioner reinsurance for the full amount of policy exposure above the limits approved by the Commissioner for any given type of risk. The approval of the reinsurer shall be in accordance with paragraphs (1) - (4) of this subsection.

(1) The Association shall submit a petition to the Commissioner requesting approval of the reinsurer before any excess per risk reinsurance contract or renewal of such contract becomes effective. The petition shall include the name of the proposed reinsurer or reinsurers; the reinsurance proposal; the draft excess per risk reinsurance contract; information on the financial health of the proposed reinsurer or reinsurers and any other information related to the reasons for the Association’s selection of reinsurer or reinsurers; estimated costs for the reinsurance; the proposed cost to the Association to administer the reinsured excess coverage program; estimated total premium for the reinsurance; the method of making the reinsurance capacity available to policyholders; and any other information the Association or the Commissioner deems necessary to enable the Commissioner to determine whether to approve or disapprove the proposed reinsurer or reinsurers.

(2) Pursuant to Article 21.49, §5A of the Insurance Code, the Commissioner, after notice and hearing, shall issue an order approving or disapproving the proposed reinsurer. The order shall be issued no later than December 31 of each year preceding the calendar year in which the reinsured excess coverage program is operated except for the first year the program is operated when the order shall be issued following the adoption of this section.
(3) An excess per risk reinsurance contract may not become effective until the Commissioner has issued an order approving the reinsurer. The excess per risk reinsurance contract does not require approval by the Commissioner.

(4) The Association shall submit written notice of any amendments to any existing excess per risk reinsurance contract to the Commissioner at least 30 days prior to the effective date of the proposed amendments. The notice shall include an explanation of the reason for the amendments and a copy of the draft amendments. The reinsurer under the amended contract shall be deemed approved by the Commissioner unless within 30 days following the submission of the written notice the Commissioner enters an order disapproving the reinsurer. Amendments to the contract do not require approval by the Commissioner.

(e) Coverage. Pursuant to Article 21.49, §8E, the Association may issue a policy of windstorm and hail insurance that includes coverage that is in excess of a liability limit approved by the Commissioner pursuant to Article 21.49, §8D, Insurance Code. Any such policy shall be issued in accordance with paragraphs (1) - (3) of this subsection.

(1) Excess liability limits. The amount of reinsurance excess coverage available to an individual risk shall be determined in accordance with the reinsured excess coverage program.

(2) Policy provisions.

(A) The total limit of liability shall be the limit of liability insured by the Association and the amount of reinsurance excess coverage provided on the individual risk under the reinsured excess coverage program.

(B) All terms and conditions of the windstorm and hail insurance policy issued by the Association shall apply to the reinsured excess coverage provided under the windstorm and hail insurance policy.

(C) The amount of reinsured excess coverage must be shown separately on the declarations page of the policy.

(3) Types of risks.

(A) The Association may provide reinsurance excess coverage for dwelling structures only, commercial structures only, or for both dwelling structures and commercial structures.

(B) Reinsured excess coverage may be provided on either buildings or contents, or on buildings and contents. If reinsured excess coverage is provided on building and contents, building structures must be insured for 100% replacement cost, up to the total maximum limit of liability available for the risk and the available reinsured excess coverage amount provided under the reinsured excess coverage program before reinsured excess coverage may be applied to contents.

(f) Premium.

(1) Premium computation. The total premium charged by the Association for the reinsured excess coverage provided on a windstorm and hail insurance policy issued by the Association shall be the total of:

(A) the amount of the excess per risk reinsurance premium charged to the Association by the reinsurer for the reinsured excess coverage provided on any given risk, and

(B) the payment to the Association that is approved by the Commissioner pursuant to Article 21.49, §8E(b) and as provided in subsection (g) of this section.

(2) Display of premium. The total premium charged by the Association for the reinsured excess coverage provided in a windstorm and hail insurance policy issued by the Association must be shown separately on the declarations page of the policy.

(g) Payment to the Association. Pursuant to Article 21.49, §8E(b), the premium charged by the Association for the excess coverage shall be equal to the amount of the reinsurance premium charged to the Association by the reinsurer plus any payment to the Association that is approved by the Commissioner as provided in paragraphs (1) and (2) of this subsection.

(1) The payment to the Association that may be proposed by the Association for approval by the Commissioner pursuant to Article 21.49, §8E(b) may include the amounts of the direct and indirect costs identified by the Association to administer the reinsured excess coverage program and may include costs for claims, underwriting, accounting, technical and administrative support, computer equipment, agent commissions, taxes, and any other administrative costs approved by the Commissioner.

(2) Pursuant to Article 21.49, §5A of the Insurance Code, the Commissioner, after notice and hearing, shall issue an order approving or disapproving the proposed payment to the Association. The Commissioner may take such action in the order issued pursuant to subsection (d)(2) of this section.

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 27, 1998.

TRD-9802971
Caroline Scott
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: April 12, 1998
For further information, please call: (512) 463-6327

Chapter 21. Trade Practices

Subchapter B. Insurance Advertising, Certain Trade Practices, and Solicitation

28 TAC §21.102, §21.114

The Texas Department of Insurance proposes clarifying and conforming amendments to §21.102 and §21.114, concerning rules pertaining specifically to life insurance advertising. The proposed amendments are necessary for clarification and conformity with provisions and requirements of Subchapter N, Chapter 21, this title, relating to life insurance illustrations, which is published elsewhere in this issue of the Texas Register as §§21.2201 – 21.2214. The proposed amendment to §21.102 clarifies that in the term "advertisement" the descriptive item "illustration" is intended to include the software as well as hard copy components. The proposed amendment to §21.114 provides that if dividends are illustrated, the illustration must conform to the requirements of Subchapter N, Chapter 21, this title, relating to life insurance illustrations.

Audrey Selden, associate commissioner for the consumer protection division of the Texas Department of Insurance, has determined that for each year of the first five years the section...
is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the section. Ms. Selden also has determined that there will be no effect on local employment or the local economy.

Audrey Selden, associate commissioner for the consumer protection division of the Texas Department of Insurance, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administration and enforcement of the amendments will be a more clear life insurance advertising rule which contains provisions for illustration of dividends that is consistent with the requirements for life illustrations generally set out in Subchapter N. The amendment therefore will enhance consumer protection and facilitate consumer education concerning illustrations, particularly dividend illustrations. There is no anticipated difference in cost of compliance between small and large businesses, or between business entities and natural persons resulting from the proposed amendments. There is no anticipated economic cost resulting from the proposed amendment to persons who are subject to the proposed amendments. Because there is no compliance cost resulting from the clarification to the definition of "advertisement," and because any cost associated with the change in dividend illustration requirements is a cost already absorbed by an insurer in satisfying the requirements of the life insurance illustration provisions of Subchapter N.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposal in the Texas Register to Caroline Scott, General Counsel and Chief Clerk, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments should be submitted to William O. Goodman, Special Litigation Counsel, Enforcement Division, P.O. Box 149104, MC #110-1A, Austin, Texas 78714-9104. A request for public hearing on the proposed sections should be submitted separately to the Office of the Chief Clerk.

The amendment is proposed pursuant to the Insurance Code, Article 21.21, §13. Article 21.21, §13, provides that the department is authorized to promulgate and enforce reasonable rules and regulations and order such provision as is necessary in the accomplishment of the purposes of Article 21.21, relating to unfair competition and unfair practices.

The proposed new section affects regulation pursuant to the following statutes: Insurance Code, Article 21.21

$21.102. Scope.

For the purpose of these sections:

(1) "Advertisement" includes but is not limited to:

(A) (No change.)

(B) descriptive literature and sales aids of all kinds issued by an insurer or agent for presentation to members of the public, including circulars, letters, booklets, depictions, illustrations and the software supporting the same, and form letters; and

(D)-(G) (No change.)

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

(6) Dividends.

(A) (No change.)

(B) An advertisement may not state or imply that the payment or amount of dividends is guaranteed. If dividends are illustrated, [the dividends must be based on the insurer's current dividend scale and the illustration must contain a statement to the effect that the dividends or amount of dividends illustrated are not to be construed as guarantees or estimates of dividends to be paid in the future] the illustration must conform to the requirements of Subchapter N of this chapter (relating to Life Insurance Illustrations).

(C)-(D) (No change.)

(7)-(9) (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 25, 1998.

TRD-9802827

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: April 12, 1998

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

Subchapter N. Life Insurance Illustrations

28 TAC §§21.2201-21.2214

The Department of Insurance proposes new Subchapter N, concerning the preparation and use of illustrations or ledger sheets in the sale of life insurance. Typically an illustration is a marketing device which projects current and non-guaranteed values over a period of years. Proposed §§21.2201 – 21.2214 are based on the Life Insurance Illustration Model Regulation adopted by the National Association of Insurance Commissioners on December 6, 1995. The new sections are necessary to protect prospective insureds and insurers from the mounting deception, abuse and unfair trade practices that have accompanied the recent proliferation of illustrations in the life insurance marketplace. Through the use of an actuarial test known as the "Disciplined Current Scale," the proposed new sections will restrict the projection of non-guaranteed elements to those which are based on actual, recent and verifiable experience. The DSC is intended to minimize or eliminate the frequent manipulation of assumptions underlying the projection of non-guaranteed values.

The proposed sections also require specific illustration formats and disclosures in connection with the use of illustrations, including the assumptions underlying the projections.

Proposed §21.2201 sets out the purpose of the subchapter. Proposed §21.2202 states the statutory authority upon which the proposed sections are based. Proposed §21.2203 sets out the applicability and scope of the subchapter. Proposed §21.2204 contains definitions of essential terms used in the proposed sections. Proposed §21.2205 sets out provisions for commissioner notification and circumstances requiring de-

Rose Ann Reeser, associate commissioner for regulation and safety at the Texas Department of Insurance, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal impact to the state or local units of government as a result of enforcing or administering the section. Ms. Reeser has determined that there will be no other implications for the local economy and no impact on local employment as a result of administering the proposed new sections.

Ms. Reeser also has determined that for each year of the first five years the proposed rule is in effect the public benefit anticipated as a result of enforcing and administering the proposed new sections will be a significant reduction in the level of deceptive and unfair trade practices currently associated with the use of illustrations in the sale of life insurance. Such a reduction will mutually benefit consumers and those insurers whose current use of illustrations is free of deception. Further, compliance with the proposed rule should reduce the exposure an insurer might otherwise incur from a deceptive trade practices or Article 21.21 action.

Ms. Reeser also has determined that for the first year the proposed rule is in effect, the cost to each insurer complying with the rule will depend on whether an insurer chooses to market any policy forms with an illustration. If an insurer chooses not to market any of its policy forms with an illustration, its compliance costs would be limited to notifying the Department by letter of this fact. The cost of such notice is estimated to be $10 annually.

For insurers who choose to market one or more policy forms with an illustration, the costs of compliance will depend upon the following factors:

The number of policy forms chosen to be illustrated;

The complexity of the policy forms chosen to be illustrated;

Whether the policy forms will be marketed in other states which have adopted the NAIC Life Insurance Illustrations Model Regulation or variants thereof (i.e., compliance costs for an insurer marketing a policy form designated to be illustrated in other states should be proportionately reduced); and

Whether illustrations will be prepared contemporaneously with the marketing of a particular policy or prepared prior to subsequent to a sales call.

Insurers who choose to illustrate will incur compliance costs in the following areas:

Actuarial testing for the Disciplined Current Scale;

Software development costs for implementing formatting and disclosure requirements;

Annual Certifications;

Annual Policyholder Statements; and

In-force Illustrations.

Because of the number and complexity of the above described variables, the costs to each insurer complying with the rule will vary from a maximum of $380,285 to a low of $10. The costs in the second through fifth years for insurers who choose to illustrate should decrease significantly from the first-year costs of compliance, since there are no anticipated significant software development costs for those years. Annual costs are estimated to range from a maximum of $49,585 to a low of $10.

These estimates were derived from a survey of eight insurers of various sizes who indicated that they planned to illustrate one or more policies in Texas. Insurers were asked to estimate their total nationwide start up costs to implement the Life Illustration Model. Compliance costs were broken down by the following categories: actuarial testing, software development, annual certification, annual policyholder statements and in-force illustrations. The sum of these costs was then multiplied by either the percent of premiums generated in Texas or the percent of life illustrations presented in Texas in order to determine costs of compliance for Texas. Costs relating to the Texas proposed modifications, if any, were then added to the Texas percentage of Model implementation costs to generate the total cost of compliance for the proposed rule. Start up costs for the eight companies were as high as $380,280, and were as low as $76,400. Average start up costs were $163,833 and the median start up cost amounted to $135,600. Insurers were also polled regarding annual compliance costs. The results produced a low of $14,580 and a high of $49,585 producing an average annual cost of $20,526 and a median of $16,260.

Ms. Reeser has further determined that the proposed rule will not have an adverse economic effect on small businesses because those insurance companies that would qualify as "small" within the meaning of TEX. GOV’T CODE §2006.002 will not have an adverse economic effect on small businesses because those insurance companies that would qualify as "small" within the meaning of TEX. GOV’T CODE §2006.002 do not issue life insurance policies which would be subject to the proposed rule.

A computerized search of the 1996 ANNUAL STATEMENTS revealed that of 854 life insurance companies authorized to do business in Texas, 123 had 1995 gross receipts of $1 million or less. Gross receipts were computed by totaling lines 1 through 6 of the Cash Flow Exhibit to the ANNUAL STATEMENT which reflects receipts from: "premium and annuity consideration," 'debit type funds' 'supplemental contracts with life contingencies,' 'coupons left to accumulate' and 'net investment income.'

To determine whether any of these 123 companies sold life products or sold life products which would subject them to the application of the rule, a screen was done on Exhibit 8, Interrogatory No. 3 of the ANNUAL STATEMENTS which asks: "Does the company at present issue or have in force policies that contain non-guaranteed elements?" The rule does not apply unless non-guaranteed elements or values are illustrated. 121 companies responded negatively, i.e. they either currently are not selling life insurance or the life insurance they are marketing does not contain any non-guaranteed elements.
The two remaining companies, Insurance Investors Life Insurance Co. and American Travelers Assurance Co., do sell life products with non-guaranteed values, but are part of a larger holding company and therefore do not qualify as "small" within the meaning of the statute.

Comments on the proposal may be submitted to the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104, Mail Code 113-2A, within 30 days following the date of this publication. An additional copy of comments should be submitted to William O. Goodman, Special Litigation Counsel, Enforcement Division, P.O. Box 149104, MC #110-1A, Austin, Texas 78714-9104. A request for a public hearing on the proposed rule should be submitted separately to the Office of the Chief Clerk.

The new sections are proposed pursuant to the Insurance Code, Article 21.21, §13. and article 1.03A article 21.21, §13 authorizes the commissioner to promulgate reasonable rules and regulations as are necessary to accomplish the purposes of Article 21.21 in the regulation of trade practices in the business of insurance by defining, or providing for the determination of, all practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices.

The proposed new sections affect regulation pursuant to the following statutes: Insurance Code, Article 21.21.

§21.2201 Purpose.
The purpose of this regulation is to provide rules for life insurance policy illustrations that will protect consumers and foster consumer education. The regulation provides illustration formats, prescribes standards to be followed when illustrations are used, and specifies the disclosures that are required in connection with illustrations. The goals of this regulation are to ensure that illustrations do not mislead purchasers of life insurance and to make illustrations more understandable. Insurers will, as far as possible, eliminate the use of footnotes and caveats and define terms used in the illustration in language that would be understood by a typical person within the segment of the public to which the illustration is directed.

§21.2202 Authority.
This regulation is issued based upon the authority granted the commissioner under the Insurance Code, Article 21.21 §13 and article 1.03A

§21.2203 Applicability and Scope.
This regulation applies to all group and individual life insurance policies and certificates except:

1. variable life insurance;
2. individual and group annuity contracts;
3. credit life insurance; or
4. life insurance policies with no illustrated death benefits on any individual exceeding $10,000.

§21.2204 Definitions.
For the purposes of this regulation, the terms in this section shall have the meanings placed opposite them unless the explicit wording of a regulation shall otherwise direct.

1. Actuarial Standards Board – the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.
defined by the Insurance Code, Article 10.01 §(a) and §(b); a Mutual Life Insurance Company as defined by the Insurance Code, Article 11.01; or a Stipulated Premium Insurance Company as defined by the Insurance Code, Article 22.01.

(12) Lapse-supported illustration – an illustration of a policy form failing the test of self-supporting as defined in this regulation, under a modified persistency rate assumption using persistency rates underlying the disciplined current scale for the first five years and 100% policy persistency thereafter.

(13) Minimum assumed expenses – the minimum expenses that may be used in the calculation of the disciplined current scale for a policy form. The insurer may choose to designate each year the method of determining assumed expenses for all policy forms from:

(A) fully allocated expenses;

(B) marginal expenses; and

(C) a generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the National Association of Insurance Commissioners or by the commissioner. Marginal expenses may be used only if greater than a generally recognized expense table. If no generally recognized expense table is approved, fully allocated expenses must be used.

(14) Non-guaranteed elements – the premiums, benefits, values, credits or charges under a policy of life insurance that are not guaranteed or not determined at issue.

(15) Non-term group life – a group policy or individual policies of life insurance issued to members of an employer group or other permitted group where:

(A) every plan of coverage was selected by the employer or other group representative;

(B) some portion of the premium is paid by the group or through payroll deduction; and

(C) group underwriting or simplified underwriting is used.

(16) Participating life insurance policy – a life insurance policy which provides for possible policyholder dividends.

(17) Policy owner – the owner named in the policy or the certificate holder in the case of a group policy.

(18) Premium outlay – the amount of premium assumed to be paid by the policy owner or other premium payor out-of-pocket.

(19) Self-supporting illustration – an illustration of a policy form for which it can be demonstrated that, when using experience assumptions underlying the disciplined current scale, for all illustrated points in time or after the fifteenth policy anniversary or the twentieth policy anniversary for second-or-later-to-die policies (or upon policy expiration if sooner), the accumulated value of all policy cash flows equals or exceeds the total policy owner value available. For this purpose, policy owner value will include cash surrender values and any other illustrated benefit amounts available at the policy owner’s election.

(20) Universal life insurance policy – a life insurance policy under the provisions of which separately identified interest credits (other than in connection with dividend accumulations, premium deposit funds, or other separate accounts) and mortality and expense charges are made to the policy. A universal life policy may provide for other credits and charges, such as charges for the cost of benefits provided by rider.

§21.2205 Policies to Be Illustrated.

(a) Commissioner notification. Each insurer marketing policies to which this regulation is applicable shall notify the commissioner whether a policy form is to be marketed with or without an illustration. For all policy forms being actively marketed on the effective date of this regulation, the insurer shall identify in writing those forms and whether or not an illustration will be used with them. For policy forms filed after the effective date of this regulation, the identification shall be made at the time of filing. Any previous identification may be changed by notice to the commissioner.

(b) Prohibition. If the insurer identifies a policy form as one to be marketed without an illustration, any use of an illustration for any policy using that form prior to the first policy anniversary is prohibited.

(c) When delivery of illustration is required. If a policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with this regulation is required, except that a basic illustration need not be provided to individual members of a group or to individuals insured under multiple lives coverage issued to a single applicant unless the coverage is marketed to these individuals. The illustration furnished an applicant for a group life insurance policy or policies issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.

(d) When delivery of quotation is required. Potential enrollees of non-term group life subject to this regulation shall be furnished a quotation with the enrollment materials. The quotation shall show potential policy values for sample ages and policy years on a guaranteed and non-guaranteed basis appropriate to the group and the coverage. This quotation shall not be considered an illustration for purposes of this regulation, but all information provided shall be consistent with the illustrated scale. A basic illustration shall be provided at delivery of the certificate to enrollees for non-term group life who enroll for more than the minimum premium necessary to provide pure death benefit protection. In addition, the insurer shall make a basic illustration available to any non-term group life enrollee who requests it.


An illustration used in the sale of a life insurance policy shall conform to the requirements set out in paragraphs (1) - (3) of this section.

(1) Disclosure and format. An illustration used in the sale of a life insurance policy shall satisfy the applicable requirements of this regulation, be clearly labeled “life insurance illustration” and contain the basic information set out in subparagraphs (A) - (W) of this paragraph, as follows:

(A) name of insurer;

(B) name and business address of producer or insurer’s authorized representative, if any;

(C) name, age and sex of proposed insured, except where a composite illustration is permitted under this regulation;

(D) underwriting or rating classification upon which the illustration is based;

(E) generic name of policy, the company product name, if different, and form number;

(F) initial death benefit;
(G) dividend option election or application of non-
guaranteed elements, if applicable; and

(H) illustration date.

(I) The illustration shall be prominently labeled “Life
Insurance Illustration.”

(J) Each page, including any explanatory notes or
pages, shall be numbered and show its relationship to the total number
of pages in the illustration (e.g., the fourth page of a seven-page
illustration shall be labeled “page 4 of 7 pages”). If a supplemental
illustration is used, it may be numbered either sequentially with or
separately from the basic illustration.

(K) The assumed dates of payment receipt and benefit
pay-out within a policy year shall be clearly identified.

(L) If the age of the proposed insured is shown as a
component of the tabular detail, it shall be issue age plus the numbers
of years the policy is assumed to have been in force.

(M) The assumed payments on which the illustrated
benefits and values are based shall be identified as premium outlay
or contract premium, as applicable. For policies that do not require a
specific contract premium, the illustrated payments shall be identified
as premium outlay.

(N) Guaranteed death benefits and values available
upon surrender, if any, for the illustrated premium outlay or contract
premium shall be shown and clearly labeled guaranteed.

(O) If the illustration shows any non-guaranteed
elements, they cannot be based on a scale more favorable to
the policy owner than the insurer’s illustrated scale at any duration. These
elements shall be clearly labeled non-guaranteed.

(P) The guaranteed elements, if any, shall be shown
before corresponding non-guaranteed elements and shall be specifically
referred to on any page of an illustration that shows or describes
only the non-guaranteed elements (e.g., “see page one for guaranteed
elements”).

(Q) The account or accumulation value of a policy, if
shown, shall be identified by the name this value is given in the policy
being illustrated and shown in close proximity to the corresponding
value available upon surrender.

(R) The value available upon surrender shall be
identified by the name this value is given in the policy being illustrated
and shall be the amount available to the policy owner in a lump sum
after deduction of surrender charges, policy loans and policy loan
interest, as applicable.

(S) Illustrations may show policy benefits and values
in graphic or chart form in addition to the tabular form.

(T) A disclaimer shall be set out conspicuously and in
close conjunction to any depiction of non-guaranteed elements over a
period of years and shall:

(i) identify those benefits and values which are not
guaranteed;

(ii) identify the assumptions upon which the non-
guaranteed values are based;

(iii) state that the assumptions are not likely to
continue unchanged for the years shown and that the assumptions are
subject to change by the insurer;

(iv) state that actual results may be more or less
favorable; and

(v) identify the factors which will affect future
policy performance, including death claims, investment earnings and
overhead costs or makes reference to the narrative which identifies
these factors.

(U) If the illustration shows that the premium payer
may have the option to allow policy charges to be paid using non-
guaranteed values, the illustration must clearly disclose that a charge
continues to be required and that, depending on actual results, the
premium payer may need to continue or resume premium outlays.
Similar disclosure shall be made for premium outlay of lesser amounts
or shorter durations than the contract premium. If a contract premium
is due, the premium outlay display shall not be left blank or show zero
unless accompanied by an asterisk or similar mark to draw attention
to the fact that the policy is not paid up.

(V) If the applicant plans to use dividends or policy
values, guaranteed or non-guaranteed, to pay all or a portion of the
contract premium or policy charges, or for any other purpose, the
illustration may reflect those plans and the impact on future policy
benefits and values.

(W) If policy loans are illustrated on a guaranteed
basis, interest charged must be calculated at the highest numerical
rate permitted under the terms of the contract.

(2) Prohibited conduct. When using an illustration in the
sale of a life insurance policy, an insurer or its producers or other
authorized representatives or agents shall not:

(A) represent the policy as anything other than a life
insurance policy;

(B) use or describe non-guaranteed elements in a
manner that is misleading or has the capacity to mislead;

(C) state or imply that the payment or amount of non-
guaranteed elements is guaranteed;

(D) use an illustration that does not comply with the
requirements of this regulation;

(E) use an illustration that at any policy duration
depicts policy performance more favorable to the policy owner than
that produced by the illustrated scale of the insurer whose policy is
being illustrated;

(F) provide an applicant with an incomplete illus-
tration;

(G) use a particular illustration if there has been a
change in the current payable scale or the proposed insured’s age
since the illustration date;

(H) represent in any way that premium payments will
not be required for each year of the policy in order to maintain the
illustrated death benefits, unless that is the fact;

(I) use the term “vanish” or “vanishing premium,” or
a similar term that implies the policy becomes paid up, to describe
a plan for using non-guaranteed elements to pay a portion of future
premiums;

(J) except for policies that can never develop nonfor-
feiture values, use an illustration that is “lapse-supported;

(K) use an illustration that is not “self-supporting;”

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(L) use an illustration or the software supporting it unless the illustration and the supporting software have been approved by the insurer in accordance with §21.122 of this title (relating to System of Control and Home Office Approval of Advertising Material Naming an Insurer); or

(M) use an illustration on a policy not identified by the insurer as one to be marketed with an illustration.

(3) Interest rate for non-guaranteed elements. The interest rate used to determine the illustrated non-guaranteed elements shall not be greater than the lesser of the earned interest rate underlying the disciplined current scale or the interest rate for the currently payable scale. A non-guaranteed interest rate used in calculating non-guaranteed values shall not increase from one policy year to a subsequent policy year unless the contract provides for a corresponding increase in the guaranteed interest rate.

§21.2207. Standards for Basic Illustrations.
In addition to those matters set out in §21.2206 of this title (relating to General Rules and Prohibitions), a basic illustration shall conform to the following requirements:

(1) Narrative summary. A basic illustration shall begin with a narrative summary which shall include:

(A) a brief description of the policy being illustrated, including a statement that it is a life insurance policy;

(B) a brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium outlay that must be paid to guarantee coverage for the term of the contract, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the Internal Revenue Code;

(C) a brief description of any policy features, riders or options, guaranteed or non-guaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy;

(D) identification and a brief definition of column headings and key terms used in the illustration; and

(E) A statement which:

(i) identifies those benefits and values which are not guaranteed;

(ii) identifies the assumptions upon which the non-guaranteed values are based;

(iii) states that the assumptions are not likely to continue unchanged for the years shown and that the assumptions are subject to change by the insurer;

(iv) states that actual results may be more or less favorable; and

(v) identifies the factors which will affect future policy performance, including death claims, investment earnings and overhead costs.

(2) Numeric summary. Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable.

(A) For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium. This summary shall be shown for at least policy years five, 10 and 20 and at age 70, if applicable. For multiple life policies the summary shall show policy years five, 10, 20 and 30. The summaries required in this subparagraph shall be presented on the three bases set out in clauses (i) - (iii) of this subparagraph, as follows:

(i) policy guarantees;

(ii) insurer’s illustrated scale; and

(iii) insurer’s illustrated scale used but with the non-guaranteed elements reduced as set out in subclauses (I) - (III) as follow:

(I) dividends at 50% of the dividends contained in the illustrated scale used;

(II) non-guaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used; and

(III) all non-guaranteed charges, including but not limited to, term insurance charges, mortality and expense charges, at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used.

(B) In addition, if coverage would cease prior to policy maturity or age 100, the year in which coverage ceases shall be identified for each of the three bases set out in subparagraph (A) of this paragraph.

(3) Tabular detail. Life insurance policy illustrations shall include, as applicable, the tabular detail set out in subparagraphs (A) - (C) of this paragraph.

(A) A basic illustration shall include the following for at least each policy year from one to 10 and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and except for term insurance beyond the 20th year, for any year in which the premium outlay and contract premium, if applicable, is to change:

(i) The premium outlay and mode the applicant plans to pay and the contract premium, as applicable;

(ii) The corresponding guaranteed death benefit, as provided in the policy; and

(iii) The corresponding guaranteed value available upon surrender, as provided in the policy.

(B) For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender shall correspond to the contract premium.

(C) Non-guaranteed elements may be shown if described in the contract. In the case of an illustration for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer’s current practice is to pay terminal dividends. If any non-guaranteed elements are shown they must be shown at the same durations as the corresponding guaranteed elements, if any. If no guaranteed benefit or value is available at any duration for which a non-guaranteed benefit or value is shown, a zero shall be displayed in the guaranteed column.

A supplemental illustration may be provided so long as it meets all standards set out in paragraphs (1) - (4) of this section, as follows:

(1) it is appended to, accompanied by or preceded by a basic illustration that complies with this regulation;
(2) the non-guaranteed elements shown are not more favorable to the policy owner than the corresponding elements based on the scale used in the basic illustration;

(3) it conforms to §21.2206 of this title (relating to General Rules and Prohibitions); and

(4) for a policy that has a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the basic illustration.

§21.2209. Delivery of Illustration and Record Retention.

(a) Illustration delivery provisions. An illustration or revised illustration shall be delivered by the insurer as set out in paragraphs (1) - (4) of this subsection.

(1) Basic illustration delivery. If a basic illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of that illustration shall be submitted to the insurer at the time of policy application. A copy also shall be provided to the applicant.

(2) Revised illustration delivery. If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be sent with the policy. The revised illustration shall conform to the requirements of this regulation, shall be labeled "Revised Illustration." A copy shall be provided to the insurer and the policy owner.

(3) Certification required where no illustration is used. If no illustration is used by an insurance producer or other authorized representative in the sale of a life insurance policy or if the policy is applied for other than as illustrated, the producer or representative shall certify to that effect in writing on a form provided by the insurer. On the same form the applicant shall acknowledge that no illustration conforming to the policy applied for was provided and shall further acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery. This form shall be submitted to the insurer at the time of policy application.

(4) Illustration to be provided with policy. If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy. A copy shall be provided to the insurer and the policy owner.

(b) Records retention. A copy of the basic illustration and a revised basic illustration, if any, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three years after the policy is no longer in force. A copy need not be retained if no policy is issued.


(a) Annual report provision. If an illustration is used in the sale of a life insurance policy after the effective date of this regulation, the insurer shall provide each policy owner with an annual report on the status of the policy that shall contain, at a minimum, the applicable information set out in paragraphs (1) - (3) of this subsection.

(1) Universal life policies. For universal life policies, the report shall include:

(A) the beginning and end date of the current report period;

(B) the policy value at the end of the previous report period and at the end of the current report period;

(C) the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense and riders);

(D) the current death benefit at the end of the current report period on each life covered by the policy;

(E) the net cash surrender value of the policy as of the end of the current report period;

(F) the amount of outstanding loans, if any, as of the end of the current report period; and

(G) for fixed premium policies, if, assuming guaranteed interest, mortality and expense loads and continued scheduled premium payments, the policy’s net cash surrender value is such that it would not maintain insurance in force until the end of the next reporting period, a notice to this effect shall be included in the report; or

(H) for flexible premium policies, if, assuming guaranteed interest, mortality and expense loads, the policy’s net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made, a notice to this effect shall be included in the report.

(2) Other life insurance policies. For all other policies, the report shall include, as applicable:

(A) current death benefit;

(B) annual contract premium;

(C) current cash surrender value;

(D) current dividend;

(E) application of current dividend; and

(F) amount of outstanding loan.

(3) Life insurance policies without nonforfeiture values. For life insurance policies that do not build nonforfeiture values, insurers shall only be required to provide an annual report with respect to these policies for those years when a change has been made to non-guaranteed policy elements by the insurer.

(b) Required policy owner notice. If the annual report does not include an in-force illustration, it shall contain the following notice displayed prominently: "IMPORTANT POLICY OWNER NOTICE: You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration. You may annually request, without charge, such an illustration by calling (insurer’s phone number), writing to (insurer’s name) at (insurer’s address) or contacting your agent. If you do not receive a current illustration of your policy within 30 days from your request, you should contact your state insurance department." The insurer may vary the sequential order of the methods for obtaining an in-force illustration.

(c) In-force illustration to be provided at policy owner request. Upon the request of the policy owner, the insurer shall furnish an in-force illustration of current and future benefits and values based on the insurer’s present illustrated scale. This illustration shall comply with the requirements of §21.2206(1) and (2)(A) - (K) of this title (relating to General Rules and Prohibitions); and §21.2207(3) of this title (relating to Standards for Basic Illustrations).
No signature or other acknowledgment of receipt of this illustration shall be required.

(d) Notice of change to non-guaranteed elements. If an adverse change in non-guaranteed elements that could affect the policy has been made by the insurer since the last annual report, the annual report shall contain a notice of that fact and the nature of the change prominently displayed.


(a) Insurer to appoint illustration actuary. The board of directors of each insurer shall appoint one or more illustration actuaries.

(b) Actuary certification. The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the Actuarial Standard of Practice for Compliance with the NAIC Model Regulation on Life Insurance Illustrations promulgated by the Actuarial Standards Board, and that the illustrated scales used in insurer-authorized illustrations meet the requirements of this regulation.

(c) Illustration actuary qualifications and disclosures. The illustration actuary shall:

(1) be a member in good standing of the American Academy of Actuaries;

(2) be familiar with the standard of practice regarding life insurance policy illustrations;

(3) not have been found by the commissioner, following appropriate notice and hearing to have:

(A) violated any provision of, or any obligation imposed by, the insurance law or other law in the course of his or her dealings as an illustration actuary;

(B) been found guilty of fraudulent or dishonest practices;

(C) demonstrated his or her incompetence, lack of cooperation, or untrustworthiness to act as an illustration actuary; or

(D) resigned or been removed as an illustration actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of a failure to adhere to generally acceptable actuarial standards;

(4) not fail to notify the commissioner of any action taken by a commissioner of another state similar to that under paragraph (3) of this subsection;

(5) disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous five years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. If non-guaranteed elements illustrated for new policies are not consistent with those illustrated for similar in-force policies, this must be disclosed in the annual certification. If non-guaranteed elements illustrated for both new and in-force policies are not consistent with the non-guaranteed elements actually being paid, charged or credited to the same or similar forms, this must be disclosed in the annual certification; and

(6) disclose in the annual certification the method used to allocate overhead expenses for all illustrations:

(A) fully allocated expenses;

(B) marginal expenses; or

(C) a generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the National Association of Insurance Commissioners or by the commissioner.

(d) Certification filing requirements. The illustration actuary shall file a certification with the commissioner prior to use of any illustration for a new policy form, and annually for all current policy forms for which illustrations are used.

(e) Notice of error. If an error in a previous certification is discovered, the illustration actuary shall notify the board of directors of the insurer and the commissioner promptly.

(f) Notice of inability to certify. If an illustration actuary is unable to certify the scale for any policy form illustration the insurer intends to use, the actuary shall notify the board of directors of the insurer and the commissioner promptly of his or her inability to certify.

(g) Annual certification. A responsible officer of the insurer, other than the illustration actuary, shall certify annually:

(1) that the illustration formats meet the requirements of this regulation and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary; and

(2) that the company has provided its agents with information about the expense allocation method used by the company in its illustrations and disclosed as required in subsection (c)(6) of this section.

(h) Due date of certifications. The annual certifications shall be provided to the commissioner each year by a date determined by the insurer.

(i) Notice of change in illustration actuary. If an insurer changes the illustration actuary responsible for all or a portion of the company’s policy forms, the insurer shall notify the commissioner of that fact promptly and disclose the reason for the change.


Any violation of this subsection shall constitute a misrepresentation of the terms of an issued and unissued policy in violation of the Insurance Code, Article 21.21 §4(1) and (2), and to be a misrepresentation of the terms, benefits, and advantages of a policy within the meaning of the Insurance Code, Article 21.20. Violations of this subsection shall subject the insurer and agent to the penalties provided in the Insurance Code, Article 21.21 and other applicable provisions of the Insurance Code.

§21.2213. Separability, Conflict with and Effect on Other Regulations.

(a) Separability. If any provision of this regulation or its application to any person or circumstance is for any reason held to be invalid by any court of law, the remainder of the regulation and its application to other persons or circumstances shall not be affected.

(b) Conflict with or effect on other rules. This subchapter is not intended to conflict with or supersede and is to be interpreted when possible as not to conflict with Subchapters A and B of this chapter (relating Unfair Competition and Unfair Practices of Insurers and Insurance Advertising).

§21.2214. Effective Date.

These sections shall become effective September 1, 1998, and shall apply to all policies sold on or after that date.
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 25, 1998.

TRD-9802828
Caroline Scott
General Counsel and Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: April 12, 1998
For further information, please call: (512) 463-6327

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 53. Finance

Subchapter A. License Fees and Boat and Motor Fees

31 TAC §53.6–53.7

The Texas Parks and Wildlife Department proposes amendments to §53.6, concerning Commercial Fishing Licenses and Tags, and §53.7, concerning Business Licenses and Permits. Responsibility for establishing provisions enabling a commercial crab fishery license limitation program, including creation of a commercial crab fishing license, is delegated to the Parks and Wildlife Commission by passage of House Bill 2542 in the 75th Legislature. The proposed amendments establish license fees, license transfer fees, and duplicate license fees for resident and non-resident commercial crab fisherman’s licenses. The commercial crab trap tag fee is being removed, as it will no longer be required.

Robin Riechers, staff economist, has determined that for each of the first five years that the rules as proposed are in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the rules.

Mr. Riechers also has determined that for each of the first five years the rules as proposed are in effect the public benefit anticipated as a result of administering or enforcing the rules as proposed will be the development of a more efficient and economically stable crabbing industry, thus maximizing the social and economic benefits to the state. There will be no anticipated additional fiscal implications to state or local governments as a result of enforcing or administering the rules.

There will be some effects on small businesses and individuals required to comply with the rules as proposed. These may be additional costs associated with the license fees, gear modifications, and other program aspects, but in the long-term both individual efficiency and profits should rise as stock abundance increases.

License Fees: The legislatively mandated fees for a newly established commercial crab fisherman’s license will have positive economic impacts on crab fishers whose past annual license(s) and crab trap tag expenditures did not exceed the cost of the new license fee and will have negative impacts on those crab fishers whose past annual license(s) and crab trap tag expenditures did not exceed the cost of the new license fee. The distribution of these types of crab fishers is not known.

Commercial Crab Fishing Gear Marking: There will be some minimal costs associated with individuals complying with the new gear marking requirements. However, since the marking requirements will enhance enforcement, thereby reducing the opportunity for theft of traps and crabs, there will be positive economic benefits due to a reduction in lost or stolen gear and crabs.

Degradable Panel Options: There will be some small costs associated with individuals complying with the new degradable panel options. The new options should, however, minimize reported premature degradation of the panel using the twine option, thereby reducing premature loss of crabs from actively fishing traps.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedures Act, Government Code, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

Comments on the proposed rule may be submitted to Paul Hammerschmidt, Coastal Fisheries Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4650 or 1-800-792-1112 extension 4650.

The amendments are proposed under Parks and Wildlife Code, Chapter 78, Subchapter B, which delegate to the Texas Parks and Wildlife Commission authority to establish provisions enabling a commercial crab fishery license limitation program, including creation of commercial crab fishing licenses.

The amendments affect Parks and Wildlife Code, Chapter 78, Subchapter B.

§53.6. Commercial Fishing Licenses and Tags.
(a)-(c) (No change.)
(d) Crabbing licenses.
(1) Licenses and permits. The following license fee amounts are effective for the license year beginning September 1, 1998, and thereafter:
   (A) resident commercial crab fisherman’s (type 338)–
   $500; and
   (B) nonresident commercial crab fisherman’s (type 438)–$2,000.
(2) License transfers. The following license transfer fee amounts are effective for the license year beginning September 1, 1998, and thereafter:
   (A) resident commercial crab fisherman’s (type 368)–
   $500; and
   (B) nonresident commercial crab fisherman’s (type 468)–$2,000.
(3) Duplicate license plates. The following duplicate license plate fee amounts are effective for the license year beginning September 1, 1998, and thereafter:
   (A) resident commercial crab fisherman’s (type 338)–
   $5; and

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Fish, bait, and shrimp licenses and tags.

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

(3) The fee for the saltwater trotline tag (type 307) shall be $3.00. [Tags. The following tag fee amounts are effective for the license year beginning September 1, 1995, and thereafter]

[(A) saltwater trotline tag (type 307) $3.00; and]

[(B) commercial crab trap tag (type 305) $1.50].

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 25, 1998.

TRD-9802755

Bill Harvey

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: April 12, 1998

For further information, please call: (512) 389-4642

31 TAC §53.8

The Texas Parks and Wildlife Department proposes an amendment to §53.8, concerning fees schedules. The amendment to §53.8 is necessary to implement the fee for the newly created nonresident raptor trapping permit. The amendment will function to impose fees for nonresidents wishing to trap raptors in this state.

Robert Macdonald, Wildlife Division regulations coordinator, has determined that for each of the first five years that the proposed amendment is in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Macdonald also has determined that for each of the first five years the amendment as proposed is in effect, the public benefit anticipated as a result of enforcing the rule as proposed will be the increased opportunity for persons to benefit from the wildlife resources of the state.

There will be no effect on small businesses. There are additional economic costs to persons required to comply with the rule as proposed; specifically, a $300 fee for nonresidents to trap raptors in this state.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as this agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 or 1-800-792-1112.

The amendment is proposed under Parks and Wildlife Code, §49.014, which provides the commission with authority to establish a fee for the nonresident trapping permit.

The amendment affects Parks and Wildlife Code, Chapters 49 and 31.


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

(c) Falconry permits. The following permit fee amounts (fees also prescribed in Chapter 65 of this title) are effective for the license year beginning September 1, 1996, and thereafter:

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

(5) nonresident raptor trapper's (5-day falconer's) (type 125) - $300[$20].

(d)-(e) (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 25, 1998.

TRD-9803015

Bill Harvey

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: April 12, 1998

For further information, please call: (512) 389-4775

Subchapter H. Marine Safety Enforcement-Training and Certification Fees

31 TAC §53.60

The Texas Parks and Wildlife Department proposes new §53.60, concerning fees schedules. New §53.60 is necessary to implement the fees to recover the administrative cost of training and certifying marine safety enforcement officers and marine safety enforcement officer course instructors. The new section will function to impose fees for peace officers seeking certification as marine safety enforcement officers or marine safety enforcement officer course instructors.

Robert Macdonald, Wildlife Division regulations coordinator, has determined that for each of the first five years that the proposed new rule is in effect, there will be fiscal implications to state or local governments as a result of enforcing or administering the proposed new rule. A governmental entity seeking to have a peace officer trained and certified as a marine safety enforcement officer or marine safety enforcement officer course instructor will incur an enrollment cost of $25 per peace officer and a $3.00 per student per hour instruction charge.

Mr. Macdonald also has determined that for each of the first five years the amendment and new rule as proposed are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be the ability of the department to deliver a program that enhances the safety of all persons who participate in water-related recreation in this state.

There will be no effect on small businesses. There are additional economic costs to persons required to comply with the rules as proposed; specifically, a $25 fee per peace officer en-
rolled for training and certification as a marine safety enforcement officer or marine safety enforcement course instructor, and $3.00 per student per hour instruction charge.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as this agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rules may be submitted to Carlos Vaca, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4624 or 1-800-792-1112.

The new section is proposed under the provisions of House Bill 966, Acts of the 75th Texas Legislature, Regular Session, 1997, which amended Parks and Wildlife Code, §31.121 to authorize the commission to establish and collect a fee to recover the administrative costs associated with the certification of marine safety enforcement officers.

The new section affect Parks and Wildlife Code, Chapter 31.

§33.60. Law Enforcement Training and Certification Fees. In addition to the enrollment fees below, the department shall impose an instruction charge of $3.00 per student per hour.

(1) The fee for certification as a marine safety enforcement officer is $25.

(2) The fee for certification as a marine safety enforcement officer instructor is $25.

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 March 2, 1998.

TRD-9803014

Bill Harvey

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: April 12, 1998

For further information, please call: (512) 389-4775

Chapter 55. Law Enforcement

Subchapter H. Marine Safety Enforcement Training and Certification Standards

31 TAC §§55.801-55.807

The Texas Parks and Wildlife Department proposes new §§55.801-55.807, concerning training and certification of marine safety enforcement officers. The new sections are necessary in order to implement the provisions of House Bill 966, enacted by the 75th Texas Legislature, which established mandatory boater education in this state. The new sections will function by establishing the certification criteria for persons to become marine safety officers and marine safety officer course instructors.

Robert Macdonald, Wildlife Division regulations coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be fiscal implications to state and local governments as a result of enforcing or administering the new sections. The proposed new sections would require a certification fee of $25 per peace officer, an instruction charge of $3.00 per student per hour, and provide for special course fee not to exceed $300 per course. The department cannot quantify costs to other governmental subdivisions, as such costs are dependent upon the number of peace officers a given governmental subdivision might enroll in the certification process.

Mr. Macdonald also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be the presence of trained peace officers on the public waters of the state to enforce boating safety laws, thus increasing the safety of water-related recreational activities as well as reducing injuries, deaths, and property losses resulting from unsafe and unlawful boat operation.

There will be no effect on small businesses and no additional economic costs to persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as this agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Carlos Vaca, Director of Water Safety Enforcement, Law Enforcement Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4624 or 1-800-792-1112.

The new sections are proposed under Parks and Wildlife Code, §31.121, which gives the commission authority to adopt rules establishing standards for training and certifying marine safety enforcement officers, creating exemptions from training and certification requirements, and establishing fees to recover administrative costs associated with the certification process.

§55.801. Application.

This subchapter shall apply to any peace officer, as defined by Article 2.12, Texas Code of Criminal Procedure, who enforces any provision of Parks and Wildlife Code, Chapter 31, or enforces any provision, regulation, resolution, ordinance, order adopted pursuant to Parks and Wildlife Code, §31.092.

§55.802. Definitions.

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

(1) Active duty peace officer - A peace officer holding a valid peace officer license from the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) and a valid peace officer commission issued by an authorized governmental entity of the State of Texas.

(2) Commission - The Texas Parks and Wildlife Commission

(3) Department - The Texas Parks and Wildlife Department

§55.803. General Rules.
(a) To be eligible for certification as a marine safety enforcement officer, a person must:

1. be an active duty peace officer;
2. hold a Texas boater education certificate; and
3. successfully complete the marine safety enforcement officer training course and marine safety enforcement officer examination.

(b) To retain certification, a marine safety enforcement officer must comply with all reporting requirements as set forth in §55.806 of this title (relating to Reporting Requirements).

(c) To instruct the marine safety enforcement officer training course, a person must:

1. be a certified marine safety enforcement officer;
2. hold a TCLEOSE Instructor license; and
3. successfully complete the marine safety enforcement officer instructor course and marine safety enforcement officer instructor examination.

(d) A person who is a graduate of the TPWD Game Warden Academy and who is also an active commissioned game warden is eligible for certification as a marine safety enforcement officer. A person who is a graduate of the TPWD Game Warden Academy, who is also an active commissioned game warden, and who holds a TCLEOSE Instructors License is eligible for certification as a marine safety enforcement officer course instructor.

§55.804. Marine Safety Enforcement Officer Course Standards.

(a) The marine safety enforcement officer course shall consist of the following instruction topics:

1. provisions of the Texas Water Safety Act, Parks and Wildlife Code, Chapter 31;
2. navigation rules;
3. United States Coast Guard rules applicable to state waters;
4. boater education requirements; and
5. the reporting requirements of §55.806 of this title (relating to Reporting Requirements).

(b) The marine safety enforcement officer course is successfully completed when a peace officer has:

1. attended a minimum of eight hours of prescribed instruction by a department certified marine safety enforcement officer instructor; and
2. passed the department approved marine safety enforcement officer examination.

(c) Upon completion of a course, the instructor shall submit to the department a signed affidavit specifying for each student:

1. the date(s) of instruction;
2. the topics of instruction;
3. the hours of instruction in each topic; and
4. test score.

§55.805. Marine Safety Enforcement Officer Instructor Course Standards.

(a) The marine safety enforcement officer instructor course shall consist of the following instruction topics:

1. provisions of the Texas Water Safety Act, Parks and Wildlife Code, Chapter 31;
2. navigation rules;
3. United States Coast Guard rules applicable to state waters;
4. boater education requirements; and
5. the reporting requirements of §55.806 of this title (relating to Reporting Requirements).

(b) The marine safety enforcement officer instructor course is successfully completed when a marine safety enforcement officer has:

1. attended a minimum of 16 hours of instruction prescribed by the Game Warden Training Academy; and
2. successfully completed the marine safety enforcement officer instructor examination prescribed by the Game Warden Training Academy.

(c) Upon completion of an instructor certification course, the course instructor shall submit to the department a signed affidavit specifying for each student:

1. the date(s) of instruction;
2. the topics of instruction;
3. the hours of instruction in each topic; and
4. test score.

§55.806. Reporting Requirements.

(a) Marine safety enforcement officers shall report all investigations as required by Parks and Wildlife Code, §31.132, by completing and submitting to the department a Water Safety Incident Report(s).

(b) The department may summarily suspend the certification of a marine safety enforcement officer who fails to submit, fails to complete, or falsifies a report required under subsection (a) of this section.

§55.807. Fees.

All applications shall be accompanied by the fees specified in Chapter 53 of this title (relating to Finance). All payments shall be in the form of a check, money order, or warrant made payable to the department. All fees are nonrefundable; however, an entity may substitute a qualified peace officer in place of a person named on an application.

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 25, 1998.

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Bill Harvey
Regulatory Coordinator
Texas Parks and Wildlife Department
Earliest possible date of adoption: April 12, 1998
For further information, please call: (512) 389–4775

Chapter 57. Fisheries

PROPOSED RULES  March 13, 1998  23 TexReg 2727
Subchapter A. Harmful or Potentially Harmful Exotic Fish, Shellfish and Aquatic Plants

31 TAC §§57.111-57.114

The Texas Parks and Wildlife Department proposes amendments to §§57.111-57.114, concerning harmful or potentially harmful exotic fish, shellfish and aquatic plants. Section 57.111 is amended to add definitions for the terms "certified inspector" and "manifestations of disease" and to clarify the definition of "disease free."

Proposed amendments to §57.112 will make it an offense to harvest grass carp from public water for which a valid Triploid Grass Carp Permit is currently in effect. Amendments to §57.113 stipulate that individuals may possess exotic harmful or potentially harmful fish or shellfish, other than grass carp, if the intestines have been removed and further propose amendment that stipulates grass carp may be harvested from public waters that have not been permitted for triploid grass carp, if the intestines have been removed. Further proposed amendment of §57.113 would delete Anguilla japonicus from the list of harmful or potentially harmful exotic fish that may be possessed, propagated, transported or sold with a permit and would exempt from the prohibition any person who, as of the effective date of these rules, holds a valid permit authorizing the above activities.

Proposed amendment of §57.114 would allow permit holders who must institute quarantine conditions as a result of observing a fish, shellfish or aquatic plant to discharge waste into or adjacent to water in the state if it is routed from growout structures through ditches, retention ponds or other structures prior to discharge, the animals which occupied that water must still be tested.

Robin Riechers, staff economist, has determined that during the first five years these sections as proposed are in effect there will be fiscal implications to state government as a result of administering and enforcing the sections. However, the extent of this effect is not determinable at this time. There will be no fiscal implications for units of local government.

Mr. Riechers also has determined that for the first five years these sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be increased protection of aquatic animal life from depletion due to disease. Entities, such as river authorities, water districts, private property owners, etc., which bear the cost of aquatic vegetation control may experience financial savings as a result of grass carp used versus other, more expensive forms of vegetation control. Additional costs may be incurred by entities or individuals who must comply with these rules. The Parks and Wildlife Department has determined that the prohibition in §57.113 of the proposed rules will not have any adverse impact on small businesses since it includes an exemption from the rules for any businesses currently operating. Additionally, the testing requirements imposed by §57.114 will not have an adverse impact on small business since in most cases the decision whether or not to submit laboratory samples is up to the permit holder. In the case of a probable disease outbreak where the rule requires laboratory testing, the cost of the testing will be negligible in most cases. It is not possible to accurately determine whether the quarantine provisions of §57.114 as proposed will have an adverse economic impact on any particular small business or to accurately estimate what the extent of any impact might be. The effect, if any, is totally dependent on individual circumstances. If no disease occurs on a facility, there will be no impact. If a disease occurs, the effect will vary depending on which disease occurs, the location of the facility, the design and management methods of the facility, what time of year the outbreak occurs, the species potentially affected by the disease, the current state of knowledge and technology related to disease containment and control and other factors.

The Texas Parks and Wildlife Department has not filed a local impact statement with the Texas Employment Commission as this agency has determined that the sections as proposed will not impact local economies.

TPWD has not prepared a Takings Impact Assessment for these rules because Government Code, §2007.003 provides an exception to the requirement for rules or proclamations adopted for the purpose of regulating or controlling nonindigenous or exotic aquatic species.

Comments on the proposed rules may be submitted to Joedy Gray, Inland Fisheries Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744. Comments may be faxed to Mr. Gray at (512) 389-4388. Written or faxed comments must be received no later than 5:00 p.m., Monday, April 13, 1998 in order to be considered.

These amendments are proposed under Chapter 66, §66.007 of the Texas Parks and Wildlife Code which prohibits possession of exotic harmful or potentially harmful fish, shellfish or aquatic plants except as authorized by rule or permit, requires permittees to provide proof to the department of the disease free status of animals possessed under such permits and authorizes the department to make rules to carry out these provisions.

The proposed amendments affect Texas Parks and Wildlife Code §66.007.

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

Certified Inspector - An employee of the Texas Parks and Wildlife Department or the Texas A&M Sea Grant College Program who has satisfactorily completed a department approved course in clinical analysis of shellfish.

Disease-Free - A status based on the result of an examination conducted by a department approved shellfish disease specialist which certifies a group of aquatic organisms as being free of disease [contagious pathogens or injurious parasites.]

Manifestations of disease - manifestations of disease include, but are not limited to, one or more of the following: heavy or unusual predator activity, empty guts, emaciation, rostral deformity, digestive gland atrophy or necrosis, gross pathology of shell or underlying skin typical of viral infection, fragile or atypically soft shell, gill fouling, or gill discoloration.

§57.112. General Rules.

(a)-(b) (No change.)
A fish farmer who holds a valid exotic species permit issued by the department may possess, propagate, transport or sell Pacific blue shrimp (Penaeus stylirostris) provided the exotic shellfish are cultured under quarantine conditions in private facilities located outside the harmful or potentially harmful exotic species exclusion zone, and meet disease free certification requirements listed in §57.114 of this title (relating to Health Certification of Exotic Shellfish) and as provided by conditions of the permit and these rules.

A person may possess grass carp harvested from public waters that have not been permitted for triploid grass carp, without a permit, if the intestines have been removed.

A fish farmer who holds a valid exotic species permit issued by the department may possess, propagate, transport, or sell silver carp (Hypophthalmichthys molitrix), black carp (Mylopharyngodon piceus, also commonly known as snail carp), bighead carp (Aristichthys/Hypophthalmichthys nobilis), [Japanese eel (Anguilla japonica)], blue tilapia (Tilapia aurea), Mozambique tilapia (Tilapia mossambica), Nile tilapia (Tilapia nilotica), or hybrids between the three tilapia species, as provided by conditions of the permit and these rules.

A fish farmer who holds a valid exotic species permit issued by the department may possess, propagate, transport, or sell Pacific white shrimp (Penaeus vannamei) provided the exotic shellfish meet disease free certification requirements listed in §57.114 of this title (relating to Health Certification of Exotic Shellfish) and as provided by conditions of the permit and these rules.

An operator of a wastewater treatment facility in possession of a valid exotic species permit issued by the department may possess and transport water hyacinth (Eichornia crassipes) to their facility only for the purpose of wastewater treatment.

A person may possess Mozambique tilapia in a private pond subject to compliance with §57.116(d) of this title (relating to Exotic Species Transport Invoice).

The holder of a valid triploid grass carp permit issued by the department may possess triploid grass carp as provided by conditions of the permit and these rules.

A licensed retail or wholesale fish dealer is not required to have an exotic species permit to purchase or possess:

1. live individuals of species or hybrids of species listed in subsection (c) of this section held in the place of business, unless the retail or wholesale fish dealer propagates one or more of these species. However, such a dealer may sell or deliver these species to another person only if the intestines or head of the fish are removed; or
2. Live Pacific white shrimp (Penaeus vannamei) held in the place of business if the place of business is not located within the Harmful or Potentially Harmful Exotic Species Exclusion Zone. However, such a dealer may only sell or deliver this species to another person if the shrimp are dead and packaged on ice or frozen.

The department is authorized to stock planktivorous fish including silver carp (Hypophthalmichthys molitrix) and bighead carp (Aristichthys/Hypophthalmichthys nobilis) if necessary in Lake Rita Blanca, Hartley County, in order to investigate their utility as biological agents to improve water quality and enhance fishery management.

The department is authorized to stock triploid grass carp into public waters in situations where the department has determined that there is a legitimate need, and when stocking will not affect threatened or endangered species, coastal wetlands, or specific management objectives for other important species.

A fish farmer who holds a valid exotic species permit issued by the department may possess, propagate, transport and sell Pacific blue shrimp (Penaeus stylirostris) provided the exotic shellfish are cultured under quarantine conditions in private facilities located outside the harmful or potentially harmful exotic species exclusion zone, and meet disease free certification requirements listed in §57.114 of this title (relating to Health Certification of Exotic Shellfish) and as provided by conditions of the permit and these rules.

Any person who, as of the effective date of these rules, holds a valid exotic species permit issued by the department to possess, propagate, transport or sell Anguilla japonica may continue to conduct such activities as authorized by the conditions of the permit. The permit may not be transferred to any other person, site or entity.

A person in possession of exotic shellfish stocks who observes one or more manifestations of disease shall:

1. immediately quarantine the private facility, notify the department and request an inspection from a department certified inspector; or
2. immediately quarantine the private facility, notify the department and submit samples of the affected shellfish to a department approved disease specialist for analysis. Results of the required analyses shall be forwarded to the department immediately upon receipt.

Upon receiving a request from a permit holder under subsection (d), the department certified inspector shall inspect the private facility, complete an inspection report provided by the department and notify the department and the permit holder of the results.

Before discharging any waste which at any time has been in contact with exotic shellfish into or adjacent to water in the state, the permittee shall have the private facility and a sample of the shellfish which are or were in contact with the waste inspected by a department certified inspector no more than 72 hours prior to discharge. The results of the inspection must be immediately submitted to the department on the department approved inspection form. If the results indicate the absence of any manifestations of disease, the permittee may discharge from the particular structure(s) which was inspected. If the results indicate the presence of one or more manifestations of disease, the permittee shall immediately place the private facility under quarantine and immediately submit samples of the shellfish from the affected portions of the facility to a department approved shellfish disease specialist for analysis. Results of the required analyses shall be forwarded to the department immediately upon receipt.

A private facility quarantined under subsections (d) or (f) shall remain under quarantine condition until the department removes the quarantine in writing or authorizes an appropriate disposal method based on the required analyses.

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.
Chapter 58. Oysters and Shrimp

Subchapter B. Statewide Shrimp Fishery Proclamation

31 TAC §58.160


The proposed change extends the sunset of the live baitfish exemption for commercial bait shrimp fishermen until September 1, 2001 and adds a temporary exemption for retaining Atlantic cutlassfish.

Department outreach efforts with Texas bait dealers indicate the exemption adopted in 1997 is working well to provide adequate numbers of live bait-fish for recreational anglers without creating undue resource problems or abuse. Extending the exemption would allow for further evaluation of alternative management measures in this fishery. The addition of an exemption for the retention of Atlantic cutlassfish for bait should provide a better opportunity to serve the Texas offshore anglers. These rules as proposed are based on findings of fact by the department.

Robin Riechers, staff economist, has determined that for each of the first five years that the rule as proposed is in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the rules. Since the rule is less restrictive than the rule currently in place, the fiscal implications to small businesses should be positive.

Mr. Riechers also has determined that for each of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be a simplification of enforcement, and public benefits will occur through the continued exemption which enhances the availability of bait for sport fishermen.

There will be no additional costs to small businesses or persons required to comply with the rule as proposed. There will be some positive effect on small businesses as the extension of the increased season and bag limit for harvesting fish will continue and new species for harvest are included to provide enhanced market opportunities for bait fish.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedures Act, Government Code, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

Comments on the proposed rule may be submitted to Paul Hammerschmidt, Coastal Fisheries Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4650 or 1-800-792-1112 extension 4650.

The amendment is proposed under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the commission with authority to establish wildlife resource regulations for this state.

The amendment affects Parks and Wildlife Code Chapter 61.

§58.160. Taking or Attempting to Take Shrimp (Shrimping) – General Rules.

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

(e) Other aquatic life taken incidental to legal shrimping operations.

(1) Licensed Commercial Shrimp Boats.

(A) (No change.)

(B) On board a licensed commercial shrimp boat a catch of finfish or other aquatic life, in any combination, may be retained in an amount not to exceed 50% by weight of the total trawl catch of shrimp by weight.

(i) (No change.)

(ii) From June 1 through September 30 of each year, in addition to the provision of subparagraph (B) of this paragraph:

(I) up to 1,500 live non-game fish, not regulated by bag or size limits, may be retained on board a licensed commercial bait-shrimp boat for bait purposes only; and

(II) up to 3,600 (300 dozen) Atlantic cutlassfish (Trichiurus lepturus) (also known as ribbonfish) may be retained on board a licensed commercial bait-shrimp boat for bait purposes only.

(III) The provisions of this clause will expire September 1, 2001. [up to 1,500 live non-game fish, not regulated by bag or size limits, may be retained on board a licensed commercial bait-shrimp boat for bait purposes only. The provisions of this clause will expire September 1, 1998.]

(2) (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 25, 1998.

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Bill Harvey
Regulatory Coordinator
Texas Parks and Wildlife Department
Earliest possible date of adoption: April 12, 1998
For further information, please call: (512) 389-4642

Subchapter C. Statewide Crab Fishery Proclamation

31 TAC §§58.201–58.210

The Texas Parks and Wildlife Department proposes new §§58.201-58.210, concerning Crab Fishery Proclamation. Re-
sponsibility for establishing provisions enabling a commercial crab fishery license limitation program, including creation of a commercial crab fishing license, is delegated to the Texas Parks and Wildlife Commission by passage of House Bill 2542 by the 75th Legislature. The proposed new rules create a crab license management program, including rules to establish: a commercial crab fishing license; eligibility requirements to receive the license in the 1998-1999 license year and subsequent years; provisions for transfer of licenses; the number of licenses an individual may possess; rules regarding license requirements for persons engaged in commercial crab fishing; and provisions for suspension and revocation of licenses. The proposed new regulations also create a Review Board to review and advise the department regarding appeal and hardship cases for eligibility into the license management program, and establish a license buyback program, under which the department may purchase and retire commercial crab licenses in the future. These rules as proposed are based on findings of fact by the Department and identified in 31 TAC §57.691(b) Fishery Management Plans.

Robin Riechers, staff economist, has determined that for each of the first five years that the rules as proposed are in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the rules.

Mr. Riechers also has determined that for each of the first five years the rules as proposed are in effect the public benefit anticipated as a result of administering the new rules will be the development of a more efficient and economically stable crabbing industry, thus maximizing the social and economic benefits to the state.

There will be some effects on small businesses and individuals required to comply with the new rules as proposed. These may be additional costs associated with the license fees, gear modifications, and other program aspects, but in the long term both individual efficiency and profits should rise as stock abundance increases.

License Fees: The legislatively mandated fees for a newly established commercial crab fisherman’s license will have positive economic impacts on crab fishers whose past annual license(s) and crab trap tag expenditures exceed the cost of the new license and will have negative impacts on those crab fishers whose past annual license(s) and crab trap tag expenditures did not exceed the cost of the new license fee. The distribution of these types of crab fishers is not known.

Commercial Crab Fishing Gear Marking: There will be some minimal costs associated with individuals complying with the new gear marking requirements. However, since the marking requirements will enhance enforcement, thereby reducing the opportunity for theft of traps nd crabs, there will be positive economic benefits due to a reduction in lost or stolen gear and crabs.

Degradable Panel Options: There will be some small costs associated with individuals complying with the new degradable panel options. The new option should, however, minimize reported premature degradation of the panel using the twine option, thereby reducing premature loss of crabs from actively fishing traps.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedures Act, Government Code, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

Comments on the proposed rule may be submitted to Paul Hammerschmidt, Coastal Fisheries Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4650 or 1-800-792-1112 extension 4650.

The new rules are proposed under Parks and Wildlife Code, Chapter 78, Subchapter B, which delegate to the Texas Parks and Wildlife Commission the authority to establish provisions enabling a commercial crab fishery license limitation program, including creation of commercial crab fishing licenses.

The new rules affect Parks and Wildlife Code, Chapter 78, Subchapter B.

§58.201. Crab License Management Program.
Delegation of Authority. The Commission delegates power and authority to the executive director to administer the Crab License Management Program.

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

(1) Coastal waters—All the salt water of this state (as defined in § 65.3 of this title (relating to Definitions)), including that portion of the Gulf of Mexico within the jurisdiction of the state extending nine nautical miles from the Gulf shoreline.

(2) Crab—All species in the families Portunidae and Xanthidae.

(3) Commercial crab fishing—Pursuing, taking, attempting to take, or landing crabs in this state for pay or for the purpose of sale, barter, or exchange.

(4) Possess—The act of having in possession or control, keeping, detaining, restraining or holding.

§58.203. Licensing.
(a) A person may not engage in commercial crab fishing without a commercial crab fisherman’s license.

(b) A person may operate a boat bearing a commercial crab fisherman’s license plate, ONLY if that person possesses on board the boat the following documentation:

(1) a commercial crab fisherman’s license or a general commercial fisherman’s license, and

(2) a copy of an affidavit permitting the boat operator to fish the commercial crab fishing devices owned by the person to whom the commercial crab fisherman’s license was issued. The affidavit must contain the date, original signature of the licensee, and commercial crab license number which matches the commercial crab license plate number on the boat.

(c) A person operating a boat for the purpose of commercial crab fishing is not required to possess a commercial fishing boat license.

§58.204. License Expiration.
Licenses issued under authority of Parks and Wildlife Code, Chapter 78, and this subchapter are valid only during the yearly period for which they are issued without regard to the date on which the licenses are acquired. Each yearly period begins on September 1 and extends through August 31 of the next year.
§58.206. Issuance and Renewal of Commercial Crab Fisherman’s License.

(a) Beginning September 1, 1998, the department will issue a commercial crab fisherman’s license only to a person who documents to the satisfaction of the department that the person concurrently held each of the following licenses and tags during the period September 1, 1995 through November 13, 1996:

(1) General commercial fisherman’s license;
(2) Commercial fishing boat license; and
(3) One or more commercial crab trap tags.

(b) After August 31, 1999, the department may renew a commercial crab fisherman’s license only if the person seeking to renew the license held the license to be renewed during the previous license year.

(c) Individuals not meeting the requirements set forth in subsections (a) and (b) of this section may appeal by application to the Crab License Management Review Board as provided in Parks and Wildlife Code, §78.103.

(d) When evaluating a license application or license renewal application, the department may also consider department records pertaining to the applicant’s history in the crab fishery.

§58.207. License Transfer.

(a) Except as provided in this section, a commercial crab fisherman’s license may not be transferred from one person to another before September 1, 2001.

(b) A commercial crab fisherman’s license may be transferred at any time, by will, or otherwise to any person who in the absence of a will would be entitled to all or a portion of the licensee’s property upon death of the licensee.

§58.208. Limit on Number of Licenses Held; Designated License Holder.

(a) Except as provided by subsection (b) of this section, no person may hold or directly control more than three commercial crab fisherman’s licenses.

(b) A commercial crab fisherman’s license may only be issued to an individual. A person, other than an individual who wishes to retain or seeks to renew a license must designate an individual to whom the license will be issued.

§58.209. License Suspension and Revocation.

(a) The executive director, after notice and the opportunity for a hearing, may suspend a commercial crab fisherman’s license if the license holder and all other operators of the vessel operated for the purposes of commercial crab fishing, in the aggregate, are convicted of two or more flagrant offenses. The suspension shall be for:

(1) six months, if:

(A) the date of each offense is within any 12-consecutive-month period after August 31, 1998; and

(B) the license holder has not previously had a commercial crab fisherman’s license suspended under this section; or

(2) 12 months, if the date of each offense is within any 12-consecutive-month period and the license holder has previously had a commercial crab fisherman’s license suspended under this section;

(b) License Renewal after Suspension:

(1) Except as provided by Subsection (c), a license suspension under this section does not affect the license holder’s eligibility to renew the license after the suspension expires.

(2) The holder of a license that has been suspended may not apply for a renewal of the license during the period of suspension.

(c) The executive director, after notice and the opportunity for a hearing, may permanently revoke a commercial crab fisherman’s license if:

(1) the license holder has previously had a commercial crab fisherman’s license suspended twice under this section; and

(2) the license holder and all other operators of the vessel operated for the purposes of commercial crab fishing, in the aggregate, are subsequently convicted of two or more flagrant offenses in any 12-consecutive-month period beginning not earlier than the date of the beginning of the most recent suspension under this section.

(d) For purposes of this section, a flagrant offense includes:

(1) removing crab traps from the water or removing crabs from crab traps 30 minutes before or 30 minutes after legal crabbing hours prescribed by a proclamation of the commission;

(2) fishing crab traps in a restricted area as set forth in §65.78 of this title (relating to Crabs and Ghost Shrimp);

(3) fishing crab traps in excess of legal trap numbers prescribed by a proclamation of the commission;

(4) fishing for crabs without obtaining the appropriate license, if required, as prescribed in this section; or

(5) theft of crabs or crab traps.


(a) Delegation of Authority. The commission delegates power and authority to the executive director to administer the Crab License Buyback Program.

(b) Twenty percent of commercial crab fisherman’s license and commercial crab fisherman’s license transfer fees shall be set aside to be used only for the purpose of buying back commercial crab fisherman’s licenses from a willing license holder.

(c) License buyback application period.

(1) The department will open license buyback bid application periods (hereinafter referred to as application) if available funds permit.

(2) The department shall establish during each application period a deadline for receipt of all applications.

(d) License buyback application requirements.

(1) The department shall consider all applications to the Crab License Buyback Program provided the applicants meet the following requirements:
A completed License Buyback Application form furnished by the department has been submitted to the Department by the application deadline;

The applicant is the owner of the license submitted for buyback; and

The applicant has submitted to the Department copies of all supplemental information as required in this subsection.

A completed License Buyback Application shall contain:

(A) full name of the applicant;

(B) current address of applicant’s residence;

(C) social security number of applicant;

(D) a copy of legal documentation that:

(i) documents applicant holds the sole rights and privileges to the license; or

(ii) documents that all members of a partnership or association, or each officer of a corporation, and the owner of a majority of a corporation’s corporate stock, are in agreement to apply to the license buyback program.

(E) a copy of current commercial crab fisherman’s license; and

(F) if required, the applicant’s bid offer, in U.S. dollars.

Department records will be used to verify all information supplied by or pertaining to the applicant’s history in the crab fishery and in cases where the applicant has not provided adequate information for proper consideration of the application.

(c) Crab license buyback criteria.

(1) The department may establish criteria each license year which will be used to determine qualifications for license buyback.

(2) The department may consider:

(A) duration of participation in fishery prior to enactment of Parks and Wildlife Code, §§ 78.101-78.114;

(B) amount of funds accumulated in the Crab License Buyback Account;

(C) number of commercial crab fisherman’s licenses in the fishery issued in the license year of the specific bid offer application period;

(D) bid offers from previous application periods;

(E) established open market prices for licenses; and

(F) other relevant factors.

Application Ranking Procedures.

(1) Ranking values will be assigned to all applications based on the above criteria.

(2) The Department will purchase licenses beginning with the highest ranking to the lowest.

(3) If bid offers are equally ranked, the Department will rank according to the ascending alphabetical order of the applicant’s last name.

(1) the department will notify each applicant in writing within 45 days of receipt of application regarding acceptance or rejection of application bid offer.

(2) Applicants whose bids are accepted must then notify the department of their intent to accept or reject the offer from the department within 15 days of the postmark of the notification letter sent by the department.

(3) The unsuccessful applicant may withdraw, resubmit, or amend an application for consideration during any future application periods.

(4) The department will continue to purchase in rank order as the buyback fund permits.

(b) Delegation of purchasing authority. The department may designate other qualified agents to purchase licenses on behalf of the department provided all purchased licenses are surrendered to the department and retired.

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 25, 1998.

TRD-9802751
Bill Harvey
Regulatory Coordinator
Texas Parks and Wildlife Department
Earliest possible date of adoption: April 12, 1998
For further information, please call: (512) 389-4642

Chapter 65. Wildlife

Subchapter A. Statewide Hunting and Fishing Proclamation

The Texas Parks and Wildlife Department proposes the repeal of §§65.33, 65.50, and 65.52; amendments to §§65.3, 65.9-65.11, 65.24, 65.26, 65.28, 65.31, 65.42, 65.46, 65.54, 65.71, and 65.72; and new §65.30, concerning the Statewide Hunting and Fishing Proclamation.

The amendment to §65.3, concerning Definitions, removes the crossbow from the definition of lawful archery equipment, although the crossbow remains a legal means; adds a definition of antler point; replaces the word “handicapped” with the word “disability”; and numbers the definitions to conform with the style sheet of the Texas Register. The amendment to §65.9, concerning Open Seasons: General Rules, rewords subsections (a)-(c) for clarification, eliminates subsection (d), which conflicts with provisions of the Parks and Wildlife Code, and eliminates provisions made redundant by the passage of House Bill 2542. Acts of the 75th Texas Legislature. The amendment to §65.10, concerning Possession of Wildlife Resources, alters subsection (a) to make reference “permanent residence” rather than “final destination,” which is no longer defined. Additional changes to the provisions of §65.10 may be proposed in a future rulemaking.

The department is conducting a series of public meetings to solicit public comment on the possible modification or elimination of the tagging requirements of Parks and Wildlife Code, Chapter 42. The amendment to §65.11, concerning Means and Methods, adds clarifying language to specify lawful methods and
There will be no effect on small businesses. There are no additional economic costs to persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as this agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Robert Macdonald (Wildlife (512) 389-4775), Ken Kurzawski (Inland Fisheries 389-4591), Paul Hammerschmidt (Coastal Fisheries 389-4650), David Sinclair (Wildlife Enforcement 389-4854), or Dennis Johnston (Aquatic Enforcement 389-4628), Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 or 1-800-792-1112.

Division 1. General Provisions

31 TAC §§65.3, 65.9–65.11, 65.24, 65.26, 65.28, 65.30, 65.31

The amendments and new section are proposed under the authority of Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983) which provides the Commission with authority to establish wildlife resource regulations for this state.

The amendments and new section affect Parks and Wildlife Code, Chapters 61.

§65.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms in this chapter shall have the meanings assigned in the Texas Parks and Wildlife Code.

(1) Agent - A person authorized by a landowner to act on behalf of the landowner. For the purposes of this chapter, the use of the term "landowner" also includes the landowner’s agent.

(2) Annual bag limit - The quantity of a species of a wildlife resource that may be taken from September 1 of one year to August 31 of the following year.

(3) Antlerless deer - A deer having no hardened antler protruding through the skin.

(4) Antler point - A projection on a deer antler that is at least one inch long, with the length exceeding the width at one inch or more of length.

(5) Artificial lure - Any lure (including flies) with hook or hooks attached that is man-made and is used as a bait while fishing.

(6) Bait - Something used to lure any wildlife resource.

(7) Baited area - Any area where minerals, vegetative material or any other food substances are placed so as to lure a wildlife resource to, on, or over that area.

(8) Bearded hen - A female turkey possessing a clearly visible beard protruding through the feathers of the breast.

(9) Buck deer - A deer having a hardened antler protruding through the skin.

(10) Cast net - A net which can be hand-thrown over an area.
(11) Coastal waters boundary - All public waters east and south of the following boundary are considered coastal waters: Beginning at the International Toll Bridge in Brownsville, thence northward along U.S. Highway 77 to the junction of Paredes Lines Road (F.M. Road 1847) in Brownsville, thence northward along F.M. Road 1847 to the junction of F.M. Road 106 east of Rio Hondo, thence westward along F.M. Road 106 to the junction of F.M. Road 508 in Rio Hondo, thence northward along F.M. Road 508 to the junction of F.M. Road 1420, thence northward along F.M. Road 1420 to the junction of State Highway 186 east of Raymondville, thence westward along State Highway 186 to the junction of U.S. Highway 77 near Raymondville, thence northward along U.S. Highway 77 to the junction of the Aransas River south of Woodsboro, thence eastward along the south shore of the Aransas River to the junction of the Aransas River Road at the Bonnie View boat ramp; thence northward along the Aransas River Road to the junction of F.M. Road 629; thence northward along F.M. Road 629 to the junction of F.M. Road 136; thence eastward along F.M. Road 136 to the junction of F.M. Road 2678; then northward along F.M. Road 2678 to the junction of F.M. Road 774 in Refugio, thence eastward along F.M. Road 774 to the junction of State Highway 35 south of Tivoli, thence northward along State Highway 35 to the junction of State Highway 185 between Bloomington and Seadrift, thence northwestward along State Highway 185 to the junction of F.M. Road 616 in Bloomington, thence northeastward along F.M. Road 616 to the junction of State Highway 35 east of Blessing, thence southward along State Highway 35 to the junction of F.M. Road 521 north of Palacios, thence northward along F.M. Road 521 to the junction of State Highway 36 south of Brazoria, thence southward along State Highway 36 to the junction of F.M. Road 2004, thence northward along F.M. Road 2004 to the junction of Interstate Highway 45 between Dickinson and La Marque, thence northwestward along Interstate Highway 45 to the junction of Interstate Highway 610 in Houston, thence east and northward along Interstate Highway 610 to the junction of Interstate Highway 10 in Houston, thence eastward along Interstate Highway 10 to the junction of State Highway 73 in Winnie, thence eastward along State Highway 73 to the junction of U.S. Highway 287 in Port Arthur, thence northward along U.S. Highway 287 to the junction of Interstate Highway 10 in Beaumont, thence eastward along Interstate Highway 10 to the junction of the Aransas River south of Woodsboro, thence westward along Interstate Highway 10 to the Texas State Line. The waters of Spindletop Bayou inland from the concrete dam at Russels Landing on Spindletop Bayou in Jefferson County; public waters north of the dam on Lake Anahuac in Chambers County; the waters of Taylor Bayou and Big Hill Bayou inland from the saltwater locks on Taylor Bayou in Jefferson County; Lakeview City Park Lake, West Guth Park Pond, and Waldron Park Pond in Nueces County; Galveston County Reservoir and Galveston State Park ponds #1-7 in Galveston County; Lake Burke-Crenshaw and Lake Nassau in Harris County; Fort Brown Resaca, Resaca de la Guerra, Resaca de la Palma, Resaca de los Cuates, Resaca de los Fresnos, Resaca Rancho Viejo, and Town Resaca in Cameron County; and Little Chocolate Bayou Park Ponds #1 and #2 in Calhoun County are considered coastal waters for purposes of this subchapter.

(12) Community fishing lake - All public impoundments 75 acres or smaller located totally within an incorporated city limits or a public park, and all impoundments of any size lying totally within the boundaries of a state park.

(13) Crab line - A baited line with no hook attached.

(14) Daily bag limit - The quantity of a species of a wildlife resource that may be lawfully taken in one day.

(15) Day - A 24-hour period of time that begins at midnight and ends at midnight.

(16) Dip net - A mesh bag suspended from a frame attached to a handle.

(17) Final destination for all wildlife resources - The permanent residence of a person possessing or receiving a wildlife resource or part of a wildlife resource; or a cold storage/processing facility, after the carcass of a wildlife resource has been finally processed.

(18) Fish -

(A) Game fish - Blue catfish, blue marlin, broadbill swordfish, brown trout, channel catfish, cobia, crappie (black and white), flathead catfish, Guadalupe bass, king mackerel, largemouth bass, longbill spearfish, pickerel, red drum, rainbow trout, sailfish, sauger, sharks, smallmouth bass, snook, Spanish mackerel, spotted bass, spotted seatrout, striped bass, tarpon, wahoo, walleye, white bass, white marlin, yellow bass, and hybrids or subspecies of the species listed in this subparagraph.

(B) Non-game fish - All species not listed as game fish, except endangered and threatened fish, which are defined and regulated under separate proclamations.

(19) Fishing - Taking or attempting to take aquatic animal life by any means.

(20) Fish length - That straight-line measurement (while the fish is lying on its side) from the tip of the snout (jaw closed) to the extreme tip of the tail when the tail is squeezed together or rotated to produce the maximum overall length.

(21) Fish species names - The names of fishes are those prescribed by the American Fisheries Society in the most recent edition of "A List of Common and Scientific Names of Fishes of The United States and Canada."

(22) Fully automatic firearm - Any firearm that is capable of firing more than one cartridge in succession by a single function of the trigger.

(23) Gaff - Any hand-held pole with a hook attached directly to the pole.

(24) Gear tag - A tag constructed of material as durable as the device to which it is attached. The gear tag must be legible, contain the name and address of the person using the device, and, except for saltwater trotlines, the date the device was set out.

(25) Gig - Any hand-held shaft with single or multiple points.

(26) Jug line - A fishing line with five or less hooks tied to a free-floating device.

(27) Lawful archery equipment - longbow, recurved bow, and compound bow.

(28) License year - The period of time for which an annual hunting or fishing license is valid.

(29) Muzzleloader - Any firearm that is loaded only through the muzzle.

(30) Natural bait - A whole or cut-up portion of a fish or shellfish or a whole or cut-up portion of plant material in its natural state, provided that none of these may be altered beyond cutting into portions.

(31) Permanent residence - One’s principal or ordinary home or dwelling place. This does not include a temporary abode or dwelling such as a hunting/fishing club, or any club house, cabin,
tent, or trailer house used as a hunting/fishing club, or any hotel, motel, or rooming house used during a hunting, fishing, pleasure, or business trip.

(32) Pole and line - A line with hook, attached to a pole. This gear includes rod and reel.

(33) Possession limit - The maximum number of a wildlife resource that may be lawfully possessed at one time.

(34) Purse seine (net) - A net with flotation on the corkline adequate to support the net in open water without touching bottom, with a rope or wire cable strung through rings attached along the bottom edge to close the bottom of the net.

(35) Sail line - A type of trotline with one end of the main line fixed on the shore, the other end of the main line attached to a wind-powered floating device or sail.

(36) Sand Pump - A self-contained, hand-held, hand-operated suction device used to remove and capture Callianassid ghost shrimp (Callichirus islagrande, formerly Callianassa islagrande) from their burrows.

(37) Seine - A section of non-metallic mesh webbing, the top edge buoyed upwards by a floatline and the bottom edge weighted.

(38) Silencer or sound-suppressing device - Any device that reduces the normal noise level created when the firearm is discharged or fired.

(39) Spear - Any shaft with single or multiple points, barbed or barbless, which may be propelled by any means, but does not include arrows.

(40) Spear gun - Any hand-operated device designed and used for propelling a spear, but does not include the crossbow.

(41) Spike-buck deer - A buck deer with no antler having a fork or branching point.

(42) Throwline - A fishing line with five or less hooks and with one end attached to a permanent fixture. Components of a throwline may also include swivels, snaps, rubber and rigid support structures.

(43) Trap - A rigid device of various designs and dimensions used to entrap aquatic life.

(44) Trawl - A bag-shaped net which is dragged along the bottom or through the water to catch aquatic life.

(45) Trotline - A nonmetallic main fishing line with more than five hooks attached and with each end attached to a fixture.

(46) Umbrella net - A non-metallic mesh net that is suspended horizontally in the water by multiple lines attached to a rigid frame.

(47) Upper-limb disability [handicap] - A permanent loss of the use of fingers, hand or arm in a manner that renders a person incapable of using a longbow, compound bow or recurved bow.

(48) Wildlife resources - All game animals, game birds, and aquatic animal life.

(49) Wounded deer - A deer leaving a blood trail.


(a) (No change.)

(b) [Seasons for game animals and game birds are closed during the hours between 1/2-hour before sunrise.]

[4b] No antlerless deer permit is required to take an antlerless deer [takes] during the archery-only open season, except on lands for which Managed Lands Deer permits have been issued.

[4d] Every game bird or game animal wounded by hunting and reduced to possession by the hunter must be killed immediately and become a part of the daily or annual bag limit.

[4c] The hunting of roosting turkey is unlawful.

§65.10. Possession of Wildlife Resources.

(a) For all wildlife resources taken for personal consumption and for which there is a possession limit (except migratory birds), the possession limit shall not apply after the wildlife resource has reached the possessor’s permanent residence and is finally [fully] processed.

(b) Proof of sex must remain with certain wildlife resources until the wildlife resource reaches its final destination and is finally [fully] processed.

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

(3) A person may give, leave, receive, or possess any species of legally taken wildlife resource, or a part of the resource, that is required to have a tag or permit attached or is protected by a bag or possession limit, if the wildlife resource is accompanied by a wildlife resource document from the person who killed or caught the wildlife resource. For deer, turkey, or antelope, a properly executed [the] wildlife resource document shall accompany the wildlife resource until it reaches its final destination. For all other wildlife resources, a properly executed wildlife resource document shall accompany the wildlife resource until it reaches the possessor’s permanent residence. The document must contain the following information:

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

(5) the location where the wildlife resource was killed or caught (name of ranch; area; lake, bay or stream; and county).

(d) It is a defense to prosecution if the person receiving the wildlife resource does not exceed any possession limit or possess a wildlife resource or a part of a wildlife resource that is required to be tagged if the wildlife resource or part of the wildlife resource is tagged.

§65.11. Lawful Means [and Methods].

It is unlawful to hunt [or fish for] any of the wildlife resources of this state except by the means [and methods] authorized by this section and as provided in §65.19 of this title (relating to Hunting Deer with Dogs) [chapter].

(1) Firearms.

(A) It is lawful to hunt game animals and game birds with any legal firearm, including muzzleloading weapons, except as specifically restricted in this section[chapter].

(B) (No change.)

(C) It is unlawful to use rimfire ammunition to hunt deer, antelope, or desert bighorn sheep [in counties where elk or antelope are game animals].

(D) (No change.)

(2) Archery.

(A)-(D) (No change.)

(E) Special archery-only seasons are restricted to lawful archery equipment only, except as provided in paragraph (3) of this section.
§65.24. Permits.

(a) (No change.)

(b) No person may hunt white-tailed deer, mule deer, desert bighorn sheep, or antelope[1, or elk] when permits are required unless that person has received from the landowner and has in possession a valid permit issued by the department.

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


(a) MLD permits may be issued only to a landowner who has a current WMP in accordance with §65.25 of this title (relating to Wildlife Management Plan) that specifies a harvest quota of buck and/or antlerless white-tailed deer or antlerless mule deer.

(b) An applicant may request the issuance of permits for antlerless-only[1, or buck-only] or both-sex harvest quotas.

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

(e) On all tracts of land for which both MLD buck permits and MLD antlerless permits have been issued for the harvest of white-tailed deer, and on properties for which the WMP specifies a harvest quota of zero for either sex:

(1) The bag limit shall be five white-tailed deer, no more than three bucks, regardless of the county bag limit;

(2) A hunter shall [may] use an [any] appropriate white-tailed deer tag from [on] his or her hunting license, regardless of the bag limit in the county provided the hunter also possesses an appropriate MLD permit for each deer taken; and

§65.28. Landowner Assisted Management Permit System (LAMPS).

(a)-(c) (No change.)

(d) All deer harvested on a tract of land for which LAMPS permits have been issued shall be tagged with the appropriate white-tailed deer tag from the hunting license of the person taking the deer.


(a) No person may hunt desert bighorn sheep without first attending an orientation conducted by the department during the year for which the permit is issued.

(b) Any person hunting desert bighorn sheep shall notify the department between 14 and 21 days prior to the date of the hunt to arrange for the tagging required by subsection (c) of this section. (c) Any person taking a desert bighorn sheep shall, within 72 hours of taking the sheep, ensure that the sheep is permanently tagged in one horn by a lawful representative of the department.

§65.31. Antlerless Mule Deer Permits.

(a) (No change.)

(b) No antlerless mule deer hunting permit is required for mule deer killed during an [the] archery-only open season in a county for which the bag limit during an archery-only season is [1, when bag limits are] designated as either sex.

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 March 2, 1998.

TRD-9803018

Bill Harvey

Regulatory Coordinator

Texas Parks and Wildlife Department

Earliest possible date of adoption: April 12, 1998

For further information, please call: (512) 389-4775

Division 1. Seasons and Bag Limits-General Provisions

31 TAC §65.33

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

The repeals, amendment, and new section are proposed under the authority of Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

The repeal affects Parks and Wildlife Code, Chapter 61.

§65.33. Elk Permits.

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.
Division 2. Seasons and Bag Limits-Hunting Provisions

31 TAC §§65.42, 65.46, 65.54

The amendments are proposed under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

The amendments affect Parks and Wildlife Code, Chapter 61. §65.42. Deer.

(a) (No change.)

(b) White-tailed deer. The open seasons and annual bag limits for white-tailed deer shall be as follows.

(1) (No change.)

(2) In Aransas, Atascosa, Bee, Calhoun, Cameron, Hidalgo, Live Oak, Nueces, Refugio, San Patricio, Starr, and Willacy counties, there is a general open season.

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

(C) Special Late General [Late Antlerless Only] Season. In the counties listed in this paragraph there is a special late general [late antlerless only] season for the take of antlerless and spike-buck deer only.

(i) (No change.)

(ii) Bag limit: four antlerless or spike-buck deer in the aggregate, no more than two of which may be spike bucks.

(3) In Brooks, Dimmit, Duval, Frio, Jim Hogg, Jim Wells, Kenedy, Kinney (south of U.S. Highway 90), Kleberg, LaSalle, Maverick, McMullen, Medina (south of U.S. Highway 90), Uvalde (south of U.S. Highway 90), Val Verde (that southeastern portion located both south of U.S. Highway 90 and east of Spur 239), Webb, Zapata, and Zavala counties, there is a general open season.

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

(C) Special Late General [Late Antlerless Only] Season. In the counties listed in this paragraph there is a special late general [late antlerless only] season for the take of antlerless and spike-buck deer only.

(i) (No change.)

(ii) Bag limit: five antlerless or spike-buck deer in the aggregate, no more than three of which may be spike bucks.

(4) No person may take or attempt to take more than one buck deer per license year from the counties, in the aggregate, listed within this paragraph, except as authorized under the provisions of §65.26 of this title (relating to Managed Land Deer Permits).

(A) (No change.)

(B) In Brazoria, Fort Bend, Goliad (south of U.S. Highway 59), Harris, Jackson (south of U.S. Highway 59), Matagorda, Victoria (south of U.S. Highway 59), and Wharton (south of U.S. Highway 59) counties, there is a general open season.

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

(iii) During the first 23 days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD or LAMPS permits have been issued for the tract of land. If MLD or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. After the first 23 days, antlerless deer may be taken only by MLD antlerless permits or LAMPS permits.

(C)-(E) (No change.)

(F) In Dallam, Hartley, Moore, Oldham, Potter, and Sherman counties, there is a general open season.

(i)-(iii) (No change.)

(G) In Nacogdoches, Panola, Sabine, San Augustine and Shelby counties, there is a general open season.

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

(iii) From Thanksgiving Day through the Sunday immediately following Thanksgiving Day, during the first two days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD or LAMPS permits have been issued for the tract of land. If MLD or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the first Saturday in November through Thanksgiving Day, and from the Sunday immediately following Thanksgiving Day through the first Sunday in January, antlerless deer may be taken only by MLD antlerless deer permits or LAMPS permits. On National Forests, Corps of Engineers, Sabine River Authority and Trinity River Authority lands, antlerless deer may be taken only by MLD antlerless permits.

(H) In Austin, Bastrop, Bell (east of Interstate 35), Caldwell, Colorado, Comal (east of Interstate 35), Crane, De Witt, Ector, Ellis, Falls, Fannin, Fayette, Goliad (north of U.S. Highway 59), Gonzales, Guadalupe, Hays (east of Interstate 35), Hunt, Jackson (north of U.S. Highway 59), Karnes, Kaufman, Lavaca, Lee, Loving, Midland, Milam, Rains, Travis (east of Interstate 35), Upton (that portion located north of U.S. Highway 67 and that area located both south of U.S. Highway 67 and west of state highway 349), Victoria (north of U.S. Highway 59), Waller, Ward, Washington, Wharton (north of U.S. Highway 59), Williamson (east of Interstate 35), and Wilson counties, there is a general open season.

(i)-(iii) (No change.)

(iv) Special Requirement: In Austin, Colorado, Fayette, and Lavaca counties, the take of buck deer is limited to bucks having at least eight antler points and spike bucks having at least one antler of at least four inches in length.

(5) In Angelina, Chambers, Hardin, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, and Tyler counties, there is a general open season.

(A) (No change.)

(B) Bag limit: four [three] deer, no more than two bucks and no more than two antlerless.

(C) (No change.)
§65.46. Squirrel: Open Seasons, Bag, and Possession Limits.

(a) (No change.)

(b) In Anderson, Angelina, Bowie, Camp, Cass, Chambers, Cherokee, Delta, Fannin, Franklin, Freestone, Galveston, Gregg, Hardin, Harris, Harrison, Henderson, Hopkins, Houston, Hunt, Jasper, Jefferson, Lamar, Leon, Liberty, Limestone, Marion, Montgomery, Morris, Nacogdoches, Navarro, Newton, Orange, Panola, Polk, Rains, Red River, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Trinity, Tyler, Upshur, Van Zandt, Walker, and Wood counties, there is a general open season for squirrel.

(1) Open season: May 1 - May 31 and October 1 through the first Sunday in February.

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

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

§65.54. Game Birds: Open Seasons and Bag Limits.

Except as provided in Subchapter K of this chapter (relating to Raptor Proclamation), it is unlawful to hunt a game bird at any other time than during the open seasons provided in this chapter, or to take more than the daily bag limits, or to have in possession a game bird taken at any time other than during the open seasons. On the first day of any open season the possession limit is the same as the daily bag limit.

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 March 2, 1998.

TRD-9803021
Bill Harvey
Regulatory Coordinator
Texas Parks and Wildlife Department

Earliest possible date of adoption: April 12, 1998
For further information, please call: (512) 389-4775

31 TAC §65.50, §65.52

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

The repeals and amendments are proposed under Parks and Wildlife Code, Chapter 61. Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

The repeals affect Parks and Wildlife Code, Chapter 61.

§65.50. Elk: Open seasons and annual bag limits.

§65.52. Aoudad Sheep: Open seasons and annual bag limits.

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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Bill Harvey
Regulatory Coordinator
Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775

31 TAC §65.71, §65.72

The amendments are proposed under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.
The amendments affect Parks and Wildlife Code, Chapter 61.

§65.71. Reservoir Boundaries.
Reservoir boundaries for daily bag, possession, and length limits.

(1)-(12) (No change.)

(13) Lake O’the Pines in Camp, Marion, Morris, and Upshur counties comprises all impounded waters of Big Cypress Creek from Ferrell’s Bridge dam (the Lake O’the Pines dam) upstream to U.S. Highway 259 bridge and Big Cypress Creek from Ferrell’s Bridge dam downstream to Ferrell’s Bridge crossing.

(14) (No change.)

(15) Lake Pat Mayse in Lamar County comprises all impounded waters of Sanders Creek from Pat Mayse Lake Dam upstream to County Road 35610 and Sanders Creek from Pat Mayse Lake Dam downstream to F.M. Road 197.

(16)[(15)] Lake Somerville in Burleson, Lee, Milam, and Washington counties comprises all impounded waters of Yegua, East Yegua, and Middle Yegua Creeks upstream from the Lake Somerville dam.

(17)[(16)] Lake Travis in Burnet and Travis counties comprises all impounded waters of the Colorado River from the Mansfield dam (Lake Travis dam) upstream to the Max Starcke dam (Lake Marble Falls dam) including the Pedernales River upstream to the Hammetts Crossing-Hamilton Pool Road bridge.

(18)[(17)] Purtis Creek State Park Lake in Henderson and Van Zandt counties comprises all waters within the Purtis Creek State Park boundaries.

§65.72. Fish.

(a) (No change.)

(b) Bag, possession, and length limits.

(1) (No change.)

(2) There are no bag, possession, or length limits on game or non-game fish, except as provided in these rules.

(A) (No change.)

(B) Statewide daily bag and length limits shall be as follows:

Figure 1: 31 TAC §65.72(b)(2)(B)

(C) Exceptions to statewide daily bag, possession, and length limits shall be as follows:

(i) The following is a figure:

Figure 2: 31 TAC §65.72(b)(2)(C)(i)

(ii) (No change.)

(c) Devices, means and methods.

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

(5) Device restrictions.

(A)-(D) (No change.)

(E) Juguine. For use in fresh water only. Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a jugline. It is unlawful to use a jugline:

(i)-(iii) (No change.)

(iv) in Lake Bastrop in Bastrop County, [Bell Street Lake in Tom Green County], Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Dixieland Reservoir in Cameron County, [and] Gibbons Creek Reservoir in Grimes County, and Tankersley Reservoir in Titus County.

(F) Lawful archery equipment. Only non-game fish may be taken with lawful archery equipment or crossbow.

(G)-(H) (No change.)

(I) Pole and line.

(i) (No change.)

(ii) Game and non-game fish may be taken by pole and line, except that in the Guadalupe River in Comal County from the second bridge crossing on River Road upstream to the easternmost bridge crossing on F.M. Road 306, rainbow and brown trout may not be retained when taken by any method except artificial lures. Artificial lures cannot contain or have attached either whole or portions, living or dead, of organisms such as fish, crayfish, insects (grubs, larvae, or adults), or worms, or any other animal or vegetable material, or synthetic scented materials. This does not prohibit the use of artificial lures that contain components of hair or feathers, it is an offense to possess rainbow and brown trout while fishing with any other device in that part of the Guadalupe River defined in this paragraph.

(J)-(O) (No change.)

(P) Throwline. For use in fresh water only.

(i) (No change.)

(ii) It is unlawful to use a throwline in Lake Bastrop in Bastrop County, [Bell Street Lake in Tom Green County], Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Dixieland Reservoir in Cameron County, [and] Gibbons Creek Reservoir in Grimes County, and Tankersley Reservoir in Titus County.

(Q) Trotline.

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

(iii) In fresh water, it is unlawful to use a trotline:

(I) (No change.)

(II) in Gibbons Creek Reservoir in Grimes County, Lake Bastrop in Bastrop County, Fayette County Reservoir in Fayette County, Pinkston Reservoir in Shelby County, Lake Bryan in Brazos County, Bellwood Lake in Smith County, Dixieland Reservoir in Cameron County, [Bell Street Lake in Tom Green County, and] Boerne City Park Lake in Kendall County, and Tankersley Reservoir in Titus County.

(iv) (No change.)

(R) (No change.)

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

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Bill Harvey
Regulatory Coordinator
Texas Parks and Wildlife Department

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23 TexReg 2740  March 13, 1998  Texas Register
Subchapter H. Public Lands Proclamation

31 TAC §§65.190, 65.193, 65.200

The Texas Parks and Wildlife Department proposes amendments to §§65.190, 65.193, and 65.200, concerning Public Lands Proclamation. The amendment to §65.190 adds, deletes, or renames various units of the public hunting system, and provides an access fee for equestrians to areas leased from the U.S. Army Corps of Engineers. The amendment is necessary to maintain a current and accurate list of wildlife management areas and public hunting lands to which the provisions of Subchapter H apply, and to provide additional opportunity for recreational use of public lands. The amendment to §65.193 adds a reference to crossbows, expands the list of species that may be hunted during an extended hunt, and requires an access permit for equestrians on areas leased from the U.S. Army Corps of Engineers. The amendment is necessary to implement provisions of House Bill 2542, Acts of the 75th Texas Legislature and to pursue Commission policy by offering increased hunting and recreational opportunity wherever possible. The amendment to §65.200 deletes the 24-hour limitation on the emplacement of temporary blinds on certain wildlife management areas. The amendment is necessary to standardize the time limits for the emplacement of temporary blinds on all wildlife management areas where they are permitted.

Robert Macdonald, Wildlife Division regulations coordinator, has determined that for each of the first five years that the proposed rules are in effect, there will be no fiscal implications to state or local governments as a result of enacting or administering the proposed amendment.

Mr. Macdonald also has determined that for each of the first five years the amendment and new rule as proposed are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be an accurate and current list of public hunting areas and wildlife management areas on which the provisions of Subchapter H apply, increased recreational opportunity for users of the public hunting system, and uniformity in the regulations governing the emplacement of temporary blinds on public lands.

There will be no effect on small businesses. There are no additional economic costs to persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as this agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2001, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Herb Kothmann, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4770 or 1-800-792-1112.

The amendments are proposed under Parks and Wildlife Code, Chapter 81, Subchapter E, which provides the Parks and Wildlife Commission with authority to establish an open season on wildlife management areas and public hunting lands and authorizes the executive director to regulate numbers, means, methods, and conditions for taking wildlife resources on wildlife management areas and public hunting lands; Chapter 12, Subchapter A, which provides that a tract of land purchased primarily for a purpose authorized by the code may be used for any authorized function of the department if the commission determines that multiple use is the best utilization of the land’s resources; and Chapter 62, Subchapter D, which provides authority, as sound biological management practices warrant, to prescribe seasons, number, size, kind, and sex and the means and method of taking any wildlife.

The amendments affect Parks and Wildlife Code, Chapter 81, Subchapter E; Chapter 12, Subchapter A; and Chapter 62, Subchapter D.

§65.190. Application.

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

(c) On U.S. Army Corps of Engineer Lands designated as public hunting lands (Aquilla, Cooper, [Cypress Creek], Dam B, Granger, Pat Mayse, Ray Roberts, Somerville, and White Oak Creek WMAs), persons other than hunters and equestrian users are exempt from requirements for an access permit.

(d) (No change.)

(e) Public hunting lands include, but are not limited to, the following:

(1)-(7) (No change.)

[8] [Blue Elder Swamp WMA (Unit 712);]

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[8] [Blue Elder Swamp WMA (Unit 712);]

[8] [Blue Elder Swamp WMA (Unit 712);]
(27)[(28)] Keechi Creek WMA (Unit 726);
(29)[(29)] Kerr WMA (Unit 756);
[(30) Lands Within a Desert Bighorn Sheep Cooperative Unit:]
(29)[(34)] Lower Neches WMA (Unit 728) - includes Old River Unit and Nelda Stark Unit;
(30)[(42)] Mad Island WMA (Unit 729) - includes Matagorda Peninsula Unit (Unit 1430);
(31) Mason Mountain WMA;
(32)[(34)] Matador WMA (Unit 702);
(33)[(44)] Matagorda Island State Park and WMA (Unit 8134 [222]);
(34)[(45)] M. O. Neaslooney WMA;
(35)[(46)] Moore Plantation WMA (Unit 902);
(36)[(42)] North Toledo Bend WMA (Unit 615);
(37)[(48)] Old Sabine Bottom WMA (Unit 732);
(38)[(49)] Old Tunnel WMA;
(39)[(40)] Pat Mayse WMA (Unit 705);
(40)[(41)] Peach Point WMA (Unit 721) - includes Bryan Beach Unit (Unit 8075 [3475]);
(41)[(42)] Ray Roberts WMA (Unit 501);
(42) Redhead Pond WMA;
(43) Richland Creek WMA (Unit 703);
(44) Sam Houston National Forest WMA (Unit 905);
[(45) Sheldon State Park and WMA (Unit 7162);]
(45)[(46)] Sierra Diablo WMA (Unit 767);
(46)[(47)] Somerville WMA (Unit 711);
(47)[(48)] Tawakoni WMA (Unit 708);
(48)[(49)] Walter Buck WMA (Unit 757);
(49) Welder Flats WMA;
(50) White Oak Creek WMA (Unit 727); and
(51) Other numbered units of public hunting lands.

§65.193. Access Permit Required and Fees.

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

(c) Annual Public Hunting (APH) Permit and Limited Public Use (LPU) Permit.

(1) (No change.)

(2) (No change.)

(3) The APH permit is required of each person 17 years of age or older who enters the Alabama Creek, Bannister, Caddo, Moore Plantation, or Sam Houston National Forest WMAs and possesses a centerfire or muzzleloading rifle or handgun, a shotgun with shot larger than #4 lead, or lawful archery equipment or crossbow with broadhead hunting point; however, a person 17 years of age or older may enter these units with other legal devices for hunting as defined in this subchapter and take specified legal wildlife resources provided the person possesses a LPU permit.

(4) The permits required under paragraphs (1) - (3) of this subsection are not required for:

(A) persons who enter on United States Forest Service lands designated as a public hunting area (Alabama Creek, Bannister, Caddo, Moore Plantation, and Sam Houston National Forest WMAs) or any portion of Units 902 and 903 for any purpose other than hunting; [as]

(B) persons who enter on U.S. Army Corps of Engineers lands (Aquilla, Cooper, [Cypress Creek], Dam B, Granger, Pat Mayse, Ray Roberts, Somerville, and White Oak Creek WMAs) designated as public hunting lands for purposes other than hunting or equestrian use; or [ -]

(C) persons who enter Caddo Lake State Park and Wildlife Management Area and do not hunt or enter upon the land.

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

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

(j) The fees for special and regular permits for hunting, exotic mammal, pronghorn antelope, javelina, turkey, coyote, and alligator are:

(1) standard period [deer, exotic mammal, pronghorn antelope, javelina, turkey, coyote, alligator] - $50;

(2) [deer, exotic mammal, alligator] - extended period - $100;

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

(k)-(o) (No change.)

§65.200. Construction of Blinds.

(a) (No change.)

(b) The use of temporary blinds is permitted only if such structures are not:

(1) (No change.)

(2) emplaced longer than 72 hours [[24 hours maximum on the Alabama Creek, Bannister, Caddo, Moore Plantation, and Sam Houston National Forest WMAs]]; or

(3) (No change.)

(c) (No change.)

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

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Bill Harvey
Regulatory Coordinator
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

Subchapter A. Statewide Hunting and Fishing Proclamation

Division 3. Seasons and Bag Limits; Fishing Provisions

31 TAC §65.78

The Texas Parks and Wildlife Department proposes an amendment to §65.78, concerning Crabs and Ghost Shrimp. Respon-

The proposed change adds language "for bait purposes only" to the 5.0% tolerance limit regarding possession of undersize crabs; establishes new provisions for marking commercial crab traps and crab lines, and adds the option of using untreated steel wire (20-gauge or smaller) in place of jute or sisal twine, or using a hinged door over a cut out in a crab trap, as requirements for equipping crab traps with degradable panels.

Following implementation of the degradable panel rules in September 1997, industry members recommended testing some form of degradable wire as an alternative method of installing degradable panels in their traps. Department testing indicates that untreated steel wire of 20-gauge or smaller would alleviate the crab fishermen’s concerns while still providing for an adequate degradable panel. Additionally, a hinged “door” installed over the degradable panel opening is currently in use by some crab fishermen. Its design meets the requirements of a degradable panel. New language allows for this option to be used by crab fishermen in their traps. The degradable panel portion of the proclamation is recommended to be effective as soon as possible after adoption by the Commission.

Theft of traps and crabs from traps has been a significant and persistent concern of commercial crab fishermen. Passage of House Bill 2542 by the 75th Texas Legislature, which authorizes the Texas Parks and Wildlife Commission to establish a license limitation system for the commercial crab fishery, including creation of a commercial crab fisherman’s license, provided the opportunity to develop an effective marking system that would minimize the opportunity for theft while enhancing law enforcement. This marking system as proposed links directly to establishment of a commercial crab fisherman’s license and was approved by the industry work group which helped develop the license limitation package. In addition, to minimize the opportunity for theft, the new rules establish that traps or crab lines marked by a commercial crab fisherman’s license plate number may be run only by an individual in a boat bearing the same commercial crab fisherman’s license plate number. Addition of the restriction requiring the 5.0% tolerance of undersize crabs to be used for bait purposes only, clarifies the original intent of the 5.0% tolerance provision.

Robin Riechers, staff economist, has determined that for each of the first five years that the rules as proposed are in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the rules.

Mr. Riechers also has determined that for each of the first five years the rules as proposed are in effect the public benefit anticipated as a result of administering the rule as proposed will be the development of a more efficient and economically stable crabbing industry, thus maximizing the social and economic benefits to the state.

There will be some effects on small businesses and individuals required to comply with the new rule. These may be additional costs associated with the license fees, gear modifications, and other program aspects, but in the long-term both individual efficiency and profits should rise as stock abundance increases.

License Fees: The legislatively mandated fees for a newly established commercial crab fisherman’s license will have positive economic impacts on crab fishers whose past annual license(s) and crab trap tag expenditures exceed the cost of the new license fee and will have negative impacts on those crab fishers whose past annual license(s) and crab trap tag expenditures did not exceed the cost of the new license fee. The distribution of these types of crab fishers is not known.

Commercial Crab Fishing Gear Marking: There will be some minimal costs associated with individuals complying with the new gear marking requirements. However, since the marking requirements will enhance enforcement, thereby reducing the opportunity for theft of traps and crabs, there will be positive economic benefits due to a reduction in lost or stolen gear and crabs.

Degradable Panel Options: There will be some small costs associated with individuals complying with the new degradable panel options. The new options should, however, minimize reported premature degradation of the panel using the twine option, thereby reducing premature loss of crabs from actively fishing traps.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedures Act, Government Code, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

Comments on the proposed rule may be submitted to Paul Hammerschmidt, Coastal Fisheries Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4650 or 1-800-792-1112 extension 4650.

The amendment is proposed under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the commission with authority to establish wildlife resource regulations for this state.

The amendment will affect Parks and Wildlife Code, Chapter 61.

§65.78. Crabs and Ghost Shrimp.

(a) Bag, possession and size limits.

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

(3) It is unlawful to:

(A) (No change.)

(B) possess blue crabs less than five inches in width, (measured across the widest point of the body from tip of spine to tip of spine) except that not more than 5.0%, by number, of undersized crabs may be possessed for bait purposes only, if placed in a separate container at the time of taking;

(C)-(F) (No change.)

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

(d) Devices, means and methods.

(1) (No change.)

(2) Only the following means and methods may be used for taking crabs:

(A) Crab line. It is unlawful to fish a crab line for commercial purposes that is not marked with a floating white buoy not less than six inches in height, six inches in length and six inches in
width bearing the commercial crab fisherman’s license plate number in letters of a contrasting color at least two inches high attached to the end fixtures.

(B) Crab trap. It is unlawful to:

(i) (iii) (No change.)

(iv) fish a crab trap that:

(I)-(II) (No change.)

(III) is not equipped with a degradable panel.

A trap shall be considered to have a degradable panel if one of the following methods is used in construction of the trap:

(-a-) the trap lid tie-down strap is secured to the trap [at one end] by a [simple] loop of untreated jute twine (comparable to Lehigh brand #530) or sisal twine (comparable to Lehigh brand #390). The trap lid must be secured so that when the twine degrades, the lid will no longer be securely closed; or

(-b-) the trap lid tie-down strap is secured to the trap by a loop of untreated steel wire with a diameter of no larger than 20 gauge. The trap lid must be secured so that when the wire degrades, the lid will no longer be securely closed; or

(-c-) [(-d)] the trap contains at least one sidewall, not including the bottom panel, with a rectangular opening no smaller [in either dimension] than three inches by six inches. Any obstruction placed in this opening may not be secured in any manner except:

(-1-) it may be laced, sewn, or otherwise obstructed by a single length of untreated jute twine (comparable to Lehigh brand #530) or sisal twine (comparable to Lehigh brand #390) knotted only at each end and not tied or looped more than once around a single mesh bar. When the twine degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-2-) it may be laced, sewn, or otherwise obstructed by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the wire degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-3-) the obstruction may be loosely hinged at the bottom of the opening by no more than two untreated steel hog rings and secured at the top of the obstruction in no more than one place by a single length of untreated jute twine (comparable to Lehigh brand #530), sisal twine (comparable to Lehigh brand #390), or by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the twine or wire degrades, the obstruction will hinge downward and the opening in the sidewall of the trap will no longer be obstructed.

(v) (No change.)

(vi) [([iii])] fish a crab trap for commercial purposes that is not marked with a floating white buoy bearing the commercial crab fisherman’s license plate number in letters of a contrasting color at least two inches high attached to the crab trap;

(vii) [([iv])] fish a crab trap that is marked with a buoy bearing a commercial crab fisherman’s license plate number other than the commercial crab fisherman’s license plate number displayed on the crab fishing boat;

(viii) [([vii])] fish a crab trap for non-commercial purposes without a floating white buoy not less than six inches in height, six inches in length, and six inches in width, bearing a two-inch wide center stripe of contrasting color, attached to the crab trap;

(ix) [([vi])] fish a crab trap in public salt waters without a valid gear tag. Gear tags must be attached within 6 inches of the buoy and are valid for 30 days after date set out.

(x) [([v])] fish a crab trap within 200 feet of a marked navigable channel in Aransas County; and in the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine Mile Point, past the town of Rockport to a point at the east end of Talley Island including that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula or possess, use or place more than three crab traps in waters north and west of Highway 146 where it crosses the Houston Ship Channel in Harris County;

(xi) [([xi])] remove crab traps from the water or remove crabs from crab traps during the period from 30 minutes after sunset to 30 minutes before sunrise;

(xii) [([xii])] place a crab trap or portion thereof closer than 100 feet from any other crab trap, except when traps are secured to a pier or dock;

(xiii) [([xiii])] fish a crab trap in public waters that is marked with a buoy made of a plastic bottle(s) of any color or size; or

(xiv) [([xiv])] use or place more than three crab traps in public waters of the San Bernard River north of a line marked by the boat access channel at Bernard Acres.

(C)-(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 February 25, 1998.

TRD-9802750
Bill Harvey
Regulatory Coordinator
Texas Parks and Wildlife Department
Earliest possible date of adoption: April 12, 1998
For further information, please call: (512) 389-4642

Chapter 69. Resource Protection

Subchapter F. Health Certification of Native Shellfish

31 TAC §69.75, §69.77

The Parks and Wildlife Department proposes new §69.75 and §69.77, concerning Health Certification of Native Shellfish. Proposed new §69.75 proposes definitions for the terms “certified inspector,” “manifestations of disease,” “disease,” “disease-free,” “private facility,” “quarantine condition,” “waste,” and “water in the state.” Proposed new §69.77 requires persons in possession of native penaeid shrimp for aquaculture or scientific research purposes to quarantine their facility if they observe man-
ifestations of disease. It also allows such persons to choose between requesting an inspection from a "certified inspector" or submitting samples of shrimp.

Robin Riechers, staff economist, has determined that during the first five years these sections as proposed are in effect there will be fiscal implications to state government as a result of administering and enforcing the sections. However, the extent of this effect is not determinable at this time. There will be no fiscal implications for units of local government.

Mr. Riechers also has determined that for the first five years these sections as proposed are in effect The public benefit anticipated as a result of enforcement of and compliance with the sections will be increased protection of aquatic animal life from depletion due to disease.

The rules as proposed will not have an adverse economic impact on small businesses or individuals because currently there are no small businesses or individual aquaculturists deriving a significant portion of their income from the culture of native penaeid shrimp.

TPWD has not filed a local impact statement with the Texas Employment Commission as this agency has determined that the sections as proposed will not impact local economies.

A Takings Impact Assessment was performed for these rules pursuant to the requirements of Government Code, §2007.043. The stated purpose of these rules is to protect wild native populations of shellfish from depletion due to disease introduced by cultured stocks. Proliferation and enforcement of these will not place a burden on private real property because they do not restrict or limit a right that would otherwise exist in the absence of the rules.

Written comments on the proposed rules may be submitted to Joedy Gray, Inland Fisheries Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744. Comments may also be faxed to Mr. Gray at (512) 389-4388. Written or faxed comments must be received no later than 5:00 p.m., Monday, April 13, 1998 in order to be considered.

These new sections are proposed under Chapters 61 and 77 of the Texas Parks and Wildlife Code. Section 61.052(b) of the Texas Parks and Wildlife Code provides the Commission with the power to regulate the means, methods and places in which it is lawful to possess aquatic animal life, §61.055 authorizes the Commission to amend its proclamations to prevent depletion of aquatic animal life or at any time it finds the facts warrant a change, and §77.007 authorizes the Commission to regulate the possession of shrimp.

The proposed amendments affect Texas Parks and Wildlife Code §61.052, 61.055 and 77.007.

§69.75. Definitions.

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

(1) Certified inspector - An employee of the Texas Parks and Wildlife Department or the Texas A&M Sea Grant College Program who has satisfactorily completed a department approved course in clinical analysis.

(2) Disease - contagious pathogens or injurious parasites which may be a threat to the health of natural populations of aquatic organisms.

(3) Disease-Free - a status based on the results of an examination conducted by a department approved shellfish disease specialist that certifies a group of aquatic organisms as being free of disease.

(4) Manifestations of disease - manifestations of disease include, but are not limited to, one or more of the following: heavy or unusual predator activity, empty guts, emaciation, rostral deformity, digestive gland atrophy or necrosis, gross pathology of shell or underlying skin typical of viral infection, fragile or atypically soft shell, gill fouling, or gill discoloration.

(5) Private facility - a pond, tank, cage or other structure capable of holding native shellfish in confinement wholly within or on private land or water or wholly within or on permitted public land or water.

(6) Quarantine condition - confinement of native penaeid shrimp such that neither the shrimp nor the water in which they are or were maintained comes into contact with other fish or shellfish.

(7) Waste - waste shall have the same meaning as in Chapter 26, §26.001(6) of the Texas Water Code.

(8) Water in the state - water in the state shall have the same meaning as in Chapter 26, §26.001(5) of the Texas Water Code.

§69.77. Health Certification of Native Shellfish.

(a) Any person in possession of native penaeid shrimp stocks held on a private facility for the purpose of aquaculture or scientific research and who observes one or more manifestations of disease shall:

(1) immediately quarantine the private facility, notify the department and request an inspection from a department certified inspector; or

(2) immediately quarantine the private facility, notify the department and submit samples of the affected shrimp to a department approved disease specialist for analysis. Results of the required analyses shall be forwarded to the department immediately upon receipt.

(b) Upon receiving a request from a permit holder under subsection (a), the department certified inspector shall inspect the private facility, complete an inspection report provided by the department and notify the department and the permit holder of the results.

(c) A private facility quarantined under subsection (a) shall remain under quarantine condition until the department removes the quarantine in writing or authorizes in writing an appropriate disposal method based on the results of the required analyses.

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 25, 1998.

TRD-9802749
Bill Harvey
Regulatory Coordinator
Texas Parks and Wildlife Department

Earliest possible date of adoption: April 12, 1998

For further information, please call: (512) 389-4642

TITLE 34. PUBLIC FINANCE
Part I. Comptroller of Public Accounts

Chapter 9. Property Tax Administration

Subchapter C. Appraisal District Administration

34 TAC §9.415

The Comptroller of Public Accounts proposes an amendment to §9.415, concerning applications for property tax exemptions. This rule is being amended to add a new model form for application for water conservation initiatives property tax exemption from Senate Joint Resolution 45, 75th Legislature, 1997, effective January 1, 1998.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect, there will be no fiscal impact on the state or units of local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect, it would benefit the public by providing them with a new application form for property tax exemption allowed for water conservation initiatives. There would be no anticipated significant economic cost to the public. The rule would have no fiscal implications to small businesses.

Comments on the proposal may be submitted to Larllyn K. Reissig, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

This amendment is proposed under the Tax Code, §11.43(f), which requires the comptroller to prescribe the contents and form for each kind of property tax exemption.


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

(c) The [amended] model forms in paragraphs (1)-(21) [and (22)] of this subsection and the new model form in paragraph (22) of this subsection are adopted by reference by the Comptroller of Public Accounts. Copies of these forms are available for inspection at the office of the Texas Register or can be obtained from the Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528. Copies may also be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621.

(1)-(19) (No change.)

(20) Application for Cotton Stored in a Warehouse (Form 50-245) [and]

(21) Application(s) for Community Housing Development Organizations Improving Property for Low-Income and Moderate-Income Housing (Form 50-263 and Form 50-264); and

(22) Application for Water Conservation Initiatives Property Tax Exemption (Form 50-270).

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 26, 1998.

TRD-980288

Martin Cherry
Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: April 12, 1998

For further information, please call: (512) 463-3699

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Part IV. Employees Retirement System of Texas

Chapter 85. Flexible Benefits

34 TAC §§85.1, 85.3, 85.7, 85.9

The Employees Retirement System of Texas proposes amendments to §§85.1, 85.3, 85.7, and 85.9, relating to the Flexible Benefits Program. The amendments are being proposed to allow participants more opportunities to make mid-term changes to their flexible benefits elections and to acknowledge the role of the Family and Medical Leave Act.

William S. Nail, General Counsel, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Nail also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be that the Flexible Benefits Program will be enhanced, providing more meaningful benefits to state employees. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rules may be submitted to William S. Nail, General Counsel, Employees Retirement System of Texas, P. O. Box 13207, Austin, Texas 78711-3207.

The amendments are proposed under the Insurance Code, Article 3.50-2, §4A, which provides the Board of Trustees with the authority to promulgate rules consistent with the Code.

The Insurance Code, Article 3.50-2 is affected by these proposed amendments.

§85.1. Introduction and Definitions.

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

(c) Definitions. The following words and terms when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise, and wherever appropriate, the singular includes the plural, the plural includes the singular, and the use of any gender includes the other gender.

(1) - (31) (No change.)

(32) Spouse - The person to whom the participant is married. Spouse does not include a person separated from the participant under a decree of divorce, or annulment.

(33) - (35) (No change.)

§85.3. Eligibility and Participation.

(a) (No change.)

(b) Health care reimbursement plan.
Eligibility.

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

(C) An employee whose employment has been terminated, voluntarily or involuntarily except for those persons not eligible pursuant to subparagraph (A) of this paragraph, and who has health insurance continuation coverage under the Public Health Services Act on September 1, may elect to participate in a health care reimbursement account during annual enrollment. A formal election must be made on a TexFlex election form prior to the beginning of a new plan year. Eligibility to participate is contingent upon pre-payment, on a monthly or annual basis, of the elected amount, plus a 2.4% service charge on the elected amount, plus the administrative fee for the plan year. Payments are due on the first day of each month and must be received no later than the 30th day of the month. Failure to pay will automatically cancel enrollment and future eligibility.

(2) (No change.)

(3) Duration of participation.

(A) (No change.)

(B) An employee returning to active duty from an approved leave of absence without pay or transferring from one state agency or institution to another or between an agency and an institution of higher education as defined in these rules, within the same plan year, must retain the election in existence on the last active duty date or the date of transfer for the remainder of the plan year unless as described in paragraph (3)(D) of this subsection.

(C) (No change.)

(D) Notwithstanding any provision to the contrary in this Plan, if a participant goes on a qualifying unpaid leave under the Family and Medical Leave Act of 1993 (FMLA), to the extent required by the FMLA, the Plan Administrator will continue to maintain the participant’s health care reimbursement account on the same terms and conditions as though he were still an active employee (i.e., the Plan Administrator will continue to provide benefits to the extent the employee opts to continue his coverage). If the employee opts to continue his coverage, the employee may pay his share of the premium in the same manner as a participant on non-FMLA leave, including with after-tax dollars while on leave or the employee may be given the option to pre-pay all or a portion of his share of the premium for the expected duration of the leave on a pre-tax salary reduction basis out of his pre-leave compensation by making a special election to that effect prior to the date such compensation would normally be made available to him (provided, however, that pre-tax dollars may not be utilized to fund coverage during the next plan year). Upon return from such leave, the employee will be permitted to reenter the Plan on the same basis the employee was participating in the Plan prior to his leave, or as otherwise required by the FMLA.

§85.7. Enrollment.

(a) Election of Benefits.

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

(4) An election to participate in a reimbursement plan must be for a specified dollar amount plus the administrative fee and for eligible terminated employees an addition 2.4% service charge on the elected amount for continuation coverage authorized under the Public Health Service Act.

(5) (No change.)

(b) (No change.)

(c) Benefit election irrevocable except for change in family status.

(1) An election to participate shall be irrevocable for the plan year unless an eligible change in family status occurs. The allowable change in election must be consistent with the change in family status event. Documentation, as prescribed by the plan administrator, must be submitted in support of the change in family status event.

(A) Health care reimbursement plan. A change in family status includes marriage; [birth; [.] ] adoption; [.] placement for adoption; acquisition of UGIP eligible dependent; [.] gaining legal custody of a child; spouse terminates employment or goes from full-time to part-time employment status; or spouse or dependent has a decrease or a loss of coverage imposed by a third party provider. An eligible change in family status permits a participant to elect to participate or increase election amounts consistent with the change in family status event.

(B) Dependent care reimbursement plan. A change in family status includes marriage; divorce; annulment; death of spouse or dependent; [.] dependent loses eligibility for UGIP; [.] loss of legal custody of child; birth, adoption, placement for adoption; acquisition of UGIP eligible dependent; [.] gaining legal custody of a child; termination or gaining of employment by a spouse; change from full-time to part-time or part-time to full-time employment status by employee or spouse; [.] [and] spouse goes on or returns from leave without pay; and a significant cost change imposed by a third party provider. An eligible change in family status permits a participant to change the election or to increase or decrease the election amount consistent with the change in family status event.

(2) A request to change election may not be made following a pay increase or decrease, pay shortage, paid leave, transfer to new agency, institution, or location within the same plan year, return to state or institution employment from leave with or without pay within the same plan year, financial hardship, loss of eligibility for health coverage by a health maintenance organization, or change in day care provider, unless imposed by a third party provider.

(3) [Employees who qualify to change elections, subject to other Uniform Group Insurance Program provisions, may add coverage, drop coverage, change coverage.] Changes will apply prospectively for the remainder of the plan year unless a subsequent family status change occurs during the plan year.

(4) (No change.)

(d) Payment of flexible benefit dollars.

(1) Flexible benefit dollars from an active duty participant shall be recovered by the State of Texas or institution of higher education through payroll withholding at least monthly during the plan year and remitted by the State of Texas or institution of higher education to the Employees Retirement System of Texas for the purpose of purchasing benefits. For the health care reimbursement account only, flexible benefit dollars from employees on leave without pay status or who have insufficient funds for any month shall be recovered through direct after-tax payment from the participant or upon the return of the employee to active duty status from payroll withholding, for the total amount due. Terminated or leave without pay employees with health care reimbursement account continuation coverage shall remit after-tax dollars, on a monthly basis, directly to the Employees Retirement System of Texas for the plan year, except as described in §85.3(b)(3)(D) of this title (relating to Eligibility and Participation).
Chapter 15. Drivers License Rules

Subchapter G. Denial of Renewal of Driver’s License for Failure to Appear for Traffic Violation

37 TAC §§15.111, 15.119, 15.120

The Texas Department of Public Safety proposes amendments to §§15.111, 15.119, and 15.120, concerning denial of renewal of driver’s license for failure to appear for a traffic citation. The amendments will clarify when a $30 administrative fee shall be required (or when the fee may be waived) pursuant to Texas Transportation Code, §706.006. Texas Transportation Code, Chapter 706, authorizes the department to deny renewal of a driver license to an applicant who has failed to appear for a hearing on a traffic violation (FTA violator), when certain statutory criteria are satisfied.

Amendment to §15.111 reflects the non-substantive changes in statute from Texas Civil Statutes to Texas Transportation Code.

To clear the denial, an FTA violator must pay a fee of $30 to the court where the traffic citation is pending, in addition to any other fines or costs assessed by the court. However, under certain circumstances, a court may issue a clearance report without requiring the $30 fee. A fee shall not be required when the person has been acquitted of the underlying traffic offense. The amendment to §15.119 more clearly defines "acquittal." The court may also waive the fee if the court finds that the person had good cause for having originally failed to appear. The amendment describes or defines "good cause."

The amendment to §15.120 clarifies that a person who sets or resets a case, or posts security for a case for which he or she earlier failed to appear is nevertheless required to pay the $30 administrative fee in order to qualify for an FTA clearance report. The amendment would also better distinguish between a civil FTA violation report submitted to the department and a criminal failure to appear charge, by deleting language which refers to a warrant of arrest.

Tom Haas, Chief of Finance, has determined that for each year of the first five year period the rule is in effect there will be some increase in revenue to the state’s general revenue fund. However, there is insufficient data upon which to accurately project the fiscal impact to state government. In addition, there will be some fiscal impact on those local governments (cities and counties) which contract with the department to implement the FTA program. Local governments are expected to benefit from increased compliance by traffic violators in their obligation to appear and answer in court for traffic violations. Local governments are permitted to retain $10 of the $30 fee imposed on persons who violate a promise to appear, however, this fee will be offset by a required fee (currently established by contract at $6) paid to a private vendor. The proposed rules are expected to increase revenue to local governments by reducing the number of cases in which an FTA fee is waived.

The department has insufficient data on which to estimate the amount of revenue which will be generated by the amendment.

Mr. Haas 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 an increased level of compliance by traffic violators in their obligation to appear at a hearing. The anticipated cost to individuals who fail to appear and answer at a hearing for a traffic violation is the $30 administrative fee. For individuals who comply with a promise to appear for a traffic
violation, there is no anticipated cost. There is no anticipated economic costs to small or large businesses.

Comments on the proposal may be submitted to David M. Douglas, Assistant Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendments are proposed pursuant to Texas Transportation Code, §706.012, which authorizes the department to adopt rules to implement this chapter; and pursuant to Texas Government Code, §411.006(4), which authorizes the director of the Department of Public Safety to adopt rules, subject to approval of the Public Safety Commission, considered necessary for the control of the Department.

Texas Transportation Code, §706.006 is affected by this proposal.

§15.111. Purpose and Scope.
This section applies to denial of license renewal for failure to appear reported to the department under authority of Texas Transportation Code, Chapter 706 [Civil Statutes, Article 6687d], based on violations of traffic law occurring on and after September 1, 1995.

§15.119. Clearance Report When No Fee Is Required.
(a) If the court finds that the license holder has established good cause for having previously failed to appear, the court shall file an appropriate clearance report to the department without requiring the license holder to pay a fee. For purposes of this section, "good cause" means a reasonable excuse such as would constitute a defense to a criminal prosecution for failure to appear. Examples of good cause are: death of a close family member; a serious, sudden accident or illness; required military service; or confinement.

(b) If the person who failed to appear is acquitted of the underlying traffic charge for which the failure to appear report was filed, the court shall file an appropriate clearance report without requiring the license holder to pay a fee. Acquittal means an official fact-finding made in the context of the adversary proceeding by an individual or group of individuals with the legal authority to decide the question of guilt or innocence. For purposes of this section, acquittal also includes a dismissal by the court upon proof of actual innocence. A person is not considered to have been acquitted of the traffic charge if the court imposes any conditions upon dismissal of the traffic complaint, such as penalties, court costs, educational programs, a period of probation, or any other sanction. For purposes of this section, a person is not considered to have been acquitted, and the prescribed administrative fee shall apply, in all cases that are dismissed under Texas Transportation Code, Chapter 543, Subchapter B, or under Texas Code of Criminal Procedure, Article 45.54.

§15.120. Clearance Report When Fee Is Required.
A clearance report shall be filed upon payment of a fee of $30 and one or more of the following conditions:

(1) (No change.)
(2) the perfection of an appeal of the case for which the failure to appear report was submitted [warrant of arrest was issued];
(3) the posting of bond, an agreed setting or resetting of the case, or the giving of [collatera] security to reinstate the charges for which the warrant was issued; or
(4) (No change.)

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

Filed with the Office of the Secretary of State on February 24, 1998.

TRD-9802721
Dudley M. Thomas
Director
Texas Department of Public Safety
Earliest possible date of adoption: April 12, 1998
For further information, please call: (512) 424-2890

Part V. Texas Board of Pardons and Paroles

Chapter 141. General Provisions

Subchapter A. Board of Pardons and Paroles

37 TAC §§141.1-141.4, 141.7

The Policy Board of the Texas Board of Pardons and Paroles proposes amendments to §§141.1-141.4, and new §141.7, concerning general provisions. The amendments and new section are proposed to reflect the changes made by House Bill 1386, Chapter 161, §5 and §6, Acts of the 75th Legislature, Regular Session, 1997 (effective September 1, 1997) with respect to the formation of the Policy Board of the Texas Board of Pardons and Paroles; composition of its membership; duties of the presiding officer; and duties of the members of the Policy Board. In addition, the proposed amendment to §141.3, sets out the role of the members of the Policy Board in coordinating Board activities and caseload assignment to Board members, as well as providing for administration of other matters as required by the presiding officer.

Victor Rodriguez, Chair of the Policy Board, has determined that for the first five-year period the proposed amendments and new rule are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments and new section.

Chairman Rodriguez also has determined that for each year of the first five years the amendments and new rule as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be a clarification of the role of the presiding officer and the composition of the Policy Board; redefinition of the manner in which the Policy Board conducts meetings; and clarification of the manner in which the Policy Board conducts business. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amendments and new rule as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, P.O. Box 13401, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of the amendments and new rule.

The amendments and new rule are proposed under Code of Criminal Procedure, Article 42.18, §6A (a) and (b), which provide for the creation of the Policy Board; and §6A (c) (1), which provides the Policy Board with authority to adopt rules relating to the decision-making processes used by the Board and Board panels; §6C (d), which designates the six members of the Policy Board as the voting members of the
Board for policy making purposes; §6A (c) (2)-(5), which charge the Policy Board with responsibility of defining caseloads for Board members as well as other administrative duties; §6 (a), which provides for the selection of the presiding officer by the governor; and Government Code, §508.045 (b), which provides that the presiding officer shall decide the composition of the Board panels.

There is no cross-reference to the proposed rules.

§141.1. Chairmanship and Membership of the Board.

(a) The presiding officer (chair) [The chairman] is designated by the governor and serves in that capacity at the pleasure of the governor. The presiding officer [The Chairman] acts as spokesperson [spokesperson] for the board. [after obtaining the views and collaboration of his colleagues if present. The chairman appoints six board members to serve on the Executive committee of the board who serve in that capacity at the pleasure of the chairman.]

(b) Six members of the board shall serve as the policy board of the Board of Pardons and Paroles. The governor designates the policy board. The term of a member of the policy board is six years, to be served concurrently with the member’s term on the board. The presiding officer of the board shall serve as presiding officer of the policy board.

§141.2. Quorum.

The transaction of business before the policy board shall be only upon a quorum of the policy board and decisions shall be upon a majority of the quorum. Four members of the Policy Board constitute a quorum.

[ A majority of the board or any panel thereof shall constitute a quorum for the transaction of all business before it]

§141.3. Majority Vote.

(a) The policy board, only upon a quorum and upon a majority of the quorum, shall determine matters that affect all board members.

(b) Members of the policy board shall coordinate activities of the board, assure a maximum efficiency and fair distribution of the caseload, and administer other matters as required by the presiding officer. [Major questions of policy and procedure require consideration of all members of the board. All decisions except parole decisions involving capital offenses committed on or after September 1, 1993, shall be made by simply majority vote. Parole decisions involving capital felony offenses committed on or after September 1, 1993, shall be made by a two-thirds vote of the entire membership of the board. In all matters related to policies or procedures considered by the full board, the chairman will only vote on any decision when it is necessary to break a tie vote of the members voting on the matter.]

§141.4. Meetings.

The policy board meets at the call of the presiding officer [chairman and from time to time as otherwise may be determined by a majority of the board making written request to the board’s administrative assistant for the scheduling of a meeting].

§141.7. Composition of Parole Panels.

Parole panels shall determine member caseload. The presiding officer shall designate the composition of each panel.

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 March 2, 1998.

TRD-9803039

Lauren McElroy
General Counsel
Texas Board of Pardons and Paroles

Earliest possible date of adoption: April 12, 1998

For further information, please call: (512) 463-1883

Chapter 145. Parole

Subchapter A. Parole Process

37 TAC §145.12

The Policy Board of the Texas Board of Pardons and Paroles proposes an amendment to §145.12, concerning action upon review. The amendment is proposed to establish additional voting options for use by parole panels when considering inmates for release on parole. The Policy Board’s purpose in creating these new voting options is to ensure that the inmate completes the rehabilitation program before release to parole by establishing the earliest program start date and determining the minimum number of months the inmate is to participate in the program before release to parole.

Victor Rodriguez, Chair of the Policy Board, 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 this section.

Chairman Rodriguez also has determined that for each year of the first five years the amended rule as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be the establishment of procedures to enable the Board panel to require the inmate to complete a treatment program with the assurance that there will be no interruption in the program before the inmate’s release to parole. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amendment as proposed.

Comments should be directed to Lauren McElroy, General Counsel, Texas Board of Pardons and Paroles, P.O. Box 13401, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this amendment.

The amendment is proposed under the Code of Criminal Procedure, Article 42.18, §8(g) and §508.044(d)(1), Government Code, which provide the Policy Board with the authority to promulgate rules with respect to the release of inmates on parole and §§508.045 - 508.047 and §508.150, Government Code, which provide the Board with the authority to release inmates eligible for parole.

There is no cross-reference to the proposed rule.

§145.12. Action Upon Review

A case reviewed by a parole panel for parole consideration may be:

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

(4) determined that the totality of the circumstances favor the inmate’s release on parole, further investigation (FI) is ordered in the following manner; and, upon release to parole, all conditions of parole or release to mandatory supervision that the parole panel is required by law to impose as a condition of parole or release to mandatory supervision are imposed:

(A)-(B) (No change.)
(C) FI-3 (Month/Year) - transfer to a TDCJ rehabilitation tier program of not less than three months in length and not earlier than the specified date. Release to parole upon program completion. Such TDCJ program may include the Pre-Release Substance Abuse Program (PRASP). In no event shall the specified date be set more than three years from the current docket date or the date of the panel decision if the current docket date has passed (transfer to Pre-parole Transfer facility prior to initial parole eligibility, and release to parole on parole eligibility date).

(D) FI-4 (Month/Year) - transfer to Pre-parole Transfer facility prior to presumptive parole date set by board panel and release to parole supervision on presumptive parole date, but in no event shall the specified [that] date be set more than three years from either initial eligibility date, current docket date or date of panel decision, if the aforementioned dates have passed;

(E) (No change.)

(F) FI 6 (Month/Year) - transfer to a TDCJ rehabilitation tier program of not less than six months in length and not earlier than the specified date. Release to parole upon program completion. Such TDCJ program may include the Pre-Release Therapeutic Community (PRTC). In no event shall the specified date be set more than three years from the current docket date or the date of the panel decision if the current docket date has passed [Inpatient Therapeutic Community Program on a specified date, but in no event shall that date be set more than three years from either initial eligibility date, current docket date or date of panel decision, if the aforementioned dates have passed; release to aftercare component only after completion of the PRTC program];

(G) FI-9 (Month/Year) - transfer to a TDCJ rehabilitation tier program of not less than nine months in length and not earlier than the specified date. Release to parole upon program completion. Such TDCJ program may include the In-Prison Therapeutic Community (IPTC). In no event shall the specified date be set more than three years from the current docket date or the date of the panel decision if the current docket date has passed;

(H) FI-18 (Month/Year) - transfer to a TDCJ rehabilitation tier program of not less than eighteen months in length and not earlier than the specified date. Release to parole upon program completion. Such TDCJ program may include the Sex Offender Treatment Program (SOTP). In no event shall the specified date be set more than three years from the current docket date or the date of the panel decision if the current docket date has passed;

(5) (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 March 2, 1998.
TRD-9803037
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: April 12, 1998
For further information, please call: (512) 463-1883

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 92. Personal Care Facilities

The Texas Department of Human Services (DHS) proposes the repeal of §92.1, concerning purpose; §92.2, concerning scope; §92.21, concerning method of payment; §92.101, definitions; and §92.129, concerning respite care; amendments to §92.3, concerning definitions; §92.4, concerning types of personal care facilities; §92.10, concerning criteria for licensing; §92.11, concerning building approval; §92.12, concerning applicant disclosure requirements; §92.13, concerning time periods for processing license applications; §92.14, concerning increase in capacity; §92.15, concerning renewal procedures and qualifications; §92.16, concerning change of ownership; §92.17, concerning criteria for denying a license or renewal of a license; §92.18, concerning license fees; §92.41, concerning standards for type A and type B personal care facilities; §92.61, concerning introduction and application; §92.62, concerning general requirements; §92.63, concerning construction and initial survey of completed construction; §92.81, concerning inspections and surveys; §92.82, concerning determinations and actions pursuant to inspections; §92.102, concerning abuse, neglect, orexploitation reportable to the Texas Department of Human Services by facilities; §92.103, concerning complaint investigation; §92.106, concerning general provisions; §92.124, concerning procedures for inspection of public records; §92.125, concerning resident's bill of rights and provider bill of rights; §92.127, concerning required postings; §92.153, concerning revocation; §92.155, concerning emergency license suspension and closing order; and new §92.2, concerning basis and scope; §92.19, concerning advertisements, solicitations, and promotional material; §92.20, concerning provisional license; §92.101, definitions of "abuse," "neglect," and "exploitation;" and §92.154, concerning unlicensed facilities, in its Personal Care Facilities chapter. The purpose of the proposal is to implement House Bills 1596 and 2601, which were passed during the 75th Legislature, and to update the current regulations, which have not been revised since 1989. The new legislation establishes a six-month provisional license for existing unlicensed facilities, which are in compliance with resident care standards, but require additional time to achieve compliance with Life Safety Code standards; allows the department to seek a temporary restraining order against a personal care facility which is operating without a license; sets civil penalties of $1,000 to $10,000 for persons operating a personal care facility without a license; and requires personal care facilities to use their license numbers in all advertising.

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

Mr. Bost 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 to better protect the residents of personal care homes through up- to-date rules. The adoption of the sections will have a minimal impact on small businesses. The sections do not require personal care providers to expend significant additional dollars to meet the requirements. One requirement will increase the number of continuing education hours from six to twelve; however, the fiscal impact to providers is minimal. 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 Susan Syler at (512) 438-3111 in DHS’s Long Term Care Policy Section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-052, Texas Department of Human Services, E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the Texas Register.

Subchapter A. Introduction

40 TAC §§92.1, 92.2

(EDITOR’S NOTE: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Health and Safety Code, Chapter 247, which authorizes the department to license personal care facilities, and Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.


§92.1 Purpose.

§92.2 Scope.

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 March 2, 1998.

TRD-9802990

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: May 15, 1998

For further information, please call: (512) 438-3765

40 TAC §§92.2–92.4

The new section and amendments are proposed under the Health and Safety Code, Chapter 247, which authorizes the department to license personal care facilities, and Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.


§92.2 Basis and Scope.

(a) Basis in legislation. The licensing standards for personal care facilities are promulgated under the authority of the Health and Safety Code, Chapter 247.

(b) Scope. The licensing standards for personal care facilities contain the minimum standards that a facility must meet in order to be licensed as a personal care facility. The standards serve as a basis for survey activities for licensure.

(1) A personal care facility is an establishment, including a board and care home, that provides, in one or more facilities, food and shelter to four or more persons who are unrelated to the owner of the establishment; personal care services; minor treatment under the direction and supervision of a physician licensed by the Texas State Board of Medical Examiners; or services which meet some need beyond basic provision of food, shelter, and laundry.

(A) The Texas Department of Human Services considers one or more facilities to be part of the same establishment and, therefore, subject to licensure as a personal care facility, based on the following factors:

(i) common ownership;

(ii) physical proximity;

(iii) shared services, personnel, or equipment in any part of the facilities’ operations; and

(iv) any public appearance of joint operations or of a relationship between the facilities.

(B) The presence or absence of any one factor in subparagraph (A) of this paragraph is not conclusive.

(2) A personal care facility does not include an establishment which furnishes food, shelter, and care to fewer than four persons unrelated to the owner.

(3) Structured or organized medical, nursing, or other care as found in licensed hospitals and licensed nursing facilities, and similar specialized facilities, cannot be furnished by the licensed personal care facility staff, but licensed nursing staff may administer medication and provide general supervision or oversight of the physical and mental well-being of residents, enabling them to maintain their independence. Residents may contract to have home health services delivered.

(c) Personal care residents. General characteristics of personal care residents include, but are not limited to, the following:

A resident may:

(1) exhibit symptoms of mental or emotional disturbance, but is not considered at risk of imminent harm to self or others;

(2) need assistance with movement;

(3) require assistance with bathing, dressing, and grooming;

(4) require assistance with routine skin care, such as application of lotions, or treatment of minor cuts and burns;

(5) need reminders to encourage toilet routine and prevent incontinence;

(6) require temporary services by professional personnel;

(7) need assistance with medications, supervision of self-medication, or administration of medication;

(8) require encouragement to eat or monitoring due to social or psychological reasons of temporary illness;

(9) be hearing impaired or speech impaired;

(10) be incontinent without pressure sores;

(11) require established therapeutic diets;

(12) require self-help devices; and

(13) need assistance with meals.

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

(1) Affiliate - With respect to a:
   (A) partnership, each partner thereof;
   (B) corporation, each officer, director, principal stockholder, subsidiary, and each person with a disclosable interest, as the term is defined in this section.
   (C) natural person:
      (i) each person’s spouse;
      (ii) each partnership and each partner thereof of which said person or any affiliate of said person is a partner; and
      (iii) each corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(2) Applicant - A person applying for a personal care license [required to be licensed] under Health and Safety Code, Chapter 247.

(3) Attendants - A facility employee who provides direct care to residents. [Any individual who is providing service to residents, and can include] This individual may serve other functions which may include, but are [is] not limited to, aides, cooks, janitors, porters, maids, laundry workers, security personnel, bookkeepers, managers, etc. [as they also are of service.]

(4) Change of ownership - A change of 50% or more in the ownership of the business organization that is licensed to operate the facility; in the owner holding the facility license; or in the federal taxpayer identification number.

(5) Co-mingles - The laundering of wearing apparel and/or linens of two or more individuals together.

(6) Dietitian - A dietitian is as follows.
   (A) A registered dietitian is a dietitian who is currently registered by the Commission on Dietetic Registration of the American Dietetic Association, or [ ]
   (B) A licensed dietitian is a dietitian who is currently licensed by the Texas State Board of Examiners of Dietitians and who has 15 hours of dietetic continuing education annually.

(7) Facility - An establishment [institution coming] under the scope of Personal Care Facility Licensing Act, Health and Safety Code, Chapter 247, [and] which furnishes room, board, and one or more personal care services [of a personal care or protective nature].

(8) Governmental unit - The state or any county, municipality or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

(9) Immediately available - The capacity of facility staff to immediately respond to an emergency situation after being notified through a communication and/or alarm system. The staff is to be no more than 600 feet from the farthest resident.

(10) Manager - A person having a contractual relationship to provide management services to a facility.

(11) Management services - Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do [shall] not include contracts solely for maintenance, laundry, or food services.

(12) Medication - Medication is:
   (A) any substance recognized as a drug in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, Texas Drug Code Index or official National Formulary, or any supplement to any of these official documents;
   (B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;
   (C) any substance (other than food) intended to affect the structure or any function of the body;
   (D) any substance intended for use as a component of any substance specified in this definition. It does not include devices or their components, parts, or accessories.

(13) Medication administration - The direct application of a medication or drug to the body of a resident by an individual legally allowed [licensed] to administer medication in the State of Texas.

(14) Medication assistance or supervision - The assistance or supervision of the medication regimen by facility staff. Refer to §92.41(e) of this title (relating to Standards for Personal Care Facilities).

(15) Medication (self-administration) - The capability of resident’s to administer their own medication/treatments without assistance from the facility staff.


(17) Person - Any individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

(18) Person with a disclosable interest - A person with a disclosable interest is any person who owns five percent interest in any corporation, partnership, or other business entity that is required to be licensed under Health and Safety Code, Chapter 247. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company unless such entity participates in the management of the facility.

(19) Personal care services - Assistance with meals, dressing, movement, bathing, or other personal needs or maintenance; the administration of medication or the assistance with or supervision of medication; or general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in the facility or who needs assistance to manage his personal life, regardless of whether a guardian has been appointed for the person.

(20) Physician - A practitioner licensed by the Texas State Board of Medical Examiners.

(21) Resident - Anyone accepted for care in the personal care facility.

(22) Respite - The provision by a facility of room, board, and care at the level ordinarily provided for permanent residents of the facility to a person for not more than 60 days for each stay in the facility [institution].
(23) Safety - Protection [Action taken to protect] from injury or loss of life due to such conditions as fire, electrical hazard, unsafe building or site conditions, and the hazardous presence of toxic fumes and materials.

(24) Service plan - A written description of the medical care or the supervision and nonmedical care needed by a person.

(25) Short-term acute episode - An illness of less than 30 days duration.

(26) Staff - Any employee of a personal care facility.

(27) Standards - The minimum licensing standards in subchapter C of this chapter (relating to Standards for License) intended to protect the health and safety of the residents.

(28) Terminal condition - A medical diagnosis, certified by a physician, of an illness which will result in death in six months or less.

(29) Universal precautions - An approach to infection control in which blood, any body fluids visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids are treated as if known to be infectious for HIV, hepatitis B, and other bloodborne pathogens.


[Authority having jurisdiction (AHJ)- Texas Department of Human Services.]

[Impractical resident- An impractical resident is:

(A) a resident with a physical disability of a nature that he/she is not capable of maneuvering in a wheelchair, walker, etc., unaided.

(B) a resident who will not take or cannot understand instructions from a staff member, or

(C) a resident who is taking medication which will make it difficult for a staff member to move the person quickly.]

[Long term care facility. A personal care facility, a nursing facility, a facility serving persons with mental retardation or related conditions, maternity facility, personal care facility, or similar facility.]

[Personal care- Acts of a protective nature. Personal care is understood to mean adult and responsible supervision of or assistance with routine living functions in instances of a resident's condition necessitating such supervision or assistance. Personal care includes a wide variety of services which would require, or result in the presence of an intermediary for the protection and care of the resident. Refer to §92.2 of this title (relating to Scope).]

[Personal care administrator. The person responsible for the overall care of a personal care facility.]

[Sanitation- Action taken to protect from illness, the transmission of disease, or loss of life due to unclean surroundings, the presence of disease-transmitting insects, or rodents, unhealthful conditions or practices in the preparation of food and beverage, or the care of personal laundry.]

§92.4. Types of Personal Care Facilities.

Types of personal care facilities are as follows.

(1) Type A. In a Type A facility a resident:

(A) must be [is] physically and mentally capable of evacuating the facility unassisted in the event of an emergency. This may include the mobile nonambulatory, e.g., persons in wheelchairs or electric carts having the capacity to transfer and evacuate themselves in an emergency;

(B) does not require [usual and] routine attendance during nighttime sleeping hours; and

(C) must be capable of following directions [for taking appropriate action for self-preservation] under emergency conditions.

(2) Type B. In a Type B facility a resident may:

(A) [be physically and/or mentally incapacitated or handicapped, and would] require staff assistance to evacuate;

(B) be incapable of following directions [and taking appropriate action for self-preservation] under emergency conditions;

(C) require attendance [routine supervision] during nighttime sleeping hours [An attendant must be awake and on call for assistance]; or

(D) not be permanently bedfast, but may require assistance in transferring to and from a wheelchair [be chairfast needing assistance with transferring upon arising and returning]; however, [has] once into the chair, the resident is able to move about independently [or]; or

(E) have needs such as indwelling catheter, routine colostomy care, etc., when self-care is provided and appropriate or when care is provided by contract with professional personnel by the individual resident.

(3) (No change.)

(4) Type D. An establishment which qualifies as a personal care facility under §92.2(b)(1)(A) of this title (relating to Basis and Scope), operated by a person certified by the Texas Department of Mental Health and Mental Retardation (TDMHMR) as a provider in a $1915(c) waiver program and providing personal care services only to persons in such a program, will be deemed licensed as a Type D facility without having to apply for a personal care facility license.

(A) After the effective date of this rule and at least 45 days prior to recertification with TDMHMR, the facility must submit an application and fee for a personal care license. Failure to submit the application and fee at least 45 days prior to the date of recertification with TDMHMR will result in loss of deemed licensure.

(B) A facility applying for licensure as a Type D facility after the effective date of this rule must be certified by TDMHMR at the time of application to the Texas Department of Human Services.

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

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

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Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: May 15, 1998
For further information, please call: (512) 438–3765

Subchapter B. Application Procedures
40 TAC §§92.10–92.20

The amendments and new sections are proposed under the Health and Safety Code, Chapter 247, which authorizes the department to license personal care facilities, and the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.


§92.10. Criteria for Licensing.

(a) (No change.)

(b) An applicant for a license must submit a complete application form and license fee to the Texas Department of Human Services (DHS). An application which remains incomplete after 120 days will be denied.

(c) An applicant for a license must affirmatively show that:

(1) (No change.)

(4) the facility meets the standards for operation based upon an on-site survey. The initial survey for an applicant for a new license must include the inspection of the care of resident(s).

(d) The applicant must provide all information requested on the application form and submit the appropriate fees as a prerequisite for DHS to conduct a feasibility inspection or plan review, as requested or required.

(d) A license will be issued to a facility meeting all requirements of this chapter and will be valid for one year. [Repeal license specifies that] The maximum allowable number of residents specified on the license “to be cared for at any one time. This number” may not be exceeded.

§92.11. Building Approval.

(a) Local fire authority. All applications for licensure must include the written approval of the local fire authority that the facility and its operation meet local fire ordinances.

(b) Local health authority. The following procedures allow the local health authority to provide recommendations to DHS concerning licensure of a facility:

1. New facility. The sponsor of a new facility under construction or a previously unlicensed facility must provide to the Texas Department of Human Services (DHS) [DHS] a copy of a dated notice to the local health authority that construction or modification has been or will be completed by a specific date. The sponsor must also provide a copy of the dated notice of approval for occupancy by the local fire marshal or local building code authority, if applicable. The local health authority may provide recommendations to DHS regarding the status of compliance with local codes, ordinances, or regulations. [Local health authority comments and recommendations must be received by DHS within ten days after the date of the sponsor’s notice of the fire marshal or building code authority approval for occupancy. The local health authority may recommend that a state license be issued or denied; however, the final decision on licensure status remains with DHS.

2. Increase in capacity. The license holder must request from DHS an application for increase in capacity. DHS provides [will provide] the license holder with the application form and will notify the local fire marshal and the local health authority of the request. The license holder must arrange for the inspection of the facility by the local fire marshal. The license holder must notify the local health authority in writing when the facility has passed inspection and provide a copy of the dated notice to DHS. [The local health authority may provide recommendations to DHS regarding the status of compliance with local codes, ordinances, or regulations. Local health authority comments and recommendations must be received within ten days after the date of the facility’s notice of the local fire marshal or building code authority approval. The local health authority may recommend that an increase in capacity be granted or denied; however, the final decision on the increase remains with DHS.] DHS approves [will approve] the application only if the facility is found to be in compliance with the standards. Approval to occupy the increased capacity may be granted by DHS prior to the issuance of the license covering the increased capacity after inspection by DHS if standards are met.

3. Decrease in capacity. A room must meet specifications stated in §92.62(l)(1) of this title (relating to General Requirements) to be licensed as a resident bedroom. When a licensed bedroom no longer meets these requirements, the license holder must notify the Long Term Care-Regulatory Licensing Section, in writing of a necessary decrease in the facility’s licensed capacity. Upon receipt of the letter, the facility will be issued a license indicating the new licensed capacity.

(c) Change of ownership. The applicant for a change of ownership license must provide DHS a copy of a letter notifying the local health authority of the request for a change of ownership. The local health authority may provide recommendations to DHS regarding the status of compliance with local codes, ordinances, or regulations. [Local authority recommendations must be received within 60 days of the date of the letter from the new owner or date of change of ownership, whichever is later, if DHS is to consider the recommendations.]

5. Renewal. DHS sends the local health authority a copy of DHS’s license renewal notice specifying the expiration date of the facility’s current license. The local health authority may provide DHS with recommendations regarding the status of compliance with local codes, ordinances, or regulations. The local authority may also recommend that a state license be issued or denied; however, the final decision on licensure status remains with DHS. [Local health authority comments and recommendations must be received at least 30 days prior to expiration of the license for consideration by DHS.]


(a) Scope of section. No person may apply for a license, change of ownership, increase in capacity, or renewal of a license to operate or maintain a facility without making a disclosure of information as required in this section.

(b) Disclosure. Application form. All applications must be made on forms prescribed by and available from the Texas Department of Human Services (DHS). Each application must be completed in accordance with DHS instructions, signed, and notarized.

(c) General information required. An applicant must file with DHS an application which contains:

(1) the name of the applicant and, if an individual, whether the applicant is at least 18 years old;

(2) the type of facility;
the location of the facility;]

(1) [§41] for initial applications and changes of ownership only, evidence of the right to possession of the facility at the time the application will be granted, which may be satisfied by the submission of applicable portions of a lease agreement, deed or trust, or appropriate legal document. The names and addresses of any persons or organizations listed as owner of record in the real estate, including the buildings and surrounding grounds, must be disclosed to DHS;

(2) [§51] certificate of good standing as issued by the comptroller of public accounts; and

(3) [§61] for initial applications and changes of ownership only, the certificate of incorporation as issued by the secretary of state for a corporation or a copy of the partnership agreement for a partnership.

(4) Disclosure requirements. Applicants must disclose the following information for the two-year period preceding the application date, concerning the applicant, persons with a dislosable interest, officers, affiliates, and manager, without regard to whether the data required relates to current or previous events:

(1) denial or revocation of a license to operate a nursing facility, facility serving persons with mental retardation or related conditions, personal care facility, or similar facility in any state;

(2) federal or state long-term care facility sanctions or penalties;

(3) state or federal criminal convictions for any offense that provides a penalty of incarceration;

(4) unsatisfied final judgments;

(5) operation of a facility that has been decertified in any state under Medicare or Medicaid;

(6) debarment, exclusion, or contract cancellation in any state from Medicare or Medicaid;

(7) eviction involving any property or space used as a facility in any state;

(8) orders from any court restraining or enjoining the applicant, manager, or any person with a controlling interest from operating a facility in any state; and

(9) any of the adverse actions noted in paragraphs (1)-(8) of this subsection taken against the applicant by all relevant licensing and certification agencies in all other states in which the applicant owns, operates or manages nursing facilities, facilities serving persons with mental retardation or related conditions, personal care facilities, or similar facilities. The applicant must obtain letters or other documentation from those agencies relating to the adverse actions or the absence of any adverse actions.

(10) Required ownership and management information for the past two years.

(11) Each applicant for a license to operate a facility must disclose to DHS the name and business address of:

[CA] each limited partner and general partner if the applicant is a partnership;

[CB] each director and officer if the applicant is a corporation; and

[CC] each person having a beneficial ownership interest of 5.0% or more in the applicant corporation, partnership, or other business entity.

(2) If any person described in this section has served or currently serves as an administrator, general partner, limited partner, trustee or trust applicant, sole proprietor, or any applicant or licensee who is a sole proprietorship, executor, or corporate officer or director of or has held a beneficial ownership interest of 5.0% or more in any other long-term care facility, the applicant must disclose the relationship to DHS, including the name and current or last address of the facility and the date the relationship began and, if applicable, the date it terminated.

(3) If the applicant or licensee is a subsidiary of another organization, the information must include the names and addresses of the parent organization and the names and addresses of the officers and directors of the parent organization.

(4) If the facility is operated by, or proposed to be operated under, a management contract, the names and addresses of any person or organization, or both, having an ownership interest of 5.0% or more in the management company must be disclosed to DHS.

(5) The information required by this section must be provided to DHS upon initial application for licensure; and changes in the information must be provided to DHS on an annual basis, except that a licensee must notify DHS within 30 days of any change of the facility’s manager.

(c) [§64] Exemptions. The provisions of this section do not apply to a bank, trust company, financial institution, title insurer, escrow company, or underwriter title company to which a license is issued in a fiduciary capacity except for provisions that require disclosure relating to the manager of the facility.

§92.13. Time Periods for Processing License Applications.

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

(e) A license will be issued or denied within 30 days of the receipt of a complete application or within 30 days prior to the expiration date of the license. However, DHS may pend action on an application for renewal of a license for up to six months if the facility is subject to a proposed or pending liquecure termination action on or within 30 days prior to the expiration date of the license. The issuance of the license constitutes DHS’s official written notice to the facility of the acceptance and filing of the application.

(f) [No change.]


(a) During the license term, a license holder may not increase capacity without approval from the Texas Department of Human Services (DHS) [department]. The license holder must [shall] submit to DHS [the department] a complete application for increase in capacity and the fee required in §92.18 of this title (relating to License Fees).

(b) Upon approval of an increase in capacity, DHS issues [the department shall issue] a new license.

§92.15. Renewal Procedures and Qualifications.

(a) [No change.]

(b) Each license holder must, at least 45 days prior to the expiration of the current license, file an application for renewal with the Texas Department of Human Services (DHS) [department]. The application for renewal shall contain the same information required
The renewal of a license may be denied for the

1. a complete application to DHS, and DHS receives the complete application at least 45 days before the current license expires; or

2. an incomplete application to DHS with a letter explaining the circumstances which prevented the inclusion of the missing information, and DHS receives the incomplete application and letter at least 45 days before the current license expires.

(c) If the application is postmarked by the filing deadline, the application will be considered timely if received in the Licensing Section of the state office of Long-Term Care-Regulatory, Texas Department of Human Services, within 15 days of the postmark.

(d) Failure to file a timely and sufficient application will result in the expiration of the license.

(f) The renewal of a license may be denied for the same reasons an original application for a license may be denied (see §92.17 of this title relating to Criteria for Denying a License or Renewal of a License)


(a) During the license term, a license holder may not transfer the license as a part of the sale of the facility. Prior to the sale of the facility, the license holder must notify the Texas Department of Human Services (department) that a change of ownership is requested. The prospective purchaser must submit to the department a complete application for a license under §92.11 of this title (relating to Criteria for Licensing) at least 30 days prior to the anticipated date of sale. The applicant must meet all requirements for a license.

(b) Pending the review of the prospective purchaser’s application, the license holder must continue to meet all requirements for operation of the facility.

§92.17. 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, manager, or affiliate:

1. substantially fails to comply with the requirements described in §92.41 of this title (relating to Standards for Personal Care Facilities) including, but not limited to:

A. noncompliance that posed or poses a serious threat to health and safety, or

B. (No change.)

2.-3. (No change.)

4. provides the following false or fraudulent information:

A.-C. (No change.)

D. knowingly conceals a material fact related to licensure; or

E. (No change.)

5. (No change.)

6. discloses any of the following actions within the two-year period preceding the application:

A. (No change.)

B. federal or state long-term care facility, personal care facility or similar facility sanctions or penalties, including but not limited to, monetary penalties, involuntary downgrading of the status of a facility license, proposals to decertify, directed plans of correction or the denial of payment for new Medicaid admissions;

C. (No change.)

D. unsatisfied final judgments excluding judgments wholly unrelated to the provision of care rendered in long term care facilities;

E. (No change.)

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; and [1]


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

§92.18. License Fees.

(a) Basic fees.

(1) (No change.)

(2) Type C and D. The license fee is $50. The fee must be paid with each initial application and annually with each application for renewal of the license.

(3) Provisional license. The license fee is $75.

(4) Increase in beds. An approved increase in beds is subject to an additional fee of $3.00 for each bed.

(b) Trust fund fee.

(1) In addition to the basic license fee described in subsection (a) of this section, the Texas Department of Human Services (DHS) has established a trust fund for the use of a court-appointed trustee as described in the Health and Safety Code, Chapter 242, Subchapter D, Chapter 232, and Chapter 247, §247.003(b).

(2) DHS charges and collects an annual fee from each institution licensed under Health and Safety Code, Chapters 242 and 247, each calendar year if the amount of the nursing and convalescent trust fund is less than $500,000. The fee is based on a monetary amount specified for each licensed unit of capacity or bed space and is in an amount sufficient to provide $500,000 in the trust fund. In calculating the fee, the amount will be rounded to the next whole cent.

(c) Payment of fees. Payment of fees must be by check, cashier’s check, or money order payable to the Texas Department of Human Services. All fees are nonrefundable, except as provided by the Texas Government Code, Chapter 2005.


A personal care facility must use its license number in all advertisements, solicitations, and promotional materials, including, but not limited to yellow pages, brochures and business cards. For purposes of this section, the state-issued facility identification number will serve as the license number.

§92.20. Provisional License.
§92.21. Method of payment.

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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Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3765

40 TAC §92.41

The amendment is proposed under the Health and Safety Code, Chapter 247, which authorizes the department to license personal care facilities, and Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.


Subchapter C. Standard for Licensure

40 TAC §92.21

(1) The Texas Department of Human Services (DHS) may issue a six-month provisional license to existing facilities with residents only if:

(a) the facility is in compliance with resident care standards;

(b) the facility voluntarily discloses that the facility needs additional time to comply with life safety code and physical plant standards;

(c) the disclosure is made in writing by certified mail to the Licensing Section: Long Term Care-Regulatory: Texas Department of Human Services (TDHS); P.O. Box 149030 (E-342); Austin, TX: 78714-9030;

(d) the lack of compliance with life safety code and physical plant standards was not independently detected by DHS nor was an investigation of the lack of compliance initiated by the department; and

(e) the disclosure of the non-compliance was made promptly after the facility became aware of it.

(b) The applicant for a provisional license must submit a complete application form and license fee to DHS and include the following:

1. written approval from the local fire authority that the facility and its operation meet local fire ordinances; and

2. a copy of a dated notice to the local health authority notifying them of the facility’s intention to seek a provisional license as a personal care facility.

(c) If at the end of the six-month provisional license period, the facility does not meet life safety code and physical plant standards, DHS will not issue a license to the facility.

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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Subchapter C. Standard for Licensure

40 TAC §92.21

(2) Attendants. Full-time facility attendants must be at least 18 years old.

(a) An attendant must [shall] be an attendant in the facility at all times when residents are in the facility. [Additionally, there shall be other attendant personnel as needed to:]

[1] maintain order, safety, and cleanliness;

[2] assist with medication regimens;]
prepare and service meals;]

assist with laundry; and]

assure that each resident receives the kind and amount of supervision and care required to meet his basic needs.]

The facility must document that attendants are competent to provide personal care and have the following knowledge prior to assuming responsibilities: needs of the resident(s) and tasks to be provided, resident’s health conditions and how they may affect provision of tasks, and conditions about which the attendant should notify the facility manager.

Attendants are not precluded from performing other functions as required by the personal care facility.

(3) Staffing.

(A) A facility must have sufficient staff to:

(i) maintain order, safety, and cleanliness;

(ii) assist with medication regimens;

(iii) prepare and service meals;

(iv) assist with laundry;

(v) assure that each resident receives the kind and amount of supervision and care required to meet his basic needs; and

(vi) ensure safe evacuation of the facility in the event of an emergency.

The staff-resident ratios described in this subparagraph must be maintained in a Type A or Type B facility. The facility management should have the authority to define day, evening, and night shift start and end times.

(i) day = 1 to 16 [15];

(ii)-(iii) [No change.]

[C] The attendants shall have the following knowledge prior to assuming responsibilities: needs of the resident(s) and tasks to be provided, resident’s health conditions and how it may affect provision of tasks, and conditions about which the attendant should notify the facility manager and a job description.

(4) Staff training. Facilities that employ licensed nurses, nurse aides, or medication aides must provide annual in-service training, appropriate to their job responsibilities, from one or more of the following areas:

(A) communication techniques and skills useful when providing geriatric care (skills for communicating with the hearing impaired, visually impaired and cognitively impaired; therapeutic touch; recognizing communication that indicates psychological abuse);

(B) assessment and nursing interventions related to the common physical and psychological changes of aging for each body system;

(C) geriatric pharmacology, including treatment for pain management and sleep disorders;

(D) common emergencies of geriatric residents and how to prevent them, for example falls, choking on food or medicines, injuries from restraint use; recognizing sudden changes in physical condition, such as stroke, heart attack, acute abdomen, acute glaucoma, and obtaining emergency treatment;

(E) common mental disorders with related nursing implications; and

(F) ethical and legal issues regarding advance directives, abuse and neglect, guardianship, confidentiality.

(b) Social services. The facility must [shall] provide an activity and/or social program at least weekly for the residents.

(c) Resident assessment. Within 14 days of admission, a facility must assess an individual and develop an individual service plan for providing care, which is based on the assessment. The service plan must be approved and signed by the person arranging care. The facility must provide care according to the service plan. [A facility that is licensed under these chapters shall care for a person according to a service plan that is filled after the facility and approved and signed by the person arranging care before the facility admits the person for the care.]

(1) For respite clients, the facility may keep a service plan for six months from the date on which it is developed. During that period, the facility may admit the individual as frequently as needed.

(2) Emergency admissions must be assessed and a service plan developed for them.

(d) Resident [Operational] policies, admission policies, and records.

(1) Resident [Operational] policies.

(A) The facility must have written policies regarding residents accepted, services provided, charges, refunds, responsibilities of facility and residents, privileges of residents, and other rules and regulations.

(B) [As] Each facility must make available copies of the resident [shall prepare and make available for distribution written operational policies]. Copies shall be furnished to staff [personnel] and to residents and/or residents’ responsible parties at time of admission. Documented notification of any changes to the policies must occur before the effective date of the changes.

(B) The statement of policies shall cover such details as residents accepted, services provided, charges, refunds, responsibilities of facility and residents, privileges of residents, and other rules and regulations:]

(2) Admission policies.

(A) A facility must not admit or retain:

(i) residents whose needs cannot be met by the personal care facility, or the necessary services secured by the resident. As part of the facility’s general supervision and oversight of the physical and mental well-being of its residents, the facility remains responsible for all care provided at the facility. If the individual is appropriate for placement in a personal care facility, then the decision that additional services are necessary and can be secured must be agreed to by the resident and the facility in writing;

(ii) an individual requiring the services of facility employees who are licensed nurses on a daily or regular basis. Individuals with a terminal condition or experiencing a shortterm acute episode are excluded from this requirement.

(B) There must be a written admission agreement between the facility and the resident. The agreement must specify such details as services to be provided and the charges for the services,
including any nursing services and supplies, with a statement that such services and supplies could be a Medicare benefit.

(C) [\text{[\text{مادة}}] Each resident must [\text{will}] have a health examination by a physician performed within 30 days prior to admission or 14 days after admission, unless a transferring hospital or facility has a physical examination in the medical record.

(D) [\text{[\text{مادة}}] The personal care facility must [\text{will}] secure at the time of admission of a resident the following identifying information: full name of resident; social security number; usual residence (where resident lived before admission); sex; \text{[\text{الカラー أو}}  code or \text{[\text{رقم}}} marital status; date of birth; place of birth; usual occupation (during most of working life); family; other persons named by the resident and physician for emergency notification; pharmacy preference; and Medicaid/Medicare number, if available.

(3) Records.

[\text{[\text{مادة}}] There shall be a written admission agreement between facility and resident. The agreement shall specify such details as services to be provided and changes therefor, and shall be based on the operational policies.]

[\text{[\text{مادة}}] Records pertaining to residents must [\text{will}] be treated as confidential and properly safeguarded from unauthorized use \text{[\text{و}} and shall be made available only to authorized persons and agencies \text{[\text{و}}. Records must be available to residents, their legal representatives, and the Texas Department of Human Services (DHS) staff.

(4) Personnel records. The facility must keep personnel records on all staff in a central location.

(4) Medications.

(1) Administration.

(A) Residents who choose not to or can not self-administer their medications must have their medications administered by a person who:

(i) (No change.)

(ii) holds a current medication aide permit and acts under the authority of a person who holds a current nursing license under state law which authorizes the licensee to administer medication. A medication aide must function under the direct supervision of a licensed nurse on duty or on call by the facility.

(iii) an employee of the facility to whom the administration of medication has been delegated by a registered nurse, who has trained them to administer medications or verified their training. The delegation of the administration of medication is governed by 22 TAC \text{[\text{建筑}}218, which implements the Nurse Practice Act.

(B)-(C) (No change.)

(D) Each resident's medications must [\text{will}] be listed on an individual resident's medication profile record. The recorded information obtained from the prescription label must [\text{will}] include, but is not limited to, the medication name, strength, dosage, amount received, directions for use, route of administration, prescription number, pharmacy name, and the date each medication was issued by the pharmacy.

(2) Supervision. Supervision of a resident's medication regimen by facility staff may be provided to residents who are incapable of self-administering without assistance to include and limited to:

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

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

(5) Storage.

(A) The facility must [\text{will}] provide a locked area for all medications. Examples of areas, but not limited to, are:

(i)-(iii) (No change.)

(B) Each resident's medication must [\text{will}] be stored separately from other resident's medications within the storage area.

(C) A refrigerator must [\text{will}] have a designated and locked storage area for medications requiring refrigeration, unless it is inside a locked medication room.

(D) (No change.)

(6) Disposal.

(A) (No change.)

(B) Needles and hypodermic syringes with needles attached must [\text{will}] be disposed as required by 25 TAC \text{[\text{ال}}<\text{\text{<}}1.131-1.137 (relating to the Definition, Treatment, and Disposal of Special Waste from Health Care Related Facilities).

(C) (No change.)

(f) Accident, injury, or acute illness.

(1) In the event of accident or injury requiring emergency medical, dental or nursing care, or in the event of apparent death, the personal care facility will:

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

(C) describe and document the injury, accident, or illness on a separate report. The report must [\text{will}] contain a statement of final disposition and be maintained on \text{[\text{文件}} file.

(2) The facility must [\text{will}] stock and maintain in a single location first aid supplies to treat burns, cuts, and poisoning.

(3) Residents who need the services of professional nursing or medical personnel due to a temporary \text{[\text{一步}} incapacity, illness or injury may have those services delivered by persons qualified to deliver the necessary service.

(g) Resident [Personal belongings and] finances.

[\text{[\text{مادة}}] Each individual shall have the right to keep and maintain any personal belongings on his possession except items which might be harmful to himself or others. The facility has no responsibility for such possessions.]

[\text{[\text{مادة}}] Each individual shall have the right of keeping and maintaining his own finances. The personal care facility must [\text{will}] keep a simple financial record on all charges billed to the resident for care and these records must [\text{will}] be available to the department, while in the facility. If the resident entrusts the handling of any personal finances to the personal care facility, a simple financial record must [\text{will}] be maintained to document accountability for receipts and expenditures, and these records must be available to DHS \text{[\text{部門}}. Receipts for payments from residents or family members must be issued upon request.

(h) Dietary service.

(1) (No change.)

(2) At least three meals or their equivalent must [\text{will}] be served daily, at regular times, with no more than a 16-hour
span between a substantial evening meal and breakfast the following morning. All exceptions must [shall] be specifically approved by DHS [the department].

(3) Menus must [shall] be planned one week in advance. Menus must [shall] be prepared to provide a balanced and nutritious diet, such as that recommended by the National Food and Nutrition Board. Food must [shall] be varied. Records of menus as served must [shall] be filed and maintained for 30 days after the date of serving.

(4) Therapeutic diets which cannot [can] customarily be prepared by a lay person must be calculated by a qualified dietician. Therapeutic diets which can customarily be prepared [observed] by a person in a family setting may [are permissible to] be served by the personal care facility. [Any individual in need of a therapeutic diet that requires professional calculation shall have the diet calculated by a qualified dietician.]

(5) Supplies of staple foods for a minimum of a four-day period and perishable foods for a minimum of a one-day period must [shall] be maintained on the premises.

(6) Food must [shall] be obtained from sources that comply with all laws relating to food and food labeling. If food, subject to spoilage, is removed from its original container, it must [shall] be kept sealed, and labeled. Food subject to spoilage must [shall] also be dated. (No change.)

(8) Potentially hazardous food, such as meat and milk products, must [shall] be stored at 45 degrees Fahrenheit or below. Hot food must [shall] be kept at 140 degrees Fahrenheit or above during preparation and serving.

(9) Freezers must [shall] be kept at a temperature of 0 degrees Fahrenheit or below and refrigerators must [shall] be 45 degrees Fahrenheit or below. Thermometers must [shall] be placed in the warmest area of the refrigerator and freezer to assure proper temperature.

(10) Food must [shall] be prepared and served with the least possible manual contact, with suitable utensils, and on surfaces that prior to use have been cleaned, rinsed, and sanitized to prevent cross-contamination.

(11) Raw foods must [shall] be washed with potable water before preparation.

(12) Food service employees, while infected with a disease in a communicable form that can be transmitted by foods, or who is a carrier of organisms that cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, must [shall] not work in the food service area in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.

(13) Effective hair restraints must [shall] be worn to prevent the contamination of food.

(14) Tobacco products must [shall] not be used in the food preparation and service areas.

(15) Kitchen employees must wash their hands before returning to work after using the lavatory. Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practice during all working periods in food service.

(16) (No change.)

(17) Sanitary dishwashing procedures and techniques must [shall] be followed.

(18) Facilities housing 17 or more residents must [shall] comply with 25 TAC <97.1 - 97.13 (relating to Food Service Sanitation) and local health ordinances or requirements must [shall] be observed in the storage, preparation, and distribution of food; in the cleaning of dishes, equipment, and work area; and in the storage and disposal of waste.

(i) Infection control.

(1) (No change.)


(3) The name of any resident of a facility with a reportable disease as specified in 25 TAC <97.1 - 97.13 (relating to Control of Communicable Diseases) shall be reported immediately to the city health officer, county health officer, or health unit director having jurisdiction, and appropriate infection control procedures shall be implemented as directed by the local health authority.

(4) The facility must have written policies for the control of communicable disease in employees and residents, which includes tuberculosis (TB) screening and provision of a safe and sanitary environment for residents and employees.

(A) If employees contract a communicable disease that is transmissible to residents through food handling or direct resident care, the employee must be excluded from providing these services as long as a period of communicability is present. [The decision to return to work must be made by the facility’s executive director in conjunction with the employee’s personal physician or the facility’s medical director, the local or state health authority if the disease is reportable, and in accordance with generally accepted practices.]

(B) (No change.)

(C) The facility must screen all employees for tuberculosis within two weeks of employment and annually, according to Center for Disease Control (CDC) screening guidelines [for tuberculosis]. All persons providing services under an outside resource contract must, upon request of the facility, provide evidence of compliance with this requirement.

(D) All residents should be screened upon admission and after exposure to tuberculosis, in accordance with the attending physician’s recommendations and CDC guidelines.

(5) (No change.)

(6) Universal precautions must [shall] be used in the care of all residents [because a reliable source cannot identify all those persons infected with blood-borne pathogens].

[(A) Universal precautions apply to blood and other body fluids containing visible blood.]

[(B) General principles of universal precautions.]

[(i) All health-care workers shall routinely use appropriate barrier precautions to prevent skin and mucous-membrane exposure when contact with blood or other body fluids of any resident is anticipated.]

[(ii) Gloves shall be worn for touching blood and blood contaminated body fluids, mucous membranes, or non-
intact skin of all residents for handling items or surfaces soiled with blood or body fluids, and for performing venipuncture and other vascular access procedures.

[4] Gloves shall be changed after contact with each resident.

[III] Masks and protective eyewear of face shields shall be worn during procedures that are likely to generate droplets of blood or other body fluids to prevent exposure of mucous membranes of the mouth, nose and eyes.

[IV] Gowns or aprons shall be worn during procedures that are likely to generate splashes of blood or other body fluids.

[iii] Hands and other skin surfaces shall be washed immediately and thoroughly if contaminated with blood or other body fluids. Hands shall be washed immediately after gloves are removed.

[iii] All health-care workers shall take precautions to prevent injuries caused by needles, scalpels, and other sharp instruments after procedures.

[iv] Although saliva has not been implicated in human immunodeficiency virus (HIV) transmission, to minimize the need for emergency mouth-to-mouth resuscitation, mouthpieces, resuscitation bags, or other ventilation devices shall be available for use in areas in which the need for resuscitation is predictable.

[5] Pregnant health-care workers are not known to be at greater risk of contracting HIV infection than health-care workers who are not pregnant; however, if a health-care worker develops HIV infection during pregnancy, the infant is at risk of infection resulting from perinatal transmission. Because of this risk, pregnant health-care workers should be especially familiar with and strictly adhere to precautions to minimize the risk of HIV transmission.

[C] The facility must have policies that provide for:

[iv] orientation and training at the time of employment and continuing education, at least annually, for health-care workers;

[iii] provision of equipment and supplies necessary to minimize the risk of infection from blood-borne pathogens; and

[iii] monitoring adherence to recommended protective measures.

[D] The facility shall implement infection control procedures, including, but not limited to, universal precautions.

[E] Facility employees and residents shall be protected from direct exposure to blood and body fluids that are visibly contaminated with blood to prevent exposure to HIV and hepatitis B virus (HBV).

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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Subchapter D. Facility Construction

40 TAC §§92.61-92.63

The amendments are proposed under the Health and Safety Code, Chapter 247, which authorizes the department to license personal care facilities, and Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.


§92.61. Introduction and Application.

(a) (No change.)

(b) Applicability of requirements for construction and life safety.

(1) All buildings or structures, new or existing, used as a licensed personal care facility must [shall] be in accordance with these standards. Any exceptions are specifically mentioned.

(2) For existing buildings and structures which are converted to personal care occupancy, no residents will be admitted until all standards are met and approval for occupancy is granted by the licensing section [office] of the Texas Department of Human Services (DHS) [the department].

(3) (No change.)

(4) Buildings and structures must [shall] conform to the 1988 edition, of NFPA 101, as published by the National Fire Protection Association, Inc., Batterymarch Park, Quincy, Massachusetts 02269, as follows. DHS has the option, for new construction only, of accepting compliance with later editions of the code, in their entirety, when required by local building authorities.

(A) All Type A [small] facilities and Type B small facilities must [shall] conform to Chapter 21.

[B] Type A large facilities shall conform to Chapter 21.]

[C] Type B small (“impractical”) facilities shall conform to Chapter 21.]

(D) Type B large (“impractical”) facilities must [shall] conform to Chapters 21 and 12 (limited care, as defined by the NFPA 101, requirements may be used).

(E) Other chapters, sections, subsections, or paragraphs of the NFPA 101 such as Chapters 1 through 7 and Chapter 31, must [shall] apply as referenced or intended for their relation to Chapters 21, 12 and 18.

(F) (No change.)

(5) New construction is [shall be] subject to local codes. (The description of the occupancy may vary with local codes.) In the absence of local codes or their enforcement for new construction, the department will require conformance to the fundamentals of the following codes:

(A)-[C] (No change.)

(D) illumination systems must [shall] be designed and installed in accordance with the Lighting Handbook of the Illuminatory Engineering Society (IES) of North America, except as may be modified in this subchapter.
An existing building either occupied as a personal care facility at the time of initial inspection by DHS [the department] or converted to occupancy as a personal care facility must [shall] meet all local requirements pertaining to that building for that occupancy. DHS will [The department shall ] require the facility sponsor or licensee to submit evidence that local requirements are satisfied. When local laws, codes or ordinances are more stringent than these standards for personal care, the more stringent requirements will [shall] govern.

Buildings must [shall] be structurally sound with regard to actual or expected dead, live, and wind loads according to applicable building codes.

The facility must [shall] meet the provisions and requirements concerning accessibility for individuals with disabilities in the following laws: the Americans with Disabilities Act of 1990 (Public Law 101- 336; Title 42, United States Code, Chapter 126); Title 28, Code of Federal Regulations, Part 35; Texas Civil Statutes, Article 9102; and Title 16, Texas Administrative Code, Chapter 68. Plans for new construction, substantial renovations, modifications, and alterations must [shall] be submitted to the Texas Department of Licensing and Regulation (Attn: Elimination of Architectural Barriers Program) for accessibility approval under Article 9102.

Existing facilities, i.e., facilities [with residents at the time of the inspection, of eight beds or less] that have residents but are not licensed as a personal care facility may [shall] be issued a six-month provisional license, in accordance with §92.20 of this title (relating to Provisional License), if the facility needs additional time to comply with life safety code and physical plant standards [given 12 months from the date of the initial architectural inspection, to meet the Life Safety Code and physical plant requirements of these standards. Facilities of nine beds or more that have residents but are not licensed as a personal care facility will be given six months, from the date of the initial architectural inspection, to meet the Life Safety Code and physical plant requirements of these standards].

§92.62. General Requirements.

(a) General. The concept of the National Fire Protection Association (NFPA) 101 Life Safety Code requirements for fire safety with regard to the residents, is based on evacuation capability. In accordance with Chapter 21 of this title (relating to Residential Board and Care Occupancies), Type A facilities are classified "slow" evacuation capability and Type B facilities are classified "impractical" evacuation capability. [These standards are written with the premise that the residents will be capable of self-evacuation without continuous staff assistance. Residents that are not normally capable of self-evacuation nor are capable of negotiating stair unassisted, shall not be housed above or below the floor of exit discharge unless the facility meets the construction requirements of NFPA 101, Chapter 12, titled "Health Care Occupancies for Large Facilities", and the "impractical" requirements for small facilities as found in NFPA 101, Chapter 21, titled "Residential Board and Care Occupancies ". Examples of residents that may not be capable of self-evacuation are as follows:]

[(4) a person with a physical disability of a nature that he is not capable of maneuvering in a wheelchair, walker, etc., unaided;]

[(2) a person who will not take or cannot understand instructions from a staff member, etc.]

[(3) a person that is taking medication which will make it difficult for a staff member to arouse the person quickly.]

(b) Evacuation procedures. Residents [that are housed ] in [buildings that are licensed as small or large] Type A facilities, must [shall] be able to demonstrate to the Texas Department of Human Services (DHS) [the authority having jurisdiction (AHJ)] that they can travel from their living unit to a centralized space, such as lobby, living or dining room on the level of discharge within a 13 minute period without continuous staff assistance. Elevators cannot be used as an evacuation route.

(c) Operational features.

(1) All fires causing damage to the facility and/or equipment must [shall] be reported to DHS [the department] within 72 hours. Any fire causing injury or death to a resident shall be reported immediately. A telephone report must [shall] be followed by a written report on a form which will be supplied by DHS [the department].

(2) Fire drills must [shall] be conducted at least four times a year on each shift. The drills may be announced in advance to the residents. The drills must [shall] involve the participation of the staff in accordance with the emergency plan. Residents must [shall] be informed of evacuation procedures and locations of exits. All fire drills must [shall] be documented on a form provided by DHS [the department].

(3) Smoking regulations must [shall] be established, and smoking areas must [shall] be designated for residents and staff. Ashtrays of noncombustible material and safe design must [shall] be provided in smoking areas.

(4) All facilities, except small, one-story facilities, [The facility] must [shall] post an emergency evacuation floor plan. [An exception is that small, one-story facilities are not required to post such plans.]

(5) The administration must [shall] have in effect and available to all supervisory personnel written copies of a plan for the protection of all persons in the event of fire and for their remaining in place, for their evacuation to areas of refuge, and from the building when necessary. The plan must [shall] include special staff actions including fire protection procedures needed to ensure the safety of any resident and must [shall] be amended or revised when needed. All employees must [shall] be periodically instructed and kept informed with respect to their duties and responsibilities under the plan. A copy of the plan must [shall] be readily available at all times within the facility.

(d) Construction.

(1) There must [shall] be separation from other occupancies. A common wall between a personal care facility and another occupancy must [shall] be not less than a two-hour fire-rated partition. (The partition must [shall] be as defined by National Fire Protection Association Standards.) A licensed nursing facility or licensed hospital is not considered another occupancy for this purpose. An exception is where an unlicensed occupancy occurs in the same building or structure and is so intermingled that separate safeguards are impracticable. The means of egress, construction, protection and other safeguards must [shall] comply with the NFPA 101 requirements of the licensed occupancy.

(2) Interior wall and ceiling surfaces must [shall] have as the finished surface or as substrate or sheathing a fire resistance of not less than that provided by 3/8” gypsum board (20 minute fire rating), unless approved otherwise by DHS [the department]. A sprinkler system will not substitute for the minimum construction requirements. An exception is Type B large facilities shall meet the construction requirements of NFPA 101, Chapter 12, §12-1.6.
(3) Flame spread rate requirements must [shall] be as specified in NFPA 101, §6-5. Flame spread is the rate of fire travel along the surface of a material. (This is different than other requirements for time-rated "burn through" resistance ratings, such as one-hour rated.) Flame spread ratings are Class A (0-25), Class B (26-75), and Class C (76-200).

(4) Doors between resident rooms and corridors or public spaces must [shall] be not less than 1-3/4" thick solid core wood construction or 20-minute fire-rated, self-closing or automatic-closing, and latch in their frames. Exceptions are as follows.

(A)-(C) (No change.)

(5) Upper floors must [shall] have at least two separate approved stairs. Each stair must [shall] be arranged and located so that it is not necessary to go through another room (such as bedroom or bath) to reach the stair. All stairs must [shall] be provided with handrails and with normal lighting. Refer to NFPA 101 for Class ‘A’ stair details. An exception is that for existing 16 beds or less: at least one main stair must be Class ‘B’. Such stairs may be constructed of wood.

(6) All hazardous areas, as defined in the NFPA 101, Chapter 21 or 12, must [shall] be one-hour fire-separated or provided with sprinkler protection or both if considered severe. Gasoline, volatile materials, oil base paint, or similar products must [shall] not be stored in the building housing residents.

(7) Exit signs, with emergency power, must [shall] be provided in all large facilities and installed in accordance with NFPA 101, §5-10.

(8) Emergency lighting must [shall] be provided in all buildings with 25 or more rooms [bedrooms]; in apartment buildings with 12 or more living units or which are 3 or more stories in height; and in all large facilities that are designed for Type B. The System must [shall] be installed in accordance with NFPA 101, §5-9.

(e) Fire alarm and sprinkler systems.

(1) Fire alarm and smoke detection system. Facilities licensed for eight beds or less must provide a manual fire alarm system, with smoke detection that complies with House- hold Fire Warning Equipment (NFPA 74), at a minimum. For all other facilities, an [Am] underwriter’s laboratory (U.L.) listed manual fire alarm initiating system, with an interconnected automatic smoke detection and alarm initiation system, must [shall] be provided in accordance with the NFPA 101, §7-6. The operation of any alarm initiating device will sound an audible/visual alarm(s) at the site.

(A) Smoke detectors must [shall] be installed in resident bedrooms, corridors, hallways, living rooms, dining rooms, offices, and public or common areas. Service areas, such as kitchens, laundries and attached garages used for car parking may have heat detectors in lieu of smoke detectors. Exceptions are as follows.

(i) Large facilities with apartment units may use listed smoke detectors with an alarm device and separate heat detector contacts in the living area. The smoke detectors must provide an audible signal within the apartment, and annunciate at the main staff station or location. The heat detector contacts must [shall] be connected into the fire alarm system and provide a general alarm when activated.

(ii) (No change.)

(B) The fire alarm control panel must [shall] be visible to staff at or near the staff area that is attended 24 hours a day. An exception to this requirement is a fire alarm control panel that is monitored by a device carried by the staff.

(C) (No change.)

(D) Emergency power source must [shall] be from approved storage batteries or on-site engine-driven generator set.

(E) The facility must [shall] have a written contract with a fire alarm company or person licensed by the State of Texas to maintain the alarm system semiannually. Inspections stipulated in the contract must be performed.

(F) In large facilities, the fire alarm panel must [shall] indicate as a separate zone, each floor and/or smoke compartment. Each zone must [shall] have an alarm and trouble indication.

(G) In large Type B facilities the fire alarm must [shall] automatically notify the fire department in accordance with NFPA 101, §7-6.4.

(2) Sprinkler systems. When installed or required, sprinkler systems must [shall] meet the following criteria.

(A)-(C) (No change.)

(f) Site and location.

(1) The facility must [shall] be serviced by a paid or volunteer fire fighting unit as approved by DHS [the department]. Water supply for fire fighting purposes must [shall] be as required and approved by the fire fighting unit.

(2) Any site or building conditions that are a fire hazard, health hazard, or physical hazard must [shall] have corrections made as determined by DHS [the department].

(3) The facility must [shall] provide or arrange for nearby parking spaces for private vehicles of residents and visitors. A minimum of one space must [shall] be provided for each four beds or fraction thereof, or per local code, whichever is more stringent.

(4) Ramps, walks, and steps must [shall] be of slip-resistant texture and uniform, without irregularities. Ramps must [shall] not exceed 1:12 slope, and shall meet handicap standards for width. Guardrails, fences, or handrails must [shall] be provided where grades make an abrupt change in level.

(5) All outside areas, grounds, adjacent buildings, etc., on the site must [shall] be maintained in good condition and kept free of rubbish, garbage, untended growth, etc., that may constitute a fire or health hazard. Site grades must [shall] provide for water drainage away from the structure to prevent ponding or standing water at or near the building.

(g) Sanitation and housekeeping.

(1) Waste water and sewage must [shall] be discharged into an approved [a state-approved municipal] sewerage system or an onsite sewerage facility approved by the Texas Natural Resource Conservation Commission or its authorized agent [an exception shall be as approved by the department].

(2) The water supply must [shall] be of safe, sanitary quality, suitable for use, and adequate in quantity and pressure, and must [shall] be obtained from a water supply system, the location, construction, and operation of which are approved by DHS [the department].

(3) Waste, trash, and garbage must [shall] be disposed of from the premises at regular intervals in accordance with state and local practices. Excessive accumulations are not permitted. The
facility must [shall] comply with 25 TAC §§1.131-1.137 (relating to Definition, Treatment, and Disposal of Special Waste from Health Care Related Facilities).

(4) Operable windows must [shall] be insect screened.

(5) An ongoing pest control program must [shall] be provided by facility staff or by contract with a licensed pest control company. The least toxic and least flammable effective chemicals must [shall] be used.

(6) All bathrooms, toilet rooms, and other odor-producing rooms or areas for soiled and unsanitary operations must [shall] be ventilated with operable windows or powered exhaust to the exterior for odor control. An exception is that existing small facilities may vent into an attic in accordance with the Uniform Building Code or local building code [provided that the attic is vented].

(7) In kitchens and in laundries, there must [shall] be procedures utilized by facility staff to avoid cross-contamination between clean and soiled utensils and linens.

(8) The facility must [shall] be kept free of accumulations of dirt, rubbish, dust, and hazards. Floors must [shall] be maintained in good condition and cleaned regularly; walls and ceilings must [shall] be structurally maintained, repaired, and repainted or cleaned as needed. Storage areas and cellars must [shall] be kept in an organized manner. No storage will be permitted in the attic spaces.

(9) The facility must [shall] be capable of being ventilated through the use of windows, mechanical ventilation, or a combination of both. Interior areas designated for smoking within the building must [shall] have mechanical ventilation directed to the exterior to remove smoke at the rate of 10 air changes per hour.

(10) In addition to janitor closet(s) called for in specific departments of large facilities, other janitor closet(s) must [shall] be provided throughout the facility to maintain a clean and sanitary environment. Each janitor closet must [shall] have a service sink and mechanical ventilation ducted to the outside.

(11) A public/staff toilet, i.e. commode and lavatory, complying with accessibility standards is required for every large facility up to and including 60 beds. Facilities over 60 beds must [shall] have separate public and staff toilets in addition to the staff toilet(s) required for the dietary staff.

(12) If the facility provides linens to the residents, the quantity of available linen must [shall] meet the sanitary and cleanliness needs of the residents. Clean linens must [shall] be stored in a clean area.

General safety features.

(1) The building must [shall] be kept in good repair; electrical, heating, and cooling must [shall] be maintained in a safe manner. DHS [The department] may require the facility sponsor or licensee to submit evidence to this effect, consisting of a report from the fire marshal, city/county building official having jurisdiction, licensed electrician, or a registered professional engineer. Use of electrical appliances, devices, and lamps must [shall] be such as not to overload circuits or cause excessive lengths of extension cords.

(2) Existing furnace and water heater installations may be continued in service, subject to approval by DHS.

(3) In large facilities, all draperies and other window coverings in public or common areas, and in bedrooms and/or living units in which smoking is permitted must [shall] be flame resistant.

(4) In large facilities, all new floor carpet installed in public or common spaces after the initial inspection by the department must [shall] be Class I or II based on the ‘Critical Radiant Flux’ ratings. Proper documentation must be provided.

(5) Open flame heating devices are prohibited. All fuel burning heating devices must [shall] be vented. Working fireplaces are acceptable if of safe design and construction and if screened or otherwise enclosed.

(6) There must [shall] be at least one telephone in the facility available to both staff and residents for use in case of an emergency. Emergency telephone numbers, including at least fire, police, ambulance, EMS, and poison control center, must [shall] be posted conspicuously at or near the telephone.

(7) An initial pressure test of facility gas lines from the meter must [shall] be provided. Additional pressure tests will be required when the facility has major renovations or additions where the gas service is interrupted. All gas heating systems must [shall] be checked prior to the heating season for proper operation and safety by persons who are licensed or approved by the State of Texas to inspect such equipment. A record of this service must [shall] be maintained by the facility. Any unsatisfactory conditions must [shall] be corrected promptly.

(8) Exterior and interior stairs must [shall] have handrails that are firmly secured to prevent falls.

(9) Cooling and heating must [shall] be provided for occupant comfort. Conditioning systems must [shall] be capable of maintaining the comfort ranges of 68 degrees Fahrenheit to 82 degrees Fahrenheit in resident-use areas.

(10) The Illumination Engineering Society of North America recommendations must [shall] be followed to achieve proper illumination characteristics and lighting levels throughout the facility. Minimum illumination must [shall] be 10-foot candles in resident rooms during the day and 20 foot candles in corridors, staff stations, dining rooms, lobbies, toilets, bathing facilities, laundries, stairways and elevators during the day. Illumination requirements for these areas apply to lighting throughout the space and should be measured at approximately 30 inches above the floor anywhere in the room. Minimum illumination for medication preparation or storage areas, kitchens, and staff station desks must [shall] be 50-foot candles during the day. Illumination requirements for these areas apply to the task performed and should be measured on the tasks.

(11) All buildings three floors or higher and in facilities that provide services, treatment, or social activities on floors above or below the level of discharge and which house mobility impaired residents must [shall] have a passenger elevator. The lowest level of discharge will be the first floor for determining floor level.

(12) Floor, ceiling, and wall finish materials must [shall] be complete and in place to provide a sanitary and structurally safe environment.

(i) Portable fire extinguishers. Portable fire extinguishers must be provided and maintained to comply with the provisions of the National Fire Protection Association (NFPA) 10. This includes such items as type of extinguishers (A, B, or C), location and spacing, mounting heights, monthly inspections by staff, yearly inspections by a licensed agent (with any necessary servicing), and hydrostatic testing as recommended by the manufacturer.
(1) Extinguishers in resident corridors must be spaced so that travel distance is not more than 75 feet. The minimum size of extinguishers must be either 2 1/2 gallon for water type or five pound for ABC type. In large facilities, at least one portable Underwriters Laboratory (U.L.) or factory mutual (F.M.)-approved five-pound Class B/C dry chemical fire extinguisher, rechargeable type, is required in each laundry, kitchen and walk-in mechanical room.

(2)-(7) (No change.)

(j) (No change.)

(k) Accessibility provisions.

[44] The physical plant of all large facilities and all other facilities housing residents with physical disabilities and/or mobility impairments must comply with applicable federal, state and local requirements for persons with disabilities.

[2] A minimum of 5.0 percent of the resident living units of large facilities shall meet the accessibility provisions.

(l) Resident accommodations.

(1) Resident bedrooms.

(A) Bedroom usable floor space for Type A facilities must [shall] not be less than 80 square feet for a one-bed room and not less than 60 square feet per bed for a multiple bed room. A bedroom must [shall] be not less than eight feet in the smallest dimension, unless specifically approved otherwise by the department. Bedrooms for persons with physical disabilities and/or mobility impairment must [shall] meet accessibility standards for access around the bed or beds, i.e., minimum of 3'-0" clear width for access aisles. (B) Bedroom usable square footage for Type B facilities must [shall] be not less than 100 square feet per bed for a single-bed room and not less than 80 square feet per bed for a multiple-bed room. Bedrooms for persons with physical disabilities and/or mobility impairment must [shall] meet accessibility standards for access around the bed or beds, i.e., minimum of 3'-0" clear width for access aisles. A bedroom must [shall] not be less than ten feet in the smallest dimension unless specifically approved otherwise by DHS [the department].

(C) (No change.)

(D) No more than four beds must [shall] be in a bedroom, and not more than 50% of the beds must [shall] be in bedrooms of three or more.

(E) Each bedroom must [shall] have at least one operable window with outside exposure. The window sill must [shall] be no higher than 44" from the floor and must [shall] be at or above grade level. The window will be operable from the inside, without the use of tools or special devices, and provide an operable section with a clear opening of not less than 5.7 square feet (minimum width of 20" x 41.2" high and minimum height of 24" x 34.2" wide). Windows required for evacuation will not be blocked by bars, shrubs, or any obstacle that would impede evacuation. Exceptions are as follows.

(i) In large Type B facilities, the window must permit the venting of products of combustion in accordance with the Life Safety Code for Healthcare Occupancy [shall be no more than 35%].

(ii) In large Type B facilities, the bedroom window size shall not be less than 8% of the bedroom size.
(B) The total space requirement for social-diversional areas must be provided on a sliding scale as follows:
Figure: 40 TAC 92.62(1)(3)(B)

(C) (No change.)

(4) Resident dining areas.

(A) A dining area must be provided and have appropriate furnishings. A minimum of 120 square feet must be provided in at least one space, regardless of number of residents. This space must have exterior windows providing a view of the outside.

(B) Access to a dining area from the resident living units or bedrooms must be covered.

(C) The total space requirement for a dining area must be provided on a sliding scale as follows:
Figure: 40 TAC 92.62(1)(4)(C)

(D) (No change.)

(5) Storage areas. The facility must provide sufficient separate storage spaces or areas for the following:

(A) (No change.)

(B) locked areas for medications and medical supplies. Poison must be stored in a locked area and separate from all medications and preparation;

(C)-(I) (No change.)

(6) Kitchen.

(A) The facility must have a kitchen or dietary area to meet the general food service needs of the residents. It must include provisions for the storage, refrigeration, preparation, and serving of food; for dish and utensil cleaning; and for refuse storage and removal. Exception: Food may be prepared off-site or in a separate building provided that the food is served at the proper temperature and transported in a sanitary manner.

(B) Kitchens (main/dietary) for facilities serving 17 or more non-employees per meal, on a routine basis, must be as follows.

(i) Kitchens will be evaluated on the basis of their performance in the sanitary and efficient preparation and serving of meals to residents and compliance with provisions covering dietary service in §92.41(h)(18) of this title (relating to Standards for Personal Care Facilities).

(I) Consideration must be given to planning for the type of meals served, the overall building design, the food service equipment, arrangement, and the work flow involved in the preparation and delivery of food.

(II) Plans must include a detailed kitchen layout designed by a registered or licensed dietitian or architect having knowledge in the design of food service operations.

(ii) Kitchens must be designed so that room temperature, at peak load (summertime), must not exceed 85 degrees Fahrenheit measured over the room at the five foot level. The amount of supply air must take into account the large quantities of air that may be exhausted at the range hood and dishwashing area.

(iii) Facilities for washing and sanitizing dishes and cooking utensils must be provided. The kitchen must contain a multi-compartment pot sink large enough to immerse pots and pans, and a mechanical dishwasher for washing and sanitizing dishes. Separation of soiled and clean dish areas must be maintained, including air flow.

(iv) A vegetable preparation sink must be provided. It must be separate from the pot sinks.

(v) A supply of hot and cold water must be provided. Hot water for sanitizing purposes must be 180 degrees Fahrenheit or the manufacturer’s suggested temperature for chemical sanitizers.

(vi) The kitchen must be provided with a hand-washing lavatory in the food preparation area with hot and cold water, soap, towel dispenser, and waste receptacle. The dish room area must have ready access to a handwashing lavatory.

(vii) Staff rest room facilities with lavatory must be directly accessible to kitchen staff without traversing resident use areas. The rest room must not open directly into the kitchen (i.e., provide a vestibule). An exception is that staff rest rooms in existing facilities must be provided, but may be located outside of the kitchen area.

(viii) Janitorial facilities must be provided exclusively for the kitchen and must be located in the kitchen area. An exception is that janitorial closets in existing facilities may be located outside of the kitchen area provided sanitary procedures are used to reduce the possibility of cross-contamination.

(ix) Non-absorbent smooth finishes or surfaces must be used on kitchen floors, walls and ceilings. Such surfaces must be capable of being routinely cleaned and sanitized to maintain a healthful environment. Counter and cabinet surfaces, inside and outside, must also have smooth, cleanable, non-porous finishes.

(x) Doors between kitchen and dining or serving areas must have 1/4-inch fixed wire glass view panel mounted in a steel frame.

(xi) A garbage can or cart washing area with drain and hot water must be provided either on the interior or exterior of the facility.

(xii) Floor drains must be provided in the kitchen and dishwashing areas. Exception: Floor drains are not required in existing facilities provided the floors are kept clean.

(xiii) A commercial range must be provided and equipped with a commercial range hood and exhaust designed and installed in accordance with NFPA 96. Small facilities with residential ranges may have residential range hoods, if they meet the Uniform Building Code (or local building code).

(xiv) Grease traps must be provided as required.

(C) Food storage areas for large facilities must be as follows.

(i) Food storage areas must provide for storage of a four-day minimum supply of non-perishable foods at all times.

(ii) Shelves must be adjustable wire type. An exception is that existing facilities with wood shelves may continue to use the shelves provided they are kept sealed and clean.

(iii) (No change.)
(iv) Food must not be stored on the floor. Dollies, racks, pallets, or wheeled containers may be used to elevate foods not stored on shelving.

(v) Dry foods storage must have an effective venting system to provide for positive air circulation.

(vi) The maximum room temperature for food storage must not exceed 85 degrees Fahrenheit at any time. The measurement must be taken at the highest food storage level, but not less than five feet from the floor.

(vii) (No change.)

(D) Auxiliary serving kitchens (not contiguous to food preparation/serving area) must be as follows.

(i) Where service areas other than the kitchen are used to dispense foods, these must be designated as food service areas and must have equipment for maintaining required food temperatures while serving.

(ii) Separate food service areas must have handwashing facilities as part of the food service area.

(iii) Finishes of all surfaces, except ceilings, must be the same as those required for dietary kitchens or comparable areas.

(7) Laundry/linen services.

(A) A large personal care facility which co-mingles and processes laundry on-site in a central location must comply with the following.

(i) The laundry must be separated and provided with sprinkler protection if located in the main building. (Separation must consist of a one-hour fire rated partition carried to the underside of the floor or roof deck above.) Access doors must be from the exterior or interior non-resident use areas, such as a small vestibule or service corridor.

(ii) The laundry must be provided with the following physical features:

(I) a soiled linen receiving, holding, and sorting room with a floor drain and forced exhaust to the exterior which must operate at all times there is soiled linen being held in this area. (This may be combined with the washer section.);

(II)-(VI) (No change.)

(B) If linen is processed off the site, the following must be provided on the premises:

(i) (No change.)

(C) Resident-use laundry, if provided, must utilize residential type washers and dryers. If more than three washers and three dryers are located in one space, the area must be one-hour fire separated or provided with sprinkler protection.

§92.63. Construction and Initial Survey of Completed Construction.

(a) Construction phase.

(1) The Texas Department of Human Services (DHS), Long Term Care-Regulatory, Licensing [Architectural] Section in Austin, Texas, must be notified in writing of construction start.

(2) All construction must be done in accordance minimum licensing requirements. It is the sponsor’s responsibility to employ qualified personnel to prepare the contract documents for construction of a new facility or remodeling of an existing facility. Contract documents for additions and remodeling and for the construction of an entirely new facility must be prepared by an architect licensed by the Texas State Board of Architectural Examiners. Drawings must bear the seal of the architect. Certain parts of final plans, designs, and specifications must bear the seal of a registered professional engineer approved by the State Board of Registration for Professional Engineers to operate in Texas. These certain parts include sheets and sections covering structural, electrical, mechanical, and sanitary engineering.

(A) Remodeling is the construction, removal, or relocation of walls and partitions; the construction of foundations, floors, or ceiling-roof assemblies; the expanding or altering of safety systems (including, but not limited to, sprinkler, fire alarm, and emergency systems) or the conversion of space in a facility to a different use.

(B) (No change.)

(b) (No change.)

(c) Initial survey of completed construction.

(1) Upon completion of construction, including grounds and basic equipment and furnishings, an initial architectural inspection [initial survey] of the facility, including additions or remodeled areas, is required to be performed by DHS and may be done in accordance with the architectural section prior to occupancy. A minimum of three weeks advance notice is needed. The completed construction must have the written approval of the local authorities having jurisdiction, including the fire marshal, health department, and building inspector.

(2) The Licensure Section, Long Term Care-Regulatory, must be notified of completion of construction or pending completion in order to facilitate the initial architectural inspection. DHS will schedule an inspection as soon as possible.

(3) After the completed construction has been surveyed by a representative of the architectural section of DHS and found acceptable, this information will be conveyed to the licensing officer of the DHS facility as part of the information needed to issue a license to the facility. In the case of additions or remodeling of existing facilities, a revision or modification to an existing license may be necessary. Note that the building, grades, drives, and parking must be 100% complete at the time of this initial visit for occupancy approval and licensing, including basic furnishings and operational needs. A facility may accept up to three residents between the time it receives initial approval from the architectural section and the time the license is issued.

(4) The following documents must be available to DHS’s surveyor at the time of the survey of the completed building:

(A)-(C) (No change.)

(D) approval of the completed sprinkler system installation by the designer. A copy of the material list and test certification must be available;

(E)-(F) (No change.)

(G) a written statement from an architect/engineer stating that, from periodic onsite observation visits, the facility as constructed is, to the best of his/her knowledge and belief, in substantial compliance with his/her construction documents, the Life Safety Code, DHS licensure standards, and local codes that the building was constructed to meet NFPA 101, Life Safety Code.
(H) (No change.)

(d) Nonapproval of new construction.

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

(3) Copies of reduced size floor plans on an 8 1/2 inch by 11 inch sheet must [shall] be submitted in duplicate to the department for record/file use and for the facility’s use and for facility’s use for evacuation plan, fire alarm zone identification, etc. The plan must [shall] contain basic legible information such as scale, room usage names, actual bedroom numbers, doors, windows, and any other pertinent information.

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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Glenn Scott

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For further information, please call: (512) 43789-3765

Subchapter E. Inspections, Surveys, and Visits

§92.81. Inspections and Surveys.

(a) (No change.)

(b) An inspection may be conducted by an individual surveyor or by a team, depending on the purpose of the inspection or survey, size of facility, [levels of care] and service provided by the facility, and other factors.

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

(e) Certain visits may be announced, including, but not limited to, [consultations visits to determine how a physical plant may be expanded or upgraded and visits to determine the progress of physical plant construction or repairs, equipment installation or repairs, or systems installation or repairs or] conditions when certain emergencies arise, such as fire, windstorm, or malfunctioning or nonfunctioning of electrical or mechanical systems.

(f) The facility must make all [resident and employee] books, records, and other documents maintained by or on behalf of a facility accessible to DHS upon request.

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

§92.82. Determinations and Actions Pursuant to Inspections.

(a) (No change.)

(b) Violations of regulations will be listed on forms designed for the purpose of the inspection and will include a specific reference in the Personal Care Standards for the violations cited.

(c) (No change.)

(d) At the conclusion of an inspection or survey, the violations will be discussed in an exit conference with the facility’s management. A written list of the violations will be left with the facility at the time of the exit conference, [i] If any additional violations are cited [violation that may be determined] during review of field notes or preparation of the official final list (when the official final list was not issued at the exit conference), the facility will be given an additional exit conference regarding the newly-cited violation(s), which will be communicated to the facility in writing within ten weekdays of the exit conference, and the facility will have ten weekdays to reply before the additional violation is made a part of the permanent record. Copies of any narratives or similar papers written to further describe the conditions will be furnished to the facility.

(e) Upon receipt of the final statement of violations, the facility will have ten days to submit an acceptable plan of correction to the regional director.

(f) [i] A clear and concise summary in nontechnical language of each licensure inspection, inspection of care, and/or complaint investigation will be provided by DHS. That summary will be in a form outlining significant violations noted at the time of the visit, but will not include names of residents, staff, or any other statement that would identify individual residents or other prohibited information under general rules of public disclosure. The summary will be provided to the facility at the time the report of contact or similar document is provided.

(g) [i] If the provider and the inspector cannot resolve a dispute regarding a violation of regulations, the provider, in entitled to (may seek) an informal dispute resolution (IDR) at the regional level for all violations. For a violation which resulted in an adverse action, the provider is entitled to an IDR at either the regional or state office level.

(1) A written request and all supporting documentation must be submitted to the Regional Director, Long Term Care-Regulatory, for a regional IDR, or to Long Term Care- Regulatory, Texas Department of Human Services (TDHS), P.O. Box 149030 (E-341), Austin, TX 78714-9030, for a central office IDR, no later than the tenth calendar day after receipt of the official statement of deficiencies.

(2) DHS will complete the IDR process no later than the 30th calendar day after receipt of a request from a facility.

(3) Deficiencies deemed invalid in an IDR will be so noted in DHS’s records.

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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Subchapter F. Abuse, Neglect and Exploitation; Complaint and Incident Reports and Investigations

40 TAC §92.101

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

The repeal is proposed under the Health and Safety Code, Chapter 247, which authorizes the department to license personal care facilities, and Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.


§92.101. Definitions.

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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40 TAC 92.101–92.103, 92.106

The amendments and new section are proposed under the Health and Safety Code, Chapter 247, which authorizes the department to license personal care facilities, and Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.


§92.101. Definitions of ‘abuse,’ ‘neglect,’ and ‘exploitation.’

For purposes of this subchapter, the definitions of ‘abuse,’ ‘neglect,’ and ‘exploitation’ are those found in Chapter 48, Human Resources Code, and in reference to children, those found in the Family Code, §261.001.

§92.102. Abuse, Neglect, or Exploitation Reportable to the Texas Department of Human Services (DHS) by Facilities.

(a) Any facility staff who has reasonable cause to believe that a resident is in a state of abuse, neglect, or exploitation must report the abuse, neglect, or exploitation to DHS’s state office at (512) 438-2629 and to follow the facility’s internal policies regarding abuse, neglect, or exploitation.

(b) The following information must be reported to DHS:

(1) name, age, and address of the resident;

(2) name and address of the person responsible for the care of the resident, if available;

(3) nature and extent of the elderly or disabled person’s condition;

(4) basis of the reporter’s knowledge; and

(5) any other relevant information.

(c) Reports of abuse, neglect, or exploitation are to be made to DHS’s state office at (512) 438-2629. The person reporting must make an oral report immediately on learning of the alleged abuse or neglect. The facility must investigate the alleged abuse or neglect and send a written report of the investigation to DHS’s state office no later than the fifth calendar day after the oral report.

(ce) Each report must contain the:

(4) name, age, and address of the resident;

(2) name and address of the person responsible for the care of the resident, if available;

(3) nature and extent of the elderly or disabled person’s condition; and

(4) basis of the reporter’s knowledge.

§92.103. Complaint Investigation.

(a) A complaint is any allegation received by the Texas Department of Human Services (DHS) [department] regarding

[no change]

(b) DHS must give the facility [must be furnished by the department with] a notification of the complaint received and a summary of the complaint, without identifying the source of the complaint.

§92.106. General Provisions.

(a) Confidentiality. All reports, records, and working papers used or developed by the Texas Department of Human Services (DHS) [department] in an investigation are confidential, and may be released only as provided in this subsection.

(1) Completed written investigation reports on cases concluded to be abuse or neglect must [shall] be furnished to the district attorney and appropriate law enforcement agency. DHS [The department] also may release these reports to any other public agency.

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

(b) Immunity. A person who reports suspected instances of abuse or neglect [shall], in the absence of bad faith or malicious conduct, will be immune from civil or criminal liability which might have otherwise resulted from making the report. Such immunity extends [shall extend] to participation in any judicial proceeding resulting from the report.

(c) Privileged communications. In a proceeding regarding a report or investigation conducted under this subchapter, evidence must [shall] not be excluded on a claim of privileged communication except in the case of a communication between an attorney and a client.

(d) Central registry. DHS maintains [The department shall maintain] a central registry of reported cases of abuse and neglect at the central office in Austin.

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.

(a) (No change.)

(b) Long Term Care - Regulatory, Texas Department of Human Services (DHSS) [departmental], will be responsible for the maintenance and release of records on licensed facilities, and other related records.

(c) The application for inspection of public records is subject to the following criteria.

1) The application must [shall] be made to Long Term Care - Regulatory, Texas Department of Human Services, 8430 Wall Street, Austin, Texas 78754.

2) The requestor must [shall] identify himself/herself.

3) The requestor must [shall] give reasonable prior notice of the time for inspection and/or copying of records.

4) The requestor must [shall] specify the records requested.

5) (No change.)

6) The bureau must [shall] provide the requested records as soon as possible. However, if the records are in active use, or in storage, or time is needed for proper deidentification or preparation of the records for inspection, the bureau must [shall] so advise the requestor and set an hour and date within a reasonable time when the records will be available.

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

(f) Charging for copies of records must [shall] be in accordance with the following criteria.

1) (No change.)

2) If the requestor wants to request copies of a record, the requestor will specify in writing the records to be copied on an appropriate bureau form, and the bureau will complete the form by specifying the cost of the records which the requestor must [shall] pay in advance. Checks and other instruments of payment will be made payable to the Texas Department of Human Services.

3) Any expenses for standard-size copies incurred in the reproduction, preparation, or retrieval of records must [shall] be borne by the requestor on a cost basis in accordance with costs established by the State Purchasing and General Services Commission or the department for office machine copies.

4)-(5) (No change.)

(g) (No change.)

§92.125. Resident’s Bill of Rights and Provider Bill of Rights.

(a) Resident’s bill of rights.

1) Each personal care facility must [shall] post the resident’s bill of rights, as provided by the Texas Department of Human Services (DHSS) [departmental], in a prominent place in the facility and be written in the primary language of each resident.

2) (No change.)

3) The resident’s bill of rights must provide that each resident in the personal care facility has the right to:

(A)-(C) (No change.)

(D) be treated with respect, consideration, and recognition of his or her dignity and individuality. A resident must [shall] receive personal care and private treatment in a safe and decent living environment.

(E)-(F) (No change.)

(G) be encouraged and assisted in the exercise of his or her rights. A resident may present grievances on behalf of the resident or others to the manager, state agencies, or other persons without threat of reprisal in any manner. The person providing services must [shall] develop procedures for submitting complaints and recommendations by residents and for ensuring a response by the person providing services;

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

(K) manage his or her financial affairs, or must [shall] be given at least a quarterly accounting of financial transactions made on his or her behalf by the facility should the facility accept his or her written delegation of this responsibility to the facility for any period of time in conformance with state law;

(L)-(X) (No change.)

(Y) not be transferred or discharged, except in an emergency situation. The responsible party of the resident and the attending physician must [shall] be notified immediately;

(Z)-(BB) (No change.)

(b) Provider’s bill of rights.

1) Each personal care facility must [shall] post a providers’ bill of rights in a prominent place in the facility.

2) The providers’ bill of rights must provide that a provider of personal care services has the right to:

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

(C) terminate a contract immediately, after notice to the department, if the provider finds that a resident creates a serious or immediate threat to the health, safety, or welfare of other residents of the personal care facility. [s] During evening hours and on weekends or holidays, notice to DHS must be made to 1-800-458-9838;

(D)-(J) (No change.)

§92.127. Required Postings.

Each facility must [shall] prominently and conspicuously post for display in a public area of the facility that is readily available to residents, employees, and visitors:
(1)-(2) (No change.)

(3) a notice in the form prescribed by the department stating that inspection and related reports are available at the facility for public inspection and providing the department’s toll-free telephone number that may be used to obtain information concerning the facility; [and]

(4) a copy of the most recent inspection report relating to the facility;

(5) Resident Bill of Rights; and

(6) Provider Bill of Rights.

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 March 2, 1998.

TRD-9802996
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: May 15, 1998
For further information, please call: (512) 438-3765

40 TAC §92.129

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

The repeal is proposed under the Health and Safety Code, Chapter 247, which authorizes the department to license personal care facilities, and Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.


§92.129. Respite Care.

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 March 2, 1998.

TRD-9802995
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: May 15, 1998
For further information, please call: (512) 438-3765

Subchapter H. Enforcement

40 TAC §§92.153-92.155


§92.153. Revocation.

(a) (No change.)

(b) In addition, DHS may revoke a license if the license holder:

(1) (No change.)

(2) used subterfuge or other evasive means to obtain the license; [++]

(3) concealed a material fact in the application for a license or failed to disclose information required in §92.12 of this title (relating to Applicant Disclosure Requirements) that would have been the basis to deny the license under §92.17 of this title (relating to Criteria for Denying a License or Renewal of a License); or [ - ]

(4) has violated Texas Health and Safety Code §247.021.

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


(a) The Texas Department of Human Services (DHS) may petition a district court for a temporary restraining order:

(1) to restrain a continuing violation of the standards or licensing requirements if DHS finds the facility is operating without a license; or

(2) to inspect a facility allegedly required to be licensed and operating without a license when admission to the facility cannot be obtained. If it is shown that admission to the facility cannot be obtained, the court will order the facility to allow DHS admission to the facility.

(b) A person who does not possess a license for a personal care facility, as required by §247.021, Texas Health and Safety Code, is subject to referral to the attorney general and a civil penalty of not less than $1,000 nor more than $10,000 for each act of violation. Each day of a continuing violation constitutes a separate ground for recovery.

(c) If the attorney general fails to take action within 30 days of referral from DHS, DHS will refer the case to the local district attorney, county attorney, or city attorney, who will file suit in district court to collect and retain the penalty.

(d) Investigation and attorney’s fees will not be assessed or collected by or on behalf of DHS or other state agency unless DHS or other state agency assesses and collects a penalty.

(e) The commissioner must approve any settlement agreement to a suit brought against unlicensed facilities.

§92.155. Emergency License Suspension and Closing Order.

(a) (No change.)

(b) The order suspending a license or closing a part of a facility under this section is immediately effective on the date the license holder receives a hand-delivered written notice or on a later date specified in the order. [Written notice includes notice by facsimile transmission.]

(c)-(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.
Chapter 96. Certification of Long Term Care Facilities

40 TAC §96.6

The Texas Department of Human Services (DHS) proposes an amendment to §96.6, concerning the informal administrative review process for intermediate care facilities for persons with mental retardation and related conditions, in its Certification of Long Term Care Facilities chapter. The purpose of the amendment is to make available to providers one level of review by the associate commissioner for Long Term Care Regulatory or his state office designee. Either party may conduct a face-to-face, telephone, or paper review if one of the following termination actions is taken against the facility: 90-day termination, denial of certification, or invoking of the automatic cancellation clause. Timelines are extended to ten calendar days from receipt of the official statement of deficiencies.

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 to closely align the informal review process with state law and streamline internal processes. The amendments to the rule address a review process that has no cost or impact to the small or large business provider. 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 Maxine Tomlinson at (512) 438-3169 in DHS’s Long Term Care Policy Section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-174, 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 Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The amendment implements the Human Resources Code, §§22.001-22.030.


(a) General. The procedure in this section shall be utilized by providers when there is a disagreement with surveyors’ findings and/or recommendations, when additional written information becomes available that was not shared with the survey team, or when a complaint is filed relating to the conduct of the survey. The provider may be given a face-to-face, telephone, or paper review when one of the following termination actions is taken against the facility: 90-day termination, denial of certification, or when the automatic cancellation clause is invoked. If no action was taken against the facility but deficiencies were written, the provider will be given a paper review only. These procedures shall only be used if the deficiencies cited in the survey report do not pose an imminent threat or danger to the health and/or safety of a resident. Twenty-three day terminations are not entitled to utilize the Informal [Administrative Review process.

(b) Review process.

(1) Exit conference.

(A) At the time of the survey the provider will furnish any information requested by the surveyor. The facility staff must not wait until the exit conference to provide information requested earlier during the survey. Information needed to conduct the survey must be made available during the survey; however, additional information may be accepted for consideration at the time of the exit conference. [The facility staff must not wait until the exit conference to supply information requested earlier during the survey.]

(B) At the time of the exit conference, the facility will receive written notice from a member of the survey team of its right to an informal [administrative review.

(2) Regional review.

(C) If there are issues which are not resolved during the exit conference, the administrator may make a written or faxed request for an informal [administrative] review with the associate commissioner for Long Term Care Regulatory or his state office designee [appropriate regional director]. The request for the review and any additional information must be submitted and received in the regional director’s office within ten [seven] calendar days after receipt of the official statement of deficiencies [the exit conference].

(D) The Texas Department of Human Services (DHS) will not accept additional information or schedule a conference at the regional or state office level for the informal administrative review after the seventh calendar day after the exit conference.

(E) As part of the regional review, the regional director or designee will:

(1++) review additional information and make a decision as to whether deficiencies and/or adverse action recommendations should be sustained, altered, revised, or deleted;

(2++) upon request, meet with providers to discuss survey findings; and

(3++) render a decision and notify provider of survey team/regional director’s decision within seven calendar days of the review.

(F) State office review. If the conference with the regional director does not resolve the issue, a written or faxed request may be made to the program director, ICERM/RRC department, Long Term Care - Regulatory, Texas Department of Human Services, for an informal administrative review. The written or faxed request must be submitted and received in the program director’s office seven calendar days from the date of the regional notification.

(G) As part of the state office review, the director or designee of the ICERM/RRC department will:

(1++) review only information reviewed at the regional level and make a decision as to whether deficiencies and/or punitive action recommendations shall be sustained, altered, or revised from the original finding of the survey team;
[###] upon request, hold a conference with the provider to discuss the issues involved; and

[####] render a decision and notify the provider of the state office decision within seven calendar days of the review.

[BB] If the review at the state office does not resolve the issue(s), the facility or the director or designee of the ICEMR/RC department may request a final review from the deputy commissioner's office for long term care seven calendar days from the state office notification. The written or oral request must be received by the deputy commissioner's office for long term care within seven calendar days from the date of the state office notification.

(2) [CC] Deputy: Associate commissioner's review. The associate commissioner [deputy commissioner's office] for long term care regulatory or his state designee [shall]:

(A) will review all information and make an impartial decision as to whether deficiencies [and/or punitive action recommendations] shall be sustained, altered, or reversed [review] from the original findings [finding] of the survey team. [5] The Texas Department of Human Services (DHS) will not accept additional information or schedule an informal review after ten calendar days following receipt of the official statement of deficiencies;

(B) may conduct a face-to-face, telephone, or paper review when one of the following actions was taken against the facility: 90-day termination, denial of certification, or when the automatic cancellation clause is invoked;

[BB] at DHS’s option, hold a conference with the provider to discuss the issues involved;

(C) will conduct a paper review only, if no action was taken against the facility, but deficiencies were written;

(D) may request additional information if necessary;

(E) [CC] will determine a resolution and present the resolution to the associate [deputy] commissioner for long term care regulatory for concurrence; and

(F) [CC] will notify the provider of a decision before the forty-fifth [fiscal] day after the provider receives the official statement of deficiencies [exit conference]. Time frames for all certification actions [90 day terminations] must be adhered to by the facility and DHS [the department].

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

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

TRD-9802993

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: June 1, 1998

For further information, please call: (512) 438-3765

Part II. Texas Rehabilitation Commission

Chapter 104. Informal and Formal Appeals by Applicants/Clients of Decisions by a Rehabilitation Counselor or Agency Official

40 TAC §104.5

The Texas Rehabilitation Commission proposes an amendment to §104.5, concerning formal appeal. The section is being amended to clarify the Texas Rehabilitation Commission’s Formal Appeal process.

Charles Schiesser, Chief of Staff, 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.

Mr. Schiesser also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the clarification in the Texas Rehabilitation Commission’s Formal Appeal process. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Simon Y. Rodriguez, General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

For further information, please contact Roger Darley, Deputy General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

The amendment is proposed under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

No other statute, article, or code is affected by this proposal.

§104.5. Formal Appeal.

(a) The formal appeal process commences with the filing of a Petition for Administrative Hearing with the Commissioner’s Office for Administrative Hearings. The hearing must be held within 45 days of an individual’s request for review, unless informal resolution is achieved prior to the 45th day, or the parties agree to a specific extension of time.

(b) (No change.)

(c) Impartial Hearing Officer.

(1) (No change.)

(2) Powers and Duties.

(A) The IHO shall have the authority and duty to:

(ii) take action to avoid unnecessary delay in the disposition of the proceeding;

(iii) maintain order; and

(iv) at the IHO’s discretion, permit deviations from the rules and procedures prescribed in this section in the interest of justice or to expedite the proceedings.

(B)-(D) (No change.)

(d)-(k) (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 26, 1998.
Part XIX. Texas Department of Protective and Regulatory Services

Chapter 715. Day Care Licensing

The Texas Department of Protective and Regulatory Services (TDPRS) proposes the repeal of §§715.231, 715.330, 715.433, and 715.501-715.507, concerning waiver requests, the children in care, the caregiver and family, health and safety, the care given to children, definitions, time limited registration, and inquiries, in its Day Care Licensing chapter. The purpose of the repeals is to delete rules that are out of date and that are substantively covered by other rules. For waivers and variances, §725.2023 (relating to Requesting the Waiver/Variance) covers the topic for all standards, regardless of the setting. Sections 715.501-715.507, standards for registered family homes, should have been deleted when the more recent rules became effective January 30, 1990. TDPRS is therefore proposing the repeal of Subchapter F, Standards for Registered Family Homes, at this time.

Cindy Brown, Budget and Analysis Division Director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown 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 the current rules will be clearer for the general public, as well as for those operators in child care who must comply with the rules. There will be no effect on small businesses as these repeals will enable the department to clarify and consolidate its regulations and will not have a cost to providers. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Mary Panella at (512) 438-3246 in TDPRS’s Licensing Division. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-144, Texas Department of Protective and Regulatory Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the Texas Register.

Subchapter C. Standards for Kindergartens and Nursery Schools

40 TAC §715.231

(Editors 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 Protective and Regulatory Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Human Resources Code (HRC), Chapters 40 and 42, which describe the department’s regulatory and rulemaking authority.

The repeal implements the HRC, Chapters 40 and 42.

§715.231. Waiver Request.

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 March 2, 1998.

TRD-9802992

C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: April 12, 1998

For further information, please call: (512) 438-3765

Subchapter D. Standards for Schools: Grades Kindergarten and Above

40 TAC §715.330

(Editors 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 Protective and Regulatory Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Human Resources Code (HRC), Chapters 40 and 42, which describe the department’s regulatory and rulemaking authority.

The repeal implements the HRC, Chapters 40 and 42.

§715.330. Waiver Requests.

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 March 2, 1998.

TRD-9803007

C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: April 12, 1998

For further information, please call: (512) 438-3765

Subchapter E. Minimum Standards for Day Care Centers

40 TAC §715.433

(Editors 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 Protective and Regulatory Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Human Resources Code (HRC), Chapters 40 and 42, which describe the department’s regulatory and rulemaking authority.

The repeal implements the HRC, Chapters 40 and 42.
Chapter 725: General Licensing Procedures

The Texas Department of Protective and Regulatory Services (TDPRS) proposes amendments to §§725.1001, 725.1403, 725.1804, 725.2002, 725.2018, 725.2020, 725.2023, 725.2024, 725.2028, 725.2030, 725.2033, 725.2046, 725.4052, and 725.7001, concerning definitions, facilities exempt from licensing, liability insurance, exemptions, administrative licensing suspension, appeal not requested, requesting the waiver/variance, requesting an administrative review, notification of complaint investigation, findings of the complaint investigation, registration, regulations for registered family homes, release hearing for a facility employee, and facility responsibility; and proposes the repeal of §§725.2025 and 725.2031, concerning requirements for an advisory opinion and exemptions from registration, in its General Licensing Procedures chapter. The purpose of the proposal is to bring TDPRS rules into compliance with current legislation and to ensure consistency in the rules. The amendments to §§725.2023 and 725.2024 add a time limit for requests for administrative reviews. The amendment to §725.2033 deletes the procedure for issuing temporary registration to ensure that registration, as licenses and certificates, are not issued unless all standards, rules, and statute requirements are in compliance. The amendment to §725.7001 deletes the reference to harassment, which is covered by the right of the facility/family home to an administrative review anytime there is a question about TDPRS’s right to access information that is believed to be outside TDPRS’s authority.

Ms. Brown 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 no fiscal implications for state or local government as a result of enforcing or administering the sections.

Questions about the content of the proposal may be directed to Mary Panella at (512) 438-3246 in TDPRS’s Licensing Division. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-145, Texas Department of Protective and Regulatory Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the Texas Register.

Subchapter A: Definitions

The amendment is proposed under the Human Resources Code, Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs.

The amendment implements the Human Resources Code, §§42.001 - 42.077.

§725.1001. Definitions.

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

(1) (17) (No change.)

(18) On the premises - For the purpose of §725.1403(3) of this title (relating to Facilities Exempt from Licensing), on the premises means in the same building or shopping center, and adjacent to the premises means next to, across the street from, or in the same city block.

(19)-(21) (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 March 2, 1998.

TRD-9803004
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: April 12, 1998
For further information, please call: (512) 438-3765

Subchapter O. Exemptions from Licensing

40 TAC §725.1403

The amendment is proposed under the Human Resources Code, Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs.

The amendment implements the Human Resources Code, §§42.001-42.077.

§725.1403. Facilities Exempt from Licensing.

The types of child care facilities or arrangements that are exempt from licensing are:

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

(3) a facility where the parents of the children in care are shopping or engaging in activities on or adjacent to the premises and children are cared for during short periods of time. [On the premises means in the same building or shopping center, and adjacent to the premises means next to, across the street from, or in the same city block.] The facility must be able to contact the parent at all times.

The maximum length of time the child may be in care is four and a half hours per day or 12 hours per week. This exemption does not apply to facilities operated by an organization where parents are employed or enrolled as students.

(4) (No change.)

(5) school or class for religious instruction that does not last longer than two weeks and is conducted by a religious organization during the summer months.

(6)-(18) (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 March 2, 1998.

TRD-9803013
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: April 12, 1998
For further information, please call: (512) 438-3765

Subchapter S. Administrative Procedures

40 TAC §725.1804

The amendment is proposed under the Human Resources Code, Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs.

The amendment implements the Human Resources Code, §§42.001-42.077.

§725.1804. Liability Insurance.

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

(e) This section does not apply to a group [or registered] day care home or a listed or registered family home [in an agency foster home].

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 March 2, 1998.

TRD-9803012
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: April 12, 1998
For further information, please call: (512) 438-3765

Subchapter U. Say Care Licensing Procedures


The amendments are proposed under the Human Resources Code, Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs.

The amendments implement the Human Resources Code, §§42.001-42.077.


If a facility claims that it is not subject to regulation under a provision of the Human Resources Code, §42.041, the facility must send a written claim citing the subsection of the statute or the department rule [handbook] provision under which the claim is made. The facility must include all documentation supporting the claim. The facility must send the claim to the department.

§725.2018. Administrative Licensing Suspension.

If a facility or registered family home wishes to request a suspension of its license or registration under Human Resources Code, §42.071(a), the facility or registered family home must notify the licensing representative in writing of specific plans for resuming operation after a temporary suspension of operation. The child care facility must notify the department within 14 calendar days before resuming operation. The facility must show that standards can be met at the end of the suspension period and must not care for children during the suspension period.


After a revocation or denial of license, the facility must cease providing care for children after all administrative appeals and challenges have been exhausted.


To request permission not to meet a standard or to meet the intent of the standard in a different manner, an applicant [an applicant/licensee

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§725.2024. Requesting an Administrative Review.

If an applicant or a holder of a license/registry listing disagrees with a decision or action by licensing staff and wishes to request an administrative review, the requestor must describe the decision or action in dispute. The specific request must be in writing to a licensing supervisor or administrative staff. The request may be given by telephone or in person, but must be followed up with written notification. The request for an administrative review must be made within 14 calendar days of notification of the disputed decision or action. The requestor may request an administrative review by phone, in person, or by letter. The requestor may contact any regional staff.

§725.2028. Notification of Complaint Investigation.

The applicant/licensee/registry holder/registrant, [applicant/licensee] director, or person in charge at the facility/family home (facility) is entitled to be notified by licensing staff when a complaint is being investigated.


The applicant/licensee/registry holder/registrant, [applicant/licensee] director, or person in charge is entitled to be notified of the results of the investigation of the complaint, including all relevant citations of licensing rules and/or statute requirements and any evaluations of noncompliance, [allegations, citation of standards, evaluation, noncompliance] corrections needed, and time limit for corrections.

§725.2033. Registration.

(a) The department issues a notice of registration when a registration request (completed according to registration requirements) has been processed, the applicant has submitted satisfactory verification of completion of training in first aid and cardiopulmonary resuscitation, the premises have been inspected and found to be in compliance with the minimum standards for registered family homes, and the required registration fee has been paid.

(b) If all other matters have been satisfactorily completed and the licensing representative finds only minor noncompliance, a temporary registration may be issued for 30 days. If the applicant corrects the noncompliance on or before the expiration of that term, the department verifies that corrective action has been taken and issues a regular registration certificate.

§725.2046. Regulations for Registered Family Homes.

(a) The department inspects family day care homes prior to issuing a registration to establish compliance with minimum standards. The department also inspects [a random sample of] registered family homes [every year] to establish compliance with minimum standards.

(b) Abuse/neglect complaints about registered family homes that are exempt from registration are referred to law enforcement. The department does not investigate complaints about exempt homes.

(b) [ee] The department may inspect family homes to determine whether child care is subject to regulation [registration].

(c) [dd] Registered family homes placed on probation or evaluation are inspected for compliance with the law, minimum standards, and registration requirements.

(d) [aa] Any public advertisement for a registered family home which uses the term “registered family home” must contain a provision in bold type stating: THIS HOME IS REGISTERED WITH THE TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES BUT IS NOT LICENSED OR REGULARLY INSPECTED.

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 March 2, 1998.

TRD-9803011
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services

Earliest possible date of adoption: April 12, 1998

For further information, please call: (512) 438-3765

40 TAC §725.2025, §725.2031

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

The repeals are proposed under the Human Resources Code, Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs.

The repeals implement the Human Resources Code, §§42.001-42.077.

§725.2025. Requirements for an Advisory Opinion.

§725.2031. Exemptions from Registration.

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 March 2, 1998.

TRD-9803010
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services

Earliest possible date of adoption: April 12, 1998

For further information, please call: (512) 438-3765

Subchapter PP. Release Hearings

40 TAC §725.4052

The amendment is proposed under the Human Resources Code, Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs.

The amendment implements the Human Resources Code, §§42.001-42.077.
§725.4052. Release Hearing for a Facility Employee.

When the alleged perpetrator is the employee of a facility, including an unlicensed or unregistered facility that is subject to regulation and including a facility making application, the Texas Department of Protective and Regulatory Services (TDPRS) [TPRS] sends the alleged perpetrator a notice including:

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

(5) a statement that any request for a hearing must be sent to the TDPRS, Docket Clerk, Legal Services Division, MC E-661, P.O. Box 149030, Austin, Texas 78714-9030 [associate commissioner for legal services, with a copy to the investigator or investigator’s supervisor ].

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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C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
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For further information, please call: (512) 438-3765

Subchapter NNN. Abuse/Neglect Investigations in Child Care Facilities

40 TAC §725.7001

The amendment is proposed under the Human Resources Code, Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs.

The amendment implements the Human Resources Code, §§42.001-42.077.

§725.7001. Facility Responsibility.

(a) (No change.)

(b) A regulated facility has the right to request an administrative review of any request for access or information that the facility believes is outside the department’s authority [or that the facility believes constitutes harassment]. The facility may not use a request for administrative review to delay an investigation.

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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C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
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TITLE 43. TRANSPORTATION
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 enacting or administering the proposed amended sections.

PUBLIC BENEFIT. Mr. Dike has also determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enacting the amendments and compliance with the sections will be privacy protection of persons who choose to restrict access to their personal information contained in motor vehicle records and clarification of the payment procedure for on-line access accounts and prepaid accounts for batch purchase of motor vehicle registration information. There will be no effect on small businesses.

SUBMITTAL OF COMMENTS. Written comments on the proposed amendments may be submitted to Jerry L. Dike, Director, Vehicle Titles and Registration Division, 125 East 11th Street Austin, Texas, 78701-2483. The deadline for receipt of written comments will be 5 p.m. on April 6, 1998.

STATUTORY AUTHORITY. 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, Transportation Code, §502.008 which authorizes the release of certain vehicle title and registration information, and Government Code, §552.230 and §552.262 which authorizes each agency to promulgate rules of procedure for the inspection and copying of public information and to specify the charges the agency will make for copies of public records.

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


(a) Request for records.

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

(3) Vehicle title and registration information.

(A) The department will provide certain vehicle registration information by telephone or upon receipt of a written request. Requested information will be released in accordance with 18 U.S.C. §2721, Transportation Code, Chapters 730 and 731, and Transportation Code §502.008.

(B) The department will provide a written form for requests for motor vehicle registration information which includes, but is not limited to:

(i) the name and address of the requestor;

(ii) the Texas license number, title or document number, and/or the vehicle identification number;

(iii) a statement that if the subject of the record has requested the department to restrict the release of the information, the requested information may only be released if the requestor is the subject of the record, has written authorization for release from the subject of the record, or the intended use is for one of the permitted uses indicated on the form;

(iv) a statement that the information is requested for a lawful and legitimate purpose, and the requestor will not disseminate or publish the information obtained from the department on the Internet or permit another to do so, in accordance with Transportation Code, §731.002;

(v) a certification that the statements made on the form are true and correct; and

(vi) the signature of the requestor.

(C) Each written request shall be accompanied by payment of the applicable fee in the form of either cash, cashier’s check, or money order.

(D) The department will provide vehicle registration information by license number by telephone only in accordance with 18 U.S.C. §2721 and Transportation Code, Chapters 730 and 731, and only if requested by:

(i) a peace officer acting in an official capacity; or

(ii) an official of the state, city, town, county, special district, or other political subdivision, utilizing the obtained information for tax purposes or for the purpose of determining eligibility for a state public assistance program.

[BB] The department will release information contained in the vehicle registration database by license number upon receipt of a written request. Information may only be released in accordance with 18 U.S.C. §2721 and Transportation Code, Chapters 730 and 731.

[C] Each written request shall be accompanied by payment of the applicable fee in the form of cash, cashier’s check, or money order, and shall include:

(i) the name and address of requestor;

(ii) the Texas license number and/or the vehicle identification number;

(iii) a statement that the use of the information is in accordance with 18 U.S.C. §2721 and Transportation Code, Chapters 730 and 731, and is for a lawful and legitimate purpose.

[D] A person receiving motor vehicle certificate of title or motor vehicle registration information that consists of the personal information of an individual who is the subject of that record shall agree in writing that the person will not:

(i) disseminate or publish the information on the Internet; or

(ii) permit another to disseminate or publish the information in that manner.

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

(b)-(d)

(e) Confidential information and privacy protection.

(1) The department will not provide records considered to be confidential by law or otherwise prohibited from release under the Code or other provisions of law, and will not provide copies of information subject to intellectual property protection.

(A) (No change.)

(B) Upon receipt of a request from an individual to restrict release of his or her personal information in the motor vehicle registration record, the department will only release the information in accordance with 18 U.S.C. §2721 and Transportation Code, Chapters 730 and 731. The department will provide a form for such a request, which at a minimum includes:

(i) the printed name and address of the requestor;

(ii) the description of the motor vehicle to which the request applies;
(iii) an area which allows the requestor to restrict disclosure of their personal information in response to individual requests for information and/or requests for information to be used for bulk distribution for surveys, marketing, or solicitations; and

(iv) the signature of the requestor.

(C) [SB] Upon receipt of a court order to prevent release of information, the department will prevent access to all information pertaining to an individual’s specific motor vehicle record.

(2) (No change.)

(f)-(g)


(a) (No change.)

(b) Electronic access to vehicle title and registration information.

(1) (No change.)

(2) Agreement with business or individuals. The written service agreement with a business or individual must contain:

(A) (No change.)

(B) an adjustable account, if applicable, in which an initial deposit and minimum balance is maintained in the amount of:

(i) $200 for an on-line access account; or

(ii) $1,000 for a prepaid account for batch purchase of motor vehicle registration information.

(C)-(H) (No change.)

(3) (No change.)

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

Filed with the Office of the Secretary of State on February 27, 1998.

TRD-9802962
Bob Jackson
Acting General Counsel
Texas Department of Transportation
Earliest possible date of adoption: April 12, 1998
For further information, please call: (512) 463-8630

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Chapter 9. Contract Management

Subchapter A. General

43 TAC §9.3

The Texas Department of Transportation proposes new §9.3, concerning protests made of purchases by the department under the State Purchasing and General Services act.

EXPLANATION OF PROPOSED NEW SECTION. Senate Bill 1752, 75th Legislature, 1997, added Government Code, §2155.076 to the State Purchasing Act to require each state agency to develop and adopt protest procedure rules for resolving vendor protests relating to purchasing issues. The act requires that the agency’s rules must be consistent with the General Services Commission’s rules which are located in 1 TAC Chapter 111.

New §9.3 is proposed to comply with Government Code, §2155.076 and provide a fair and efficient procedure for the protest of department purchases which does not place an undue burden on the protesting party. This section provides that the purpose of the section is to provide a procedure for vendors to protest purchases. The section defines general words and terms used throughout the new section, provides where and when a protest may be filed, establishes the minimum informational contents of the protest, and indicates who must receive copies of the protest. The section authorizes the department to suspend the purchase award during the protest unless the deputy executive director makes a written determination that the award of the purchase should be made without delay to protect substantial interests of the department. The section establishes an informal resolution process, including solicitation of written responses and resolution of dispute by agreement; requires the department to issue a written determination to a protest if the protest is not resolved by mutual agreement; and provides that remedial action that may be taken, including declaring the purchase void, reversing the award, or re-advertising the purchase. The section establishes an appeal process which includes review and recommendation by the general counsel to the executive director. The executive director may make a final determination or refer the matter to the Texas Transportation Commission for final determination. The department may reject protests that are not timely filed.

FISCAL NOTE Frank J. Smith, Director, Budget and Finance Division, has determined that for the first five-year period the new section is in effect, there will be no significant fiscal implications for state or local governments as a result of enforcing or administering the new section. There are no anticipated economic costs for persons required to comply with the section as proposed.

Lawrence J. Zatopek, Director, General Services Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new section.

PUBLIC BENEFIT Mr. Zatopek has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of the rule will be efficient and effective resolution of protests concerning protests. There will be no effect on small businesses.

SUBMITTAL OF COMMENTS. Written comments on the proposed new section may be submitted to Lawrence J. Zatopek, Director, General Services Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on April 6, 1998.

STATUTORY AUTHORITY. The new 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. Government Code, §2155.076 which requires the department to adopt rules concerning protest of purchase.

No statutes, articles, or codes are affected by this proposed new section.

§9.3. Protest of Department Purchases under the State Purchasing and General Services Act.
(a) Purpose. The purpose of this section is to provide a procedure for vendors to protest purchases made by the department. Purchases made by the General Services Commission on behalf of the department are addressed in 1 TAC Chapter 111.

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

(1) Act - Government Code, Chapters 2151-2177, the State Purchasing and General Services Act.
(2) Commission - The Texas Transportation Commission.
(3) Department - The Texas Department of Transportation.
(4) Deputy executive director - The deputy executive director for administrative services of the department.
(5) Director of general services - The director of the general services division of the department.
(6) Director of purchasing - The director of purchasing in the general services division of the department.
(7) District engineer - The chief administrative officer in charge of a district of the department.
(8) Division - An organizational unit in the department’s Austin headquarters.
(9) Executive director - The executive director of the department.
(10) Interested party - A vendor that has submitted a bid for the purchase involved.
(11) Purchase - A procurement action for commodities or non-professional services under the Act.
(12) Rules - 1 TAC §§113.1-113.87, the State Purchasing Rules.

(c) Filing of protest.

(1) An actual or prospective bidder or offeror who is aggrieved in connection with the solicitation, evaluation, or award of a purchase may file a written protest. The protest must be addressed to the attention of the district engineer in whose district the action is being or was processed, or to the director of purchasing for purchases made on behalf of a division, but sent to the office of the director of general services within 10 working days after such aggrieved person knows, or should have known, of the action.

(2) The protest must be sworn and contain:

(A) the statutory or regulatory provision of the Act or the rules that the action is alleged to have violated;
(B) a specific description of the violation;
(C) a precise statement of the relevant facts;
(D) the issue to be resolved;
(E) argument and authorities in support of the protest;

and

(F) a statement that copies of the protest have been mailed or delivered to other identifiable interested parties.

(d) Suspension of award. If a protest or appeal of a protest has been filed, then the department will not proceed with the solicitation or the award of the purchase until the deputy executive director consults with the director of general services and the appropriate district engineer or the director of purchasing, and makes a written determination that the award of the purchase should be made without delay to protect substantial interests of the department.

(e) Informal resolution. The district engineer or the director of purchasing may informally resolve the dispute, including:

(1) soliciting written responses to the protest from other interested parties; and
(2) resolving the dispute by mutual agreement.

(f) Written determination. If the protest is not resolved by agreement, the district engineer or the director of purchasing will issue a written determination to the protesting party and interested parties which sets forth the reason of the determination. The district engineer or the director of purchasing may determine that:

(1) no violation has occurred; or
(2) a violation has occurred and it is necessary to take remedial action which includes, but is not limited to:

(A) declaring the purchase void;
(B) reversing the award; and
(C) re-advertising the purchase using revised specifications.

(g) Appeal.

(1) An interested party may appeal the determination to the executive director. The party must submit an appeal in writing to the executive director’s office no later than 10 working days after the date of the determination. The appeal is limited to a review of the determination.

(2) The appealing party must mail or deliver copies of the appeal to the determining district engineer or the director of purchasing and other interested parties with an affidavit that such copies have been provided.

(3) The general counsel shall review the protest, the determination, the appeal, and prepare a written opinion with recommendation to the executive director.

(4) The executive director may:

(A) issue a final written determination; or
(B) refer the matter to the commission for its consideration at a regularly scheduled open meeting.

(5) The commission may consider oral presentations and written documents presented by the department and interested parties. The chairman shall set the order and the amount of time allowed for presentation. The commission’s determination of the appeal shall be adopted by minute order and reflected in the minutes of the meeting.

(6) The decision of the commission or executive director shall be final.

(h) Filing deadline. Unless the commission determines that the appealing party has demonstrated good cause for delay or that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely will not be considered.

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.
EXPLANATION OF PROPOSED AMENDMENTS. The Legislature passed several bills in the 75th Legislature, 1997, which created many new special plates and expanded the availability of other special plates.

House Bill 107, added Transportation Code, §502.292 to authorize the issuance of "Read to Succeed" license plates. House Bill 344 amended: Transportation Code, §502.274 to authorize the issuance of "Classic Motorcycle" license plates; Transportation Code, §502.275 to authorize the department to issue "Former Military Vehicle" license plates to applicable vehicles and renamed "Antique" vehicles "Exhibition" vehicles; and Transportation Code, §502.293 to authorize the department to issue "County Judge" license plates to each county judge in the State of Texas.

House Bill 1790, amended Transportation Code, §503.0615 to authorize the department to issue "Personalized Prestige" dealer license plates. House Bill 2198 amended Transportation Code, §502.293 to authorize the department to issue "Texas Commission on Alcohol and Drug Abuse" (Boy Scout) license plates. House Bill 2519 added Transportation Code, §502.295 to authorize the department to issue "Big Bend National Park" license plates. House Bill 2681 added Transportation Code, §502.2731 to authorize the department to issue "Keep Texas Beautiful" license plates.

House Bills 3063 and 2733 amended Transportation Code, §502.284 to authorize the department to issue "Golf Cart" license plates to applicable vehicles and to allow the operation of certain golf carts on public roads. House Bill 3250 added Transportation Code, §502.291 to authorize the department to issue "Animal Friendly" license plates.

Senate Bill 370 added Transportation Code, §502.2703 to authorize the department to issue "Professional Sports Team" license plates. Senate Bill 460 added Transportation Code, §502.292 to authorize the department to issue "Volunteer Advocate" license plates. Senate Bill 745 added Transportation Code, §502.292 to authorize the department to issue "Gold Star Mother" license plates to vehicles owned by a mother of a person who died while serving in the United States armed forces.

Senate Bill 1630 amended: Transportation Code, §502.260 to allow the issuance of "Purple Heart" license plates to civilian nationals; Transportation Code, §502.295 to authorize the department to issue "State Official" license plates; Transportation Code, §502.296 to authorize the department to issue license plates to members of Congress; and Transportation Code, §502.297 to authorize the department to issue license plates to state and federal judges. Senate Bill 1630 also amended Texas Transportation Code, §§502.001, 502.166, and 502.167 to add and provide technical corrections to definitions regarding motor vehicle registration.

Amended §17.21 clarifies that the frame, body, and motor of a vehicle must be at least 25 years old in order for it to be considered an exhibition vehicle. The section revises the definition for Road Tractor to include vehicles designed for the purpose of mowing the right of way of a public highway. It adds definitions for Rental Fleet, Rental Trailer, Token Trailer, Apportioned License Plate, Travel Trailer, and Combination License Plates.

Amended §17.28 authorizes the department to issue "Read to Succeed" license plates, "Classic Motorcycle" license plates, "Former Military Vehicle" license plates, "Texas Commission on Alcohol and Drug Abuse" (Boy Scout) license plates, "Big Bend National Park" license plates, "Keep Texas Beautiful" license plates, "Animal Friendly" license plates, "Professional Sports Team" license plates, "Volunteer Advocate" license plates, "Gold Star Mothers" license plates, and "Golf Cart" license plates to applicable vehicles. It changes the terminology of "Antique" vehicles to "Exhibition" vehicles, and authorizes the department to issue "County Judge" license plates.

The amended section also authorizes issuance of "Purple Heart" license plates to civilian nationals, and specifies the state officials who may apply for "State Official" license plates. It also authorizes the issuance of personalized prestige plates in several plate categories. The section allows a surviving spouse of a disabled veteran to apply for "Disabled Veteran" plates, even if the disabled veteran did not have plates, as long as the disabled veteran was eligible for the plates.

FISCAL NOTE. Frank J. Smith, Director, Budget and Finance, has determined that for each year of the first five-year period the amendments are in effect, the fiscal implications to the state as a result of enforcing or administering this section will be an estimated additional cost of $457,656 for 1998, $93,871 for 1999, $96,371 for 2000, $98,871 for 2001, and $101,371 for 2002. The estimated increase in revenue is $761,150 for 1998, $902,150 for 1999, $1,051,150 for 2000, $1,201,150 for 2001, and $1,351,150 for 2002. The effect on local government for the first five-year period the sections will be in effect is an estimated additional increase in revenue of $100,250 per year. No person is required to comply with the sections. The anticipated costs for persons who choose to be issued special plates ranges from no cost to $50 depending on the type of personalized plated requested.

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.

PUBLIC BENEFIT. 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 allowing the motor vehicle owners of this state to purchase special plate category license plates for their vehicles and the proper, efficient, and effective licensing of antique vehicles. There could be an increase in the
The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affidavit for alias exempt registration - A form prescribed by the director that must be executed by an exempt law enforcement agency to request the issuance of exempt registration in the name of an alias.

(2) Agent - A duly authorized representative possessing legal capacity to act for an individual or legal entity.

(3) Alias - The name of a vehicle registrant reflected on the registration, different than the name of the legal owner of the vehicle.

(4) Alias exempt registration - Registration issued under an alias to a specific vehicle to be used in covert criminal investigations by a law enforcement agency.

(5) Apportioned license plate - A license plate issued in lieu of truck license plates or combination license plates to a motor carrier in this state who proportionally registers a vehicle owned by the carrier in one or more other states.

(6) Axle load - The total load transmitted to the road by all wheels whose centers may be included between two parallel transverse vertical planes forty inches apart, extending across the full width of the vehicle.

(7) Bus (motor) - A motor propelled vehicle used in transporting persons upon the public highways of this State for compensation or hire exclusively within the limits of incorporated cities and/or towns or suburban additions to such cities and/or towns.

(8) Bus (street or suburban) - A vehicle, except a motor bus or passenger car, used in transporting persons for compensation (or hire) exclusively within (with) the limits of cities and towns or suburban additions to such cities or towns.

(9) Carrying capacity - The maximum safe load that a commercial vehicle may carry, in tons, as determined by the manufacturer.

(10) Character - A numeric or alpha symbol displayed on a license plate.

(11) Combination license plate - A license plate issued for a truck or truck-tractor that has a manufacturer’s rated carrying capacity of more than one ton and is used or intended to be used in combination with a semitrailer that has a gross weight of more than 6,000 pounds.

(12) Commercial vehicle - Any vehicle (other than a motorcycle or passenger car) designed or used primarily for the transportation of property, including any passenger car which has been reconstructed so as to be used, and which is being used, primarily for delivery purposes, with the exception of passenger cars used in the delivery of the United States mail.

(13) Conventional vehicle - A regular truck or regular trailer eligible only for regular registration, which are primarily designed to transport divisible loads, regardless of the vehicle’s present use (vehicles which have been altered or reconstructed, or upon which machinery has been mounted or attached, permanently or otherwise, retain their conventional status).

(14) County or city civil defense agency - An agency authorized by a commissioner’s court order or by a city ordinance to provide protective measures and emergency relief activities in the event of hostile attack, sabotage, or natural disaster.
Department - The Texas Department of Transportation.

Director - The director of the Vehicle Titles and Registration Division, Texas Department of Transportation.

Disabled person - A person who has mobility problems that substantially impair the person’s ability to ambulate or who is legally blind.

Escrow account - A deposit of a specific amount of money held by the department for security.

Evidence of financial responsibility - The original document or photocopy of any one of the following items:

(A) a liability insurance policy or liability self-insurance or pool coverage document issued in at least the minimum amount required by law;

(B) a personal automobile insurance policy used as evidence of financial responsibility, written for at least the term required by the Insurance Code, Article 5.06;

(C) a standard proof of liability form issued by a liability insurer;

(D) an insurance binder that confirms that the owner is in compliance with the law;

(E) a certificate issued by the Texas Department of Public Safety that shows the vehicle is covered by self-insurance;

(F) a certificate issued by the state treasurer that shows that the owner has money or securities in an amount not less than $55,000 on deposit with the state treasurer;

(G) a certificate issued by the Texas Department of Public Safety that shows the vehicle has a bond, in the form and amount required by law, on file with that department, such bond shall include at least two individual sureties each owning real estate within this state;

(H) a certificate issued by the county judge in the county where the owner resides showing that the owner has cash or a cashier’s check in an amount not less than $55,000 on deposit with the county judge.

Executive administrator - The director of a federal agency, the director of a Texas state agency, the sheriff of a Texas county, or the chief of police of a Texas city that by law possesses the authority to conduct covert criminal investigations.

Exempt agency - A governmental body exempted by statute from paying registration fees when registering motor vehicles.

Exempt license plates - Specially designated license plates issued to certain vehicles owned or controlled by exempt agencies.

Exhibition vehicle - A complete passenger car, truck, or motorcycle which:

(A) is at least 25 years old;

(B) is a collector’s item;

(C) is used exclusively for exhibitions, club activities, parades, and other functions of public interest;

(D) does not carry advertising; and

(E) has a frame, body, and motor that is at least 25 years old.

Fire fighting equipment - Equipment mounted on fire fighting vehicles used in the process of fighting fires, including, but not limited to, ladders and hoses.

Gross weight - The sum of the empty weight of a commercial vehicle (or vehicles, if operated in combination), combined with its maximum carrying capacity, rounded up to the next 100 pounds.

Highway construction project - That section of the highway between the warning signs giving notice of a construction area.

International symbol of access - The symbol adopted by Rehabilitation International in 1969 at its Eleventh World Congress of Rehabilitation of the Disabled.

Legally blind - Having not more than 20/200 of visual acuity in the better eye with correcting lenses, or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

Light truck - As defined in Transportation Code, §541.201, any truck with a manufacturer’s rated carrying capacity not to exceed two thousand pounds, including those trucks commonly known as pickup trucks, panel delivery trucks, and carryall trucks.

Make - The trade name of the vehicle manufacturer.

Net carrying capacity - 150 pounds multiplied by the seating capacity as determined by the manufacturer’s rated seating capacity, exclusive of the driver’s or operator’s seat or in the case of a vehicle that is not rated by the manufacturer, an allowance of one passenger for each sixteen inches, exclusive of the driver’s or operator’s seat.

Nonprofit organization - An unincorporated association or society or a corporation that is incorporated or holds a certificate of authority under the Texas Non-Profit Corporation Act, as amended (Texas Civil Statutes, Article 1396-1.01 et seq.).

Official - A representative of a taxing entity who is authorized to secure vehicle registration information for the purposes of taxation.

Owner - In accordance with Transportation Code, §502.001, any person who holds the legal title of a vehicle or who has the legal right of possession thereof, or the legal right of control of said vehicle.

Passenger car - In accordance with Transportation Code, §502.001, any motor vehicle other than a motorcycle, golf cart, or a bus, designed or used primarily for the transportation of persons.

Political subdivision - A county, municipality, local board, or other body of this state having authority to provide a public service.

Registration period - A 12-month period beginning on the first day of a calendar month and expiring on the last day of the last calendar month in that 12-month period.

Rental fleet - A fleet of five or more vehicles that are owned by the same owner, offered for rent or rented without drivers, and designated by the owner in the manner prescribed by the department as a rental fleet.

Rental trailer - A utility trailer that has a gross weight of 4,000 pounds or less and is part of a rental fleet.
(40) Road tractor - A vehicle designed for the purpose of mowing the right of way of a public highway or a motor vehicle designed or used for drawing another vehicle or a load and not constructed to carry:

(A) an independent load; or
(B) a part of the weight of the vehicle and load to be drawn.

(41) Service agreement - A contractual agreement which allows individuals or businesses to access the department’s vehicle registration records.

(42) Special category license plate - A special design license plate issued by the department under statutory authority.

(43) Special category license plate fee - Statutorily or department required fee payable upon submission of an application for a special category license plate, symbol, or tab, and collected in addition to statutory motor vehicle registration fees.

(44) Special district - A political subdivision of the state established to provide a single public service within a specific geographical area.

(45) Tandem axle group - Two or more axles spaced 40 inches or more apart from center to center having at least one common point of weight suspension.

(46) Token trailer - A:

(A) semitrailer that has a gross weight of more than 6,000 pounds and is operated in combination with a truck; or
(B) truck-tractor that has been issued an apportioned license plate, a combination license plate, or a forestry vehicle license plate.

(47) Tow truck - A motor vehicle or mechanical device adapted or used to tow, winch, or otherwise move disabled motor vehicles.

(48) Travel trailer - A house trailer-type vehicle or a camper trailer that is less than eight feet in width or 40 feet in length, exclusive of any hitch installed on the vehicle and designed primarily for use as temporary living quarters in connection with recreational, camping, travel, or seasonal use and not as a permanent dwelling.

(49) Unconventional vehicle - A vehicle built entirely as machinery from the ground up, that is permanently designed to perform a specific function, and is not designed to transport property.

(50) Vehicle - Every device in, or by which, any person or property is or may be transported or drawn upon a public highway, except devices used exclusively upon stationary rails or tracks.

(51) Vehicle classification - The grouping of vehicles in categories for the purpose of registration, based upon design, carrying capacity, or use.

(52) Vehicle description - Information regarding a specific vehicle, including, but not limited to, the vehicle make, year model, body style, and vehicle identification number.

(53) Vehicle identification number - A number assigned by the manufacturer of a motor vehicle or the department that describes the motor vehicle for purposes of identification.

(54) Vehicle inspection sticker - A sticker issued by the Texas Department of Public Safety signifying that a vehicle has passed all applicable safety and emissions tests.

(55) Vehicle registration insignia - A license plate, symbol, tab or other device issued by the department evidencing that all applicable fees have been paid for the current registration period which allows the vehicle to be operated upon the public highways.

(56) Vehicle registration record - Information contained in the department’s files which reflects, but is not limited to, the make, vehicle identification number, year model, body style, license number, and the name of the registered owner.

(57) Volunteer fire department - An association that is organized for the purpose of answering fire alarms, extinguishing fires, and providing emergency medical services.

§17.28. Special Category License Plates, Symbols, and Tabs.

(a) (No change.)

(b) Plate Categories. The department will issue the following special category license plates, symbols, and tabs.

(1) (No change.)

(2) Animal friendly license plates. In accordance with Transportation Code §$502.291, the department will issue specially designed license plates bearing the words “Animal Friendly” to a person who owns a passenger car or light truck that has a manufacturer’s rated carrying capacity of one ton or less.

(3) Big Bend National Park license plates. In accordance with Transportation Code §$502.295, the department shall issue specially designed license plates bearing one or more graphic images of significant features of Big Bend National Park to a person who owns a passenger car or light truck that has a manufacturer’s rated carrying capacity of one ton or less.

(4) Antique license plate. In accordance with Transportation Code, §$502.275, the department will issue Antique license plates bearing the words “Antique Vehicle” or “Antique Motorcycle” to an owner of a vehicle that is:

(A) 25 or more years old;
(B) used for exhibitions, club activities, parades, and other functions of public interest; and
(C) not used for regular transportation.

(5) Antique Validation tab. In accordance with Transportation Code, §$502.275, the department will issue Antique Validation tabs for display on existing Texas license plates that were originally issued the same year as the model year of the antique vehicle.

(6) Classic license plates. In accordance with Transportation Code, §$502.274, the department will issue Classic license plates bearing the legend “Classic Auto,” “Classic Truck,” or “Classic Motorcycle” to an owner of a passenger car or light commercial motor vehicle that:

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

(10) County Judge license plates. In accordance with Transportation Code §$502.293, the department shall issue special license plates bearing the legend “County Judge” to a person who:

(A) submits proof with the application that the person is a judge of a county court of this state established by Article V, §$15, Texas Constitution; and
(B) owns a passenger car or light truck that has a manufacturer’s rated carrying capacity of one ton or less.

(11) Disabled Veteran license plate.
(A) In accordance with Transportation Code, §502.254, the department will issue Disabled Veteran license plates bearing the words “Disabled Vet” to the following owners of a passenger car or light commercial vehicle that has a manufacturer’s rated carrying capacity of one ton or less:
(i) a veteran of the U.S. Armed Forces with a service-connected disability of at least 60%, or a 40% service connected disability due to the amputation of a lower extremity, who receives compensation from the federal government because of such disability;
(ii) an organization that owns a motor vehicle used exclusively for the transportation of disabled veterans without charge; or
(iii) the surviving spouse of a deceased disabled veteran, if such license plates were issued to the veteran prior to the time of death or the surviving spouse applies for the disabled veteran license plate after the veteran’s death as long as the deceased disabled veteran was eligible for the veteran license plates, and as long as that surviving spouse remains unmarried.

(B) A vehicle on which Disabled Veteran license plates are displayed is exempt from the payment of parking fees in accordance with Transportation Code, §681.008.

(12) Disaster relief license plates. In accordance with Transportation Code, §502.203, the department will issue Disaster Relief license plates bearing the word “Disaster” to an owner of a commercial motor vehicle, truck-tractor, trailer, and semitrailer that is the property of and used exclusively by a non-profit, disaster relief organization in emergency situations.

(13) Exhibition license plates. In accordance with Transportation Code, §502.275, the department will issue Exhibition license plates bearing the words “Antique Vehicle” or “Antique Motorcycle” to an owner of a completed vehicle that:
(A) has a frame, body, and motor that is 25 or more years old;
(B) is used for exhibitions, club activities, parades, and other functions of public interest; and
(C) is not for regular transportation.

(14) Exhibition validation tab. In accordance with Transportation Code, §502.275, the department will issue Exhibition Validation tabs displaying the word “Antique” for display on existing Texas license plates that were originally issued the same year as the model year of the exhibition vehicle.

(15) Foreign Organization license plates. In accordance with Transportation Code, §502.290 [Texas Civil Statutes, Article 6625a-5.4(a)(1) as amended], the department will issue Foreign Organization license plates bearing the words “Foreign Organization” to an instrumentality established by a foreign government recognized by the United States before January 1, 1979, that is without official representation or diplomatic relations with the United States, for a passenger car or light commercial motor vehicle that has a manufacturer’s rated carrying capacity of one ton or less.

(16) Forestry Vehicle license plates. In accordance with Transportation Code, §502.280, the department will issue Forestry Vehicle license plates bearing the words “Forestry Vehicle” to an owner of a vehicle used exclusively for transporting forest products in their natural state, including logs, debarked logs, untreated ties, stave bolts, plywood bolts, pulpwood billets, wood chips, stumps, sawdust, moss, bark, wood shavings, and property used in the production of those products.

(17) Former Military Vehicle license plate [registration number]. In accordance with Transportation Code, §502.275 [Texas Civil Statutes Article 6625a-5.4(a)(1) as amended], the department will issue a Military Vehicle license plate bearing the words “Military Vehicle” to a vehicle, to be attached to the rear [registration number in lieu of displaying a symbol, tab, or license plate to the owner] of a vehicle that:
(A) is a passenger car, truck, or motorcycle;
(B) has been, but no longer is, used by the armed forces of a national government;
(C) displays markings indicating it was a military vehicle;
(D) is used for exhibitions, club activities, parades, and other functions of public interest; and
(E) is not used for regular transportation.

(18) Former Prisoner of War license plates.

(A) Former Prisoner of War license plates. In accordance with Transportation Code, §502.257, the department will issue Former Prisoner of War license plates bearing the words “Former POW” to an owner of a passenger car and light commercial vehicle that has a manufacturer’s rated carrying capacity of one ton or less, if the owner provides evidence that he or she is:
(A) honorably discharged from the U.S. Armed Forces and was captured and incarcerated by an enemy of the United States during a period of conflict with the United States; or
(B) the surviving spouse of a former prisoner of war and remains unmarried.

(B) Former Prisoner of War license plates. In accordance with Transportation Code, §502.292, the department will issue Gold Star Mother License Plates bearing the words “Gold Star Mother” to a person who:
(A) is the mother of a person who died while serving in the United States Armed Forces;
(B) is the owner of a passenger car or light truck that has a manufacturer’s rated carrying capacity of one ton or less; and
(C) completes and signs an application form provided by the department.

(20) Golf cart license plates.
(A) In accordance with Transportation Code, §502.284, the department will issue Golf Cart license plates bearing the words “Golf Cart” to an owner of a golf cart, if the owner:
(i) resides on real property that is owned or under the control of the United States Army Corps of Engineers;
(ii) is required by that agency to register the owner’s golf cart;
(iii) resides in a county that borders another state;
(iv) resides in a county whose population is more than 95,000 but less than 100,000; and
(v) applies for and pays the $10 fee to obtain a golf cart license plate.
(B) Golf carts issued license plates under this paragraph:

(i) are prohibited from operation on public roads, except as provided in subparagraph (C) of this paragraph;

(ii) are not subject to normal vehicle registration requirements; and

(iii) are exempt from Transportation Code, Chapter 547, concerning required vehicle equipment, and Transportation Code, §601.051 concerning proof of financial responsibility.

(C) Those golf carts not meeting the criteria in subparagraph (A)(i)-(iv) of this paragraph are not required to be registered, and are also exempt from Transportation Code, Chapter 547 and Transportation Code, §601.051, if the golf cart is driven to or from a golf course and operated:

(i) in the daytime and the operation does not exceed a distance of two miles from the point of origin to the destination; or

(ii) entirely within a master planned community with a uniform set of restrictive covenants that has had a plat approved by a county or municipality.

(D) Operation of any golf cart, except those detailed in subparagraphs (A) and (C) of this paragraph, on public property or other property where the state has law enforcement jurisdiction, requires registration in accordance with current registration laws. Whether a vehicle is designed as a 4-wheel truck, 4-wheeled passenger, or 3-wheeled motorcycle determines the classification under which the golf cart must be registered. These golf carts are not exempt from Transportation Code, Chapter 547 and Transportation Code, §601.051.

(21) [447] Houston Livestock Show and Rodeo license plates. In accordance with Transportation Code, §502.293, the department will issue special license plates bearing the words "Houston Livestock Show and Rodeo" to a person who owns a passenger car or light truck that has a manufacturer's rated carrying capacity of one ton or less.

(22) [448] Honorary Consul license plates. In accordance with Transportation Code, §502.267, the department will issue Honorary Consul license plates bearing the words "Honorary Consul" to a person who:

(A) owns a passenger car or light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less; and

(B) is an honorary consul authorized by the United States government to perform consular duties.

(23) [449] Keep Texas Beautiful license plates. In accordance with Transportation Code, §502.273, the department will issue Keep Texas Beautiful License plates bearing the words "Keep Texas Beautiful" to an owner of a passenger car or light commercial motor vehicle that has a manufacturer's rated carrying capacity of one ton or less.

(24) [447] Korea Veteran license plates. In accordance with Transportation Code, §502.263, the department will issue Korea Veteran license plates bearing the words "Korea Veteran" to an owner of a passenger car or light commercial vehicle that has a manufacturer's carrying capacity rated of one ton or less, if the owner provides evidence that he or she:

(A) served in a branch of the U.S. Armed Forces after June 26, 1950 and before February 1, 1955; and

(B) was honorably discharged from the U.S. Armed Forces.

(25) [448] Legion of Valor license plates. In accordance with Transportation Code, §502.255 [Texas Civil Statutes, Article 6675a-5q as amended], the department will issue Legion of Valor license plates bearing the words "Legion of Valor" to an owner of a passenger car or light commercial vehicle that has a manufacturer's carrying capacity rate of one ton or less, if the owner provides evidence that he or she is a honorably discharged veteran of the armed forces of the United States or is a member of the armed forces of the United States on active duty, and is the recipient of one of the following military decorations:

(A) Air Force Cross;

(B) Air Force Distinguished Service Cross;

(C) Army Distinguished Service Cross;

(D) Navy Cross; or

(E) Congressional Medal of Honor.

(26) [449] Log Loader Vehicle license plates. In accordance with Transportation Code, §502.279, the department will issue Log Loader Vehicle license plates bearing the words "Log Loader" to an owner of a vehicle that does not haul logs and on which is mounted machinery used only for loading logs on other vehicles.

(27) [420] Non-Profit Organization license plates. In accordance with Transportation Code, §502.273, the department will issue Non-Profit Organization license plates bearing the insignia of a non-profit organization to an organization member who is an owner of a passenger car or light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less.

(28) [421] Operation Desert Storm license plates. In accordance with Transportation Code, §502.265, the department will issue Operation Desert Storm license plates bearing the words "Desert Storm" to an owner of a passenger car or light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less, if the owner provides evidence that he or she:

(A) took part in Operation Desert Shield/Storm as a member of the U.S. Armed Forces; and

(B) is an honorably discharged veteran or remains a member of the U.S. Armed Forces.

(29) [422] Parade license plates. In accordance with Transportation Code, §502.283, the department will issue Parade license plates bearing the suffix "PAR" to a non-profit organization that owns and operates a motor vehicle designed, constructed, and used primarily for parade purposes.

(30) [423] Peace Officer license plates. In accordance with Texas Civil Statutes, Article 6675a-5q, the department will issue Peace Officer license plates bearing the words "To Protect and Serve," inscribed above an insignia depicting a yellow rose superimposed on the outline of a badge, to the owner of a passenger car or light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less, if the owner provides evidence that he or she:

(A) has been wounded in the line of duty as a peace officer; or

(B) is the surviving spouse, parent, or adult child of a person killed in the line of duty as a peace officer.

(31) [424] Pearl Harbor Survivor license plates.
(A) In accordance with Transportation Code, §502.259, the department will issue Pearl Harbor Survivor license plates bearing the legend “Pearl Harbor Survivor” to an owner of a passenger car or light commercial vehicle that has a manufacturer’s rated carrying capacity of one ton or less, if the owner provides evidence that he or she:
   
   (i) served in the U.S. Armed Forces;
   
   (ii) was stationed in the Hawaiian islands on December 7, 1941; and
   
   (iii) survived the attack on Pearl Harbor.

(B) Pearl Harbor license plates may be issued to the surviving spouse of a Pearl Harbor survivor for as long as the surviving spouse remains unmarried.

(32) [325] Personalized license plates. In accordance with Transportation Code, §502.251, the department will issue Personalized license plates, subject to the restrictions of subsection (d)(5) of this section, which display an approved personalized license plate number, to owners of all classifications of vehicles except:

(A) those vehicles bearing license plates which receive full or partial exemption from regular registration fees, excluding Metal Dealer license plates; and

(B) trailers and semitrailers with gross weights in excess of 10,000 pounds.

(33) Professional Sports Team license plates. In accordance with Transportation Code §502.2703, the department will issue Professional Sports Team license plates bearing the name and insignia of qualifying professional sports teams to an owner of a passenger car or light commercial vehicle that has a manufacturer’s rated carrying capacity of one ton or less. The department will issue such plates for teams if authorization for use of that team’s insignia is given to the department without payment to the team or any major league properties organization.

(34) [326] Purple Heart license plates.

(A) In accordance with Transportation Code, §502.260, the department will issue Purple Heart license plates bearing the words “Purple Heart” to an owner of a passenger car or light commercial motor vehicle that has a manufacturer’s rated carrying capacity of one ton or less, if the owner provides evidence that he or she is:

[444] a recipient of the Purple Heart medal; and:

(i) [444] an honorably discharged veteran or remains on active duty with U.S. Armed Forces; or [444]

(ii) a civilian national of the United States who is an employee or a former employee of a branch of the United States armed forces.

(B) Purple Heart license plates may be issued to the surviving spouse of a Purple Heart medal recipient for as long as the surviving spouse remains unmarried.

(35) Read to Succeed license plates. In accordance with Transportation Code, §502.292, the department will issue Read to Succeed license plates to an owner of a passenger car or light commercial motor vehicle that has a manufacturer’s rated carrying capacity of one ton or less.

(36) [322] State Capitol license plates. In accordance with Transportation Code, §502.269, the department will issue State Capitol license plates depicting the state capitol to an owner of a passenger car or light commercial motor vehicle that has a manufacturer’s rated carrying capacity of one ton or less.

(37) [325] State Official license plates. In accordance with Transportation Code, §502.295, the department will issue State Official license plates bearing the appropriate designation to an [a vehicle] owner of a passenger car or light duty truck, who is a member of the U.S. Congress or Texas Legislature, is a U.S. Judge, [36] Magistrate, or State Judge, and to the following elected state officials:

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

(C) A member of the legislature [Speaker of the House];

(D) Attorney General;

(E) Comptroller of Public Accounts;

(F) [36] State Treasurer;

(G) [36] General Land Office Commissioner;

(H) [36] Agriculture Commissioner;

(I) [36] Secretary of State;

(J) [36] Railroad Commissioner;

(K) [36] Supreme Court Justice;

(L) [36] Court of Criminal Appeals Judge; and;

(38) Texas Aerospace Commission license plates.

In accordance with Transportation Code, §502.271, the department will issue Texas Aerospace Commission license plates bearing the words “Aerospace Commission” to an owner of a passenger car or light commercial motor vehicle that has a manufacturer’s rated carrying capacity of one ton or less.

(39) Texas Commission on Alcohol and Drug Abuse (Boy Scout) license plates. In accordance with Transportation Code, §502.293, the department will issue Texas Commission on Alcohol and Drug Abuse license plates to a person who owns a passenger car or light truck that has a manufacturer’s rated carrying capacity of one ton or less.

(40) [326] Texas Commission on the Arts license plates.

In accordance with Transportation Code, §502.272, the department will issue Texas Commission on the Arts license plates bearing the words “State of the Arts” to an owner of a passenger car or light commercial vehicle that has a manufacturer’s rated carrying capacity of one ton or less.

(41) [334] Texas National Guard and State Guard license plates.

In accordance with Transportation Code, §502.256, the department will issue Texas National Guard and State Guard license plates bearing the words “Texas Guard” to an owner of a passenger car or light commercial motor vehicle that has a manufacturer’s rated carrying capacity of one ton or less, if the owner provides evidence that he or she is:

(A) an active member of the Texas Army National Guard, the Texas Air National Guard, or the Texas State Guard; or

(B) a retired guard member who has completed 20 years of satisfactory service.

(42) [332] U.S. Armed Forces license plates.
(A) In accordance with Transportation Code, §502.256, the department will issue U.S. Armed Forces license plates bearing the name of the appropriate branch of the U.S. Armed Forces to an owner of a passenger car or light commercial vehicle who provides evidence that the owner is an active, retired, or honorably discharged member of a branch of the U.S. Armed Forces.

(B) U.S. Armed Forces license plates may be issued to the surviving spouse of a member killed in action for as long as that spouse remains unmarried.

(43) [çıft] U.S. Armed Forces Reserve license plates. In accordance with Transportation Code, §502.256, the department will issue U.S. Armed Forces Reserve license plates bearing the words "Armed Forces Reserve" to an owner of a passenger car or light commercial vehicle who provides evidence that the owner is a member of the United States Armed Forces Reserve.

(44) [çıft] U.S. Coast Guard Auxiliary license plates. In accordance with Transportation Code, §502.261, the department will issue U.S. Coast Guard Auxiliary license plates bearing the words "Coast Guard Auxiliary" to an owner of a passenger car or light commercial vehicle who provides evidence the owner is a member of the United States Coast Guard Auxiliary.

(45) [çıft] U.S. Marine Corps League license plates. In accordance with Transportation Code, §502.261, the department will issue Marine Corps League license plates bearing the words "Marine Corps League" and the emblem of the U.S. Marine Corps League to a person who:

(A) owns a passenger car or light commercial vehicle that has a manufacturer’s rated carrying capacity of one ton or less; and

(B) provides evidence that the owner is a member of the Marine Corps League or its auxiliary.

(46) [çıft] U.S. Olympic Committee license plates. In accordance with Texas Civil Statutes, Article 6675a-5q, the department will issue U.S. Olympic Committee license plates bearing the words "United States Olympic Committee" to an owner of a passenger car or light commercial vehicle who has a manufacturer’s rated carrying capacity of one ton or less.

(47) [çıft] Vietnam Veteran license plates.

(A) In accordance with Transportation Code, §502.264, the department will issue Vietnam Veteran license plates bearing the words "Vietnam Veteran" to an owner of a passenger car or light commercial vehicle that has a manufacturer’s rated carrying capacity of one ton or less, if the owner provides evidence that he or she:

(i) served in a branch of the U.S. Armed Forces after August 4, 1964 and before May 8, 1975; and

(ii) is an honorably discharged veteran or remains a member of the U.S. Armed Forces.

(B) Vietnam Veteran license plates may be issued to the surviving spouse of a qualifying Vietnam veteran for as long as the surviving spouse remains unmarried.

(48) Volunteer Advocate license plates. In accordance with Transportation Code, §502.292, the department will issue Volunteer Advocate license plates to an owner of a passenger car or light commercial vehicle that has a manufacturer’s rated carrying capacity of one ton or less.

(49) [çıft] Volunteer Firefighter license plates. In accordance with Transportation Code, §502.268, the department will issue Volunteer Firefighter license plates bearing the words "Vol Firefighter" to an owner of a passenger car or light commercial vehicle who provides a certificate of certification as a volunteer firefighter from the Texas Volunteer Firefighters and Fire Marshals Certification Board.

(50) [çıft] World War II Veteran license plates. In accordance with Transportation Code, §502.262, the department will issue World War II Veteran license plates bearing the words "WWII Veteran" to an owner of a passenger car or light commercial vehicle that has a manufacturer’s rated carrying capacity of one ton or less, if the owner provides evidence that he or she:

(A) served in a branch of the U.S. Armed Forces after December 6, 1941 and before January 1, 1947; and

(B) is an honorably discharged veteran or remains a member of the U.S. Armed Forces.

(c) Initial application for special category license plates, symbols, or tabs.

(1) (No change.)

(2) Fees and Documentation.

(A) The application must be accompanied by registration fees as required by law, with the following special category license plates exempted from regular registration fees by statute:

(i)-(v) (No change.)

(vi) Golf Carts that comply with all of the criteria for a golf cart plate prescribed by subsection (b)(20) of this section;

(vii) [çıft] Legion of Valor;

(viii) [çıft] Log Loader;

(ix) [çıft] Parade;

(x) [çıft] Pearl Harbor Survivor (first set per applicant only); and

(xi) [çıft] Purple Heart Recipient (first set per applicant only).

(B) The application must be accompanied by statutorily prescribed special category license plate fees.

(C) The application must be accompanied by local fees or other fees as may be prescribed by law and collected in conjunction with registering a vehicle, with the exception of vehicles bearing license plates described in subparagraph (A) of this paragraph [section], which are exempted from such fees.

(D) The application must include prescribed evidence of eligibility for any special category license plates other than personalized, collegiate, Animal Friendly, Big Bend National Park, Golf Cart, Houston Livestock Show and Rodeo, Keep Texas Beautiful, Professional Sports Teams, Read to Succeed, State Capitol, Texas Aerospace Commission, Texas Commission on Alcohol and Drug Abuse (Boy Scout), Texas Commission on the Arts,[ and] U.S. Olympic Committee, and Volunteer Advocate which may include, but is not limited to:

(i) a license issued by a governmental entity;

(ii) a letter issued by a governmental entity on that agency’s letterhead;

(iii) discharge papers; and
(iv) marriage and death certificates.

(E) Applications for Exhibition license plates must include a photograph of the completed vehicle for which Exhibition registration is requested.

(3) Place of application. All initial applications for special category license plates must be made with the department, with the exception of:

(A) "Cotton Vehicle" license plates which may be made either with the department or with the County Tax Assessor-Collector in the owner’s resident county; and

(B) Golf Cart license plates which must be made at the County Tax Assessor-Collector in the owner’s resident county.

(d) Initial issuance of special category license plates, symbols, or tabs.

(1) (No change.)

(2) Number of plates issued

(A) (No change.)

(B) One plate. One license plate will be issued per vehicle for the following license plate categories:

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

(iii) Exhibition;

(iv) [Texas] Forestry Vehicle;

(v) [Texas] Log Loader; [and]

(vi) [Texas] Parade;

(vii) Military Vehicle; and

(viii) Golf Cart.

(C) Registration number. The identification number assigned by the military may be approved as the registration number in lieu of displaying Military Vehicle license plates on a Military Vehicle. [One registration number will be assigned for former Military Vehicles. The applicant may select this number, or the department will assign it.]

(3) (No change.)

(4) Number of vehicles.

(A) (No change.)

(B) One vehicle. The following categories are limited by statute to one set of special category license plates per owner:

(i)-(iii) (No change.)

(iv) Gold Star Mother;

(v) [Texas] Legion of Valor;

(vi) [Texas] Non-Profit Organization; [and]

(vii) [Texas] U.S. Armed Forces Reserves; [and]

(viii) [Texas] Volunteer Firefighter.

(C) Three [Two] vehicles. State Official license plates are limited to three [two] sets of special category license plates per owner.

(5) Personalized plate numbers.

(A) (No change.)

(B) Character limit. A personalized license plate number may not contain more than six alpha or numeric characters, or a combination or such characters. Certain personalized special category license plates may not, depending upon the license plate design and space limitations, contain more than four or five alpha or numeric characters, or a combination of such characters. Spaces, hyphens, periods, or one silhouette of the state of Texas may be used in conjunction with the license plate number.

(C) (No change.)

(D) Categories not available. Personalized license plate numbers are not available for display on the following license plates:

(i) Amateur Radio (other than the official call letters of the vehicle owner);

(ii) Exhibition [Antique] Vehicle;

(iii) Armed Forces Reserve;

(iv) County Judge;

(v) [Texas] Cotton Vehicle;

(vi) [Texas] Disabled Veteran;

(vii) [Texas] Disaster Vehicle;

(viii) [Texas] Farm Truck;

(ix) [Texas] Foreign Organization;

(xi) [Texas] Forestry Vehicle;

(x) [Texas] Former Prisoner of War;

(xi) Golf Cart;

(xii) [Texas] Honorary Consul;

(xiv) [Texas] Legion of Valor;

(xv) [Texas] Log loader;

(xvi) [Texas] Machinery;

(xvii) [Texas] Parade;

(xviii) [Texas] Permit;

(xiv) [Texas] Soil Conservation; and

(xx) [Texas] Texas Guard.

(E)-(F) (No change.)

(e) Special Category license plate renewal.

(1) Length of validation. All special category license plates, symbols, or tabs shall be valid for 12 months from the month of issuance, with the following exceptions.

(A) Five year period. The following license plates and registration numbers are issued for a five year period or remainder of that period, and expire every five years in March:

(i) Exhibition [Antique] license plates and tabs;

(ii)-(iii) (No change.)

(B) March expiration dates. The following license plates are issued for a 12 month period, or remainder of that period, and expire annually in March:

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

(iii) County Judge:
(iv) Disaster Relief;
(v) Disabled Veteran;
(vi) Forestry Vehicle;
(vii) Former Prisoner of War;
(viii) Legion of Valor;
(ix) Pearl Harbor Survivor; and
(x) State Official.

(C)-(D) (No change.)

(2) Renewal.

(A) (No change.)

(B) Return of Notice. Upon receipt of the renewal notice, the owner must return the renewal, statutory fee, if applicable, and any required documentation to the department with the exception of renewals for golf carts registered under subsection (b)(20) of this section. To validate registration, a golf cart owner shall return the renewal, statutory fee, and any required documentation to the county tax assessor-collector in his or her resident county.

(C)-(D) (No change.)

(E) Issuance of validation insignia. Upon receipt of the License Plate Renewal Notice as specified in this subsection, the department will issue registration validation insignia as specified in §17.22 of this title (relating to Motor Vehicle Registration), except for those plates listed in items (i) or (ii) of this paragraph or unless this section or other law require the issuance of new license plates to the owner.

(i) New license plates shall be issued upon expiration for renewed [Antique] vehicle, Congressional Medal of Honor, Disaster Relief, Honorary Consular, Legion of Valor, Parade, and State Official license plates.

(ii) New license plates shall be issued every six years for renewed personalized license plates, and every eight years for other license plate categories, in accordance with the provisions of §17.22 of this title (relating to Motor Vehicle Registration).

(F) (No change.)

(f) Transfer of special category license plates.

(1) Transfer between vehicles.

(A)

(B) Non-transferable between vehicles. The following special category license plates, symbols, or tabs are non-transferable between vehicles:

(i) Exhibition [Antique] vehicle license plates and tabs;

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

(2) (No change.)

(3) Transfer of military plates to surviving spouse. Upon the death of the owner, and proper application with the department, the following special category license plates may be transferred to a surviving spouse who remains unmarried:

(A) (No change.)

(B) Disabled Veteran; if Disabled Veteran license plates were issued to the deceased veteran prior to the time of death;
been changed to number the definitions in accordance with the Texas Register style.

Section 21.421. To comply with Senate Bill 370, §2.05, this section is amended to add an exemption from regulation for off-premise signs on private property which are no larger than 50 square feet, and which advertise the name of a small business and directions to same. To be consistent with usage of the term in Chapter 394, this section is amended to specify that a sign erected by a “governmental entity” is exempt from regulation. To enable more chamber of commerce organizations to erect signs promoting their city or county, this section is also amended to expand the area in which a chamber of commerce organization may place an exempt sign. The amendments would allow those signs to be erected within a county in the case of a county chamber of commerce and, in the case of a city chamber of commerce, the extraterritorial jurisdiction of that city. The existing rule only allows an exemption if the sign is inside the city limits of the city supported by the chamber of commerce organization. The area inside the city limits is outside the department’s jurisdiction under Chapter 394. Additionally, to be consistent with the exempt chamber of commerce signs allowed along interstate and primary highways, and to carry out the legislative intent in Chapter 394 of promoting the safety and welfare of the traveling public by preserving and enhancing scenic beauty, chamber of commerce signs are limited in size to no more than 150 square feet.

To comply with Transportation Code, §394.061(b), §21.421(c) is amended by changing the population criteria for “populous” counties from 1.7 million to 2.4 million, and by specifying that this subchapter is subject to regulatory preemption in these counties. To comply with Local Government Code, §216.902, §21.421(d) is amended to more accurately reflect the department’s regulatory authority inside a municipality’s extraterritorial jurisdiction, and to specify that a municipality has the authority to decide whether the department may control signs in its extraterritorial jurisdiction. Finally, to comply with Transportation Code, §394.063, new §21.421(e) was added to exempt certain on-premise signs located in the unincorporated area of a county with a population of more than 2.4 million or in a county that borders a county with that population.

Section 21.451. To comply with Senate Bill 370, §2.06, this section is amended by deleting the requirement that a sign be located within 800 feet of two adjacent recognized commercial activities in order to be permitted. This section will now allow a sign to be permitted within 800 feet of a recognized commercial or industrial activity, or alternatively, within 800 feet of the office of a governmental entity.

Section 21.471. To allow for the use of changing technology, while protecting the safety of the traveling public, this section is amended by adding new §21.471(f) to allow the use of tri-vision, changeable message signs, provided that the messages change within one second and stay stationary for at least 10 seconds. The limitation on the frequency of the change was based on the concern that there could be an undue distraction to the public if the message changes too frequently. Similar limitations have been imposed in other states. Section 21.481.

To comply with Transportation Code, §394.046, this section is amended by adding new §21.481(b), which specifies that each face area of a double-faced, back-to-back, or V-type sign is considered to be a separate sign for the purpose of computing the face area of a sign.

Section 21.521. This section is amended to reflect the reorganization of the department and to update department titles.

Section 21.541. This section is amended to reflect the reorganization of the department and to update department titles. Additionally, to be consistent with the requirements of the Administrative Procedure Act, Government Code, Chapter 2001, and with §21.572, this section is amended by deleting §21.541(b), which provided an appeal procedure for a person whose permit is revoked.

Section 21.542. To comply with Transportation Code, §394.082, new §21.542 is proposed to specify that the commission may impose administrative penalties for a violation of the provisions of Chapter 394 or a commission rule implementing that chapter.

Section 21.551. To allow for the use of tri-vision technology, §21.551(b) was amended to delete the prohibition against using intermittent messages in a sign.

Section 21.561. To ensure that all signs erected along rural roads comply with Chapter 394 and department rules, §21.561(a)(3) was added to state that a sign must be removed if a permit is revoked in accordance with §21.541. To ensure the department does not take an action which might be considered to be a taking of private property, §21.561(b) has been deleted. That subsection provides that when a sign becomes non-conforming due to the cessation of a business activity for a period of six months, the sign will be removed at the owner’s expense within the following six months. The department has never required the removal of a sign under these circumstances.

Section 21.572. To comply with the Administrative Procedure Act and §21.542, this section is amended by specifying that notice and opportunity for a hearing must be provided before the department may impose administrative penalties. Additionally, the term “cancellation” has been replaced with the term “revocation” to be consistent with the language used in other sections of this subchapter. Finally, the term “or registration” was removed from this section as Chapter 394 does not authorize the commission to cancel or revoke a sign registration.

FISCAL NOTE. Frank J. Smith, Director, Budget and Finance Division, has certified that for the first five-year period the amendments and new section are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments and new section. While there may be increased permit revenues from additional conforming sign locations within 800 feet of a commercial or industrial business activity or a government office, these revenues will be offset by the costs associated with issuing the additional permits and performing inventories and enforcement activities. Additionally, the increased costs and revenues may not be quantified as those costs and revenues will depend on the number of new signs erected. There are no anticipated costs for persons required to comply with the sections as proposed. Gary Bernethy, P.E., Director, Right of Way Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and new section.

PUBLIC BENEFIT. Mr. Bernethy has also determined that for each year of the first five years the amendments and new section are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and new section will be to more effectively regulate the erection and maintenance of signs along rural roads and to ensure those signs are erected.
in compliance with Transportation Code, Chapter 394, thereby maximizing the welfare and safety of the traveling public. There may be a benefit to small businesses, as the amendments and new section will allow those businesses to be advertised with signs containing larger face areas. Additionally, there will be more conforming sign locations along rural roads as a result of allowing signs to be located within 800 feet of a business or government office. This may also have a positive effect on small businesses.

PUBLIC HEARING. Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed amendments and new section. The public hearing will be held at 1:30 p.m. on March 24, 1998, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 1:00 p.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director, Public Information Office, 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two working days prior to the hearing so that appropriate services can be provided.

SUBMITTAL OF COMMENTS. Written comments on the proposed amendments and new section may be submitted to Gary Bernethy, P.E., Director, Right of Way Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on April 6, 1998.

STATUTORY AUTHORITY. The amendments and new section 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 394, which authorizes the commission to adopt rules to regulate the erection or maintenance of signs along rural roads.

No other statutes, articles, or codes are affected by the proposed amendments and new section.


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

(1) Act - Transportation Code, Chapter 394.

(2) Commission - The Texas Transportation Commission.

(3) Department - The Texas Department of Transportation.

(4) Erect - To construct, build, raise, assemble, place, affix, attach, embed, create, paint, draw, or in any way bring into being or establish, except when performed incidental to the change of an advertising message or to normal maintenance or repair of an existing sign.

(5) Governmental entity - The state, an agency of the state, or a political subdivision of the state, including a county, municipality, public school district, or special purpose district.

(6) Main traveled way - The through traffic lanes exclusive of frontage roads, auxiliary lanes, and ramps.

(7) Normal maintenance - The process of keeping a sign in good repair. When the sign is being converted from a multiple pole structure to a monopole structure or is being repaired at a cost in excess of 50% of the cost of erecting a new sign of the same type at the same location, each such action constitutes a replacement rather than normal maintenance and a sign permit will be required if the sign is an off-premise sign. No sign required to be registered or permitted may be enlarged more than 10% of the size shown on the permit or registration without first obtaining a permit authorizing such enlargement. Lighting may not be added to any sign or may require more intense lighting to be added to any sign without first obtaining a permit authorizing such addition. No person shall erect, repair, or maintain a sign while such person or the equipment being used is on any road right-of-way.

(8) Off-premise sign - A sign displaying advertising copy that pertains to a business, person, organization, activity, event, place, service, or product not principally located or primarily manufactured or sold on the premises on which the sign is located.

(9) On-premise sign - A freestanding sign identifying or advertising a business, person, or activity, and installed and maintained on the same premises as the business, person, or activity.

(10) Permit - The authorization granted pursuant to action by the Texas Transportation Commission for the erection of a sign, subject to these sections and the Act.

(11) Person - An individual, association, corporation, or other legal entity.

(12) Portable sign - A sign designed to be mounted on a trailer, bench, wheeled carrier, or other nonmotorized mobile structure or on skids or legs.

(13) Recognized commercial or industrial activities - Those activities customarily permitted only in zoned commercial or industrial areas except that none of the following shall be considered recognized commercial or industrial activities:

(A) outdoor advertising structures;

(B) agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to, temporary wayside fresh produce stands;

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activities not housed in a permanent building or structure having functioning water and sewage connections and functioning electrical connections;
activities conducted in a building primarily used as a residence;
(D) railroad right-of-way;
(F) activities more than 200 feet from the edge of the right-of-way of a rural road;
(G) activities conducted only seasonally or which are not conducted an average of at least 30 hours per week or at least five days per week;
(H) activities conducted in a building having less than 300 square feet of floor space devoted to such activities;
(I) activities not conducted by human beings;
(J) activities which have not existed at least 90 days.
(14) Rural road - A road, street, way, highway, thoroughfare, or bridge that is located in an unincorporated area and is not privately owned or controlled, any part of which is open to the public for vehicular traffic, and over which the state or any of its political subdivisions have jurisdiction.
(15) Sign - An outdoor structure, sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other thing that is designed, intended, or used to advertise or inform and that is visible from the main-traveled way of a rural road.

Small business - A legal entity, including a corporation, partnership, or sole proprietorship that:

(A) is formed for the purpose of making a profit;
(B) is independently owned and operated;
(C) is not a publicly held corporation; and
(D) has fewer than 100 employees or less than $1 million in annual gross receipts in a fiscal year.

\[21.421. \text{ Exemptions.}\]

(a) The following are exempt from these sections:

(1) (No change.)

(2) a sign in existence before September 1, 1985, except that such sign shall be registered as provided in §21.431 of this title (relating to Registration of Existing Off- Premise Signs) [under the Act];

(3)-(5) (No change.)

(6) a sign erected by a governmental entity [an agency of the state or a political subdivision of the state];

(7)-9) (No change.)

(10) off-premise signs on private property which are no larger than 50 square feet, advertising the name of a small business and directions to same;

(11) [440] signs required by the Texas Railroad Commission at the principal entrance to or on each oil or gas producing property, well, tank, or measuring facility to identify or to locate such property; such signs shall be no larger in size than is necessary to comply with the Texas Railroad Commission regulations and will have no advertising message other than the name or logo of the company and the necessary directions; and

(12) [441] signs owned by a chamber of commerce organization which are no larger than 150 square feet, if the message is limited to public service information, does not mention any specific person, service or product, and if the sign is located within the extraterritorial jurisdiction of the city [or town] supported by such organization, or within the county in the case of a county chamber of commerce.

(b) (No change.)

This subchapter does not apply to off-premise portable signs in the unincorporated area of a county with a population of 2.4 million or more, according to the most recent federal census, provided such county is either prohibiting such signs or is regulating the location, height, size, anchoring, or use of such portable signs.

(d) This subchapter does not apply to the extraterritorial jurisdiction of a municipality, unless the municipality allows the commission to regulate outdoor signs in the municipality’s extraterritorial jurisdiction by filing a written notice with the commission [which has extended its outdoor sign ordinance within its area of extraterritorial jurisdiction].

(e) This subchapter does not apply to on-premise signs in the unincorporated area of a county with a population of more than 2.4 million, or of a county that borders a county with that population, if such a county has adopted an ordinance to regulate on-premise signs. In lieu of adopting an ordinance, a commissioners court of the county, by order, may allow the commission to regulate on-premise signs in the unincorporated area of the county in accordance with a municipal or county regulation.


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

(g) An off-premise sign may only be erected [only] within 800 feet of at least one [two adjacent] recognized commercial or industrial activity, or the office of a governmental entity. The commercial or industrial activity or office building must be [activities as herein defined, which are] on the same side of the rural road as the sign.

(h) (No change.)

§21.471. Face restrictions.

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

(f) Faces consisting of commercial electronic variable message signs (CEVMS), otherwise referred to as rotating slat signs or tri-vision signs may be used, provided that the rotation is completed within one second and the message is stationary for at least 10 seconds following a rotation.

§21.481. Multiple Faced Signs.

(a) For spacing purposes, multiple faced off-premise signs under common ownership, whether double-faced, back-to-back, or of V-type construction, shall be considered to be one sign provided they are either:

(1) physically contiguous; [or]

(2) connected by the same structure or by cross-bracing; or

(3) located in close proximity to each other, but in no event more than 15 feet apart at their nearest point.

(b) Each face area of a double-faced, back-to-back, or V-type sign is considered to be a separate sign for the purpose of computing the face area under §21.471 of this title (relating to Face Restrictions).

(a) Any person engaged primarily in the business of erecting signs that advertise companies located or products sold on the premises on which the signs are erected must file with the director of the right of way division [such state right of way engineer] on behalf of the commission a surety bond in the amount of at least $100,000 and payable to the commission to reimburse it for the cost of removing a sign unlawfully erected or maintained by the person; a person may not be exempted from this requirement. The form of such bond shall be as provided in a form prescribed by the department. Such bond shall be kept in force so long as such person remains primarily engaged in such business.

(b) In the event a person files with the director of the right of way division [such state right of way engineer] of the department an affidavit to the effect that such person is not engaged primarily in the business of erecting on-premise signs, the statement in such affidavit shall be accepted as fact until probative evidence to the contrary has been received by the director of the right of way division [such state right of way engineer].


[ee] The commission, acting by and through the director of the right of way division [such state right of way engineer], may suspend and revoke a permit which was issued under these sections if the permittee:

1. violates any provisions or requirements of the Act; or
2. violates a rule adopted by the commission under the Act [such statute].

[fh] A person whose permit is revoked may appeal the revocation to a district court in Travis County. The appeal must be taken not later than the 15th day after the date of such revocation.


(a) The commission, after notice and an opportunity for a hearing in accordance with §21.572 of this title (relating to Notice and Appeal), may impose an administrative penalty against a person who intentionally violates the Act or a rule adopted by the commission under the Act.

(b) The amount of the administrative penalty may not exceed the maximum amount of a civil penalty that may be imposed under §394.081 of the Act.


(a) (No change.)

(b) No sign shall be erected which contains or is illuminated by any flashing, intermittent, or moving light [or intermittent message of any nature] except a sign giving solely public service information such as time, date, temperature, or weather.

(c-e) (No change.)


(a) Upon written notification by a district engineer of the department, any off-premise sign, other than an exempt sign, erected on or after September 1, 1985, must be removed if:

1. the sign was erected without a permit [ee];
2. the permit is not kept renewed in accordance with the provisions in §21.441(c) of this title (relating to Permit for Erection of Off-Premise Sign); or
3. a permit is revoked in accordance with §21.541 of this title (relating to Revocation of Permits).

[gh] When a commercial or industrial activity ceases and a sign is no longer located within 800 feet of at least two adjacent recognized commercial or industrial activities located on the same side of the roadway, the sign is no longer conforming in accordance with §21.451(a) of this title (relating to Spacing Requirements). When this situation has existed for a period of at least six months, the sign shall be removed within the following six months.

(b) [ee] The owner shall remove the sign at the owner’s expense.


Upon determination that a permit [or registration] should be revoked or administrative penalties sought [cancelled], the director of right of way shall mail a notice of revocation or imposition of administrative penalties [cancellation] to the last known address of the holder of the permit [or registration] by certified mail.

1. The notice shall clearly state:
   (A) the reasons for the revocation or the imposition of administrative penalties [cancellation];
   (B) the effective date of the revocation [cancellation]; and
   (C) the right of the holder of the permit [or registration] to request an administrative hearing on the question of the revocation or the imposition of administrative penalties [cancellation];

2. A request for an administrative hearing under this section must be made in writing to the director of right of way within 10 days of the receipt of the notice of revocation or the imposition of administrative penalties cancellation.

3. If timely requested, an administrative hearing shall be conducted in accordance with §§1.21-1.61 [163] of this title (relating to Contested Case Procedure), and shall serve to abate the revocation or imposition of administrative penalties [cancellation] unless and until that action [cancellation] is affirmed by order of the commission.

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

Filed with the Office of the Secretary of State on February 27, 1998.

TRD-9802970
Bob Jackson
Acting General Counsel
Texas Department of Transportation
Earliest possible date of adoption: April 12, 1998

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

23 TexReg 2796  March 13, 1998  Texas Register
WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the Texas Register. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the Texas Register, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the Texas Register.
TITLE 22. EXAMINING BOARDS
Part XX. Texas Board of Private Investigators and Private Security Agencies
Chapter 428. Guard Dog Company
22 TAC §§428.3–428.6, 428.8

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed amended sections, submitted by the Texas Board of Private Investigators and Private Security Agencies has been automatically withdrawn. The amended sections as proposed appeared in the September 5, 1997, issue of the Texas Register (22 TexReg 8837).

Filed with the Office of the Secretary of State on March 10, 1998.
TRD-9803437

Chapter 429. Application and Examination
22 TAC §§429.2

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed amended section, submitted by the Texas Board of Private Investigators and Private Security Agencies has been automatically withdrawn. The amended section as proposed appeared in the September 5, 1997, issue of the Texas Register (22 TexReg 8838).

Filed with the Office of the Secretary of State on March 10, 1998.
TRD-9803436

TITLE 25. HEALTH SERVICES
Part II. Texas Department of Mental Health and Mental Retardation
Chapter 404. Protection of Clients and Staff
Subchapter A. Abuse, Neglect, and Exploitation in TDMHMR Facilities
25 TAC §§404.1–404.17

The Texas Department of Mental Health and Mental Retardation has withdrawn from consideration for permanent adoption the proposed repeals to §§§404.1–404.17, which appeared in the December 5, 1997, issue of the Texas Register (22 TexReg 11996–11997).

Filed with the Office of the Secretary of State on February 27, 1998.
TRD-9802940
Charles Cooper
Chairman
Texas Department of Mental Health and Mental Retardation
Effective date: February 27, 1998
For further information, please call: (512) 206–4516

Chapter 417. Agency and Facility Responsibilities
Subchapter K. Abuse, Neglect, and Exploitation in TDMHMR Facilities
25 TAC §§417.501–417.518

The Texas Department of Mental Health and Mental Retardation has withdrawn from consideration for permanent adoption the proposed new sections to §§417.501–417.518, which appeared in the December 5, 1997, issue of the Texas Register (22 TexReg 11997–12006).

Filed with the Office of the Secretary of State on February 27, 1998.
TRD-9802942
Charles Cooper
Chairman
Texas Department of Mental Health and Mental Retardation
Effective date: February 27, 1998
For further information, please call: (512) 206–4516

TITLE 31. NATURAL RESOURCES AND CONSERVATION
Part II. Texas Parks and Wildlife Department
Chapter 69. Resource Protection

WITHDRAWN RULES March 13, 1998 23 TexReg 2797
Subchapter I. Health Certification of Native Shellfish

31 TAC §69.75, §69.77

The Texas Parks and Wildlife Department has withdrawn from consideration for permanent adoption the proposed new §69.75 and §69.77, which appeared in the October 17, 1997, issue of the Texas Register (22 TexReg 10248).

Issued in Austin, Texas, on February 23, 1998.

TRD–9702692
Bill Harvey
Regulatory Coordinator
Texas Parks and Wildlife Department
Effective date: February 23, 1998
For further information, please call: (512) 389–4642
ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.
Title 16. Economic Regulation
Part I. Railroad Commission of Texas
Chapter 9. Liquefied Petroleum Gas Division

The Railroad Commission of Texas adopts amendments to §§9.651, 9.1751, and 9.1752, relating to applicability; applicability; MC-330 or MC-331 Department of Transportation specification requirements and exemption in 49 Code of Federal Regulations §173.315(k); and new §9.1351, relating to requirements for movable fuel storage tenders, such as farm carts, without changes to the text as published in the December 19, 1997, issue of the Texas Register (22 TexReg 12374). The sections describe requirements for nonspecification units, which are transports that do not meet the requirements of the United States Department of Transportation (DOT) specifications MC-330 or MC-331; for specification units; and for farm carts, most of which are also nonspecification units.

The Commission adopts the amendments and new section in order to adopt by reference 49 Code of Federal Regulations, Parts 171 - 180. In particular, the Commission adopts the new requirements found in DOT’s rulemaking HM-200, which will become effective October 1, 1998, concerning the transportation of hazardous materials. The main effect of HM-200, specifically 49 CFR §171.1(a)(1), is that intrastate transportation of hazardous materials (including LP-gas) will also fall under DOT’s jurisdiction. All LP-gas transportation vehicles for an entity which operates interstate must comply with MC-330 or MC-331 even if some of the vehicles are used only intrastate. Entities which operate intrastate are not eligible for the 49 CFR §173.315(k) exemption.

In Texas, this impact will be greater than in most other states because of the number of nonspecification nonexempt units which will no longer be allowed to be used in LP-gas transportation service. DOT published its final rule HM-200 in the January 8, 1997, issue of the Federal Register, with an effective date of October 1, 1997. Subsequently, DOT extended the effective date to October 1, 1998. However, the final rule allows for an exemption and an extension of time until July 1, 2000, for compliance. DOT’s regulations require all units operated in interstate or intrastate service to comply with the MC-330 or MC-331 specifications; however, certain nonspecification units that meet the exemption set forth in 49 CFR §173.315(k) may remain in intrastate service. To do so, the container and vehicle must:

1. have a minimum working pressure of 250 psig;
2. have a water capacity of 3,500 gallons or less;
3. have been manufactured to the ASME Code prior to January 1, 1981;
4. comply with NFPA 58;
5. have been inspected and tested in accordance with subpart E of Part 180, Title 49;
6. be operated exclusively in intrastate operation in a state where its operation was permitted by that state prior to January 1, 1981;
7. have been used to transport LP-gas prior to January 1, 1981; and
8. be operated in conformance with all other requirements of this subchapter.

The Commission’s LP-gas safety rules require all LP-gas transport units, both transport and bobtail vehicles, to be registered with the LP-Gas Section. Current Commission rules allow for specification, nonspecification, exempt, and nonspecification nonexempt units to be registered. Nonspecification and nonspecification nonexempt units that were not registered prior to June 1, 1989, may not be registered after that date, pursuant to §9.1752. Nonspecification units which qualify for the §173.315(k) exemption may remain in LP-gas transportation service.

The main impact of HM-200 in Texas relates to nonspecification nonexempt units currently registered by the Commission and used in the intrastate transportation of LP-gas. According to LP-Gas Section records, there are approximately 108 nonspecification nonexempt units (excluding an estimated seven 200-psig containers) that would have to be removed from LP-gas transportation service by October 1, 1998, or under the extension of time allowed by DOT, by July 1, 2000. The majority of the currently-registered nonspecification nonexempt units in Texas have a pressure rating of 200 psig and therefore do not meet the requirements of the exemption; most of these would not be allowed to remain in LP-gas transportation service after July 1, 2000. However, some of the 200-pound containers which were constructed to the U-69 ASME Code in effect until about 1948 could possibly remain in service. The Commission estimates about seven currently registered units would apply to DOT for an exemption; one entity operating one of these seven units could apply for the exemption, with the other entities joining the application. There is no guarantee that DOT will grant an exemption. The U-69 code required a safety factor of 5:1, and vessels constructed to the codes after U-69 were built to a safety factor of 4:1. A 200-pound tank built to the U-69 Code with a safety factor of 5:1 would have a safety rating of 1,000 pounds (200 pounds multiplied by five). A 250-pound tank built with a
safety factor of 4:1 also has a safety rating of 1,000 pounds. The older 200-pound tanks would have the same safety factor, so DOT might grant an exemption for these tanks, provided the vessels also meet the other conditions of §173.315(k).

HM-200 also addresses other modes of transporting LP-gas such as farm carts. The carts in existence, which typically have a water capacity of 250 to 500 gallons, generally are not constructed to MC-330 or MC-331 specifications, but some of the carts may meet the exemption of §173.315(k). Any such carts which do not would be required to be removed from LP-gas transportation service by July 1, 2000. Commission rules do not require farm carts to be registered, so the dollar impact of this effect of HM-200 could not be estimated.

HM-200 references the National Fire Protection Association pamphlet 58, Standard for the Storage and Handling of Liquefied Petroleum Gases (known as "NFPA 58"). The Commission has not adopted NFPA 58, but is currently drafting a separate rulemaking to adopt this adoption by reference in the future. The Commission does not sell any NFPA publications; these may be obtained from the National Fire Protection Association at (800) 344-3555 or through the Texas Propane Gas Association at (512) 836-8620. The Code of Federal Regulations is a United States Department of Transportation publication; these are federal statutes and may be obtained through DOT or through most public libraries.

With regard to NFPA 58, there is one requirement in Chapter 6 of NFPA 58 which may have specific impact on some of the nonspecification units in Texas (although licensees should review all applicable sections of NFPA 58). Section 6-3.2.1 requires liquid hose of 1 1/2 inch and larger size or vapor hose of 1 1/4 inch and larger size to have emergency shutoff valves, unless one of the two listed exceptions is met. Most hose commonly used today is smaller than these sizes and so would not be affected; however, this could apply to some units which then would be required to have the required valves installed.


The Commission received one comment on the proposal. The commenter objected to the proposal because the United States Constitution "clearly reserves the regulation of intra-state commerce to the individual states." In response, the Commission points out that federal law (49 U.S.C. §5103(b)) states, in pertinent part: "The Secretary [of the United States Department of Transportation] shall prescribe regulations for the safe transportation of hazardous material in intrastate, interstate, and foreign commerce. [Emphasis added.] The regulations . . . shall govern safety aspects of the transportation of hazardous material the Secretary considers appropriate." The federal statute gives the Secretary the discretion to determine appropriate safety regulations for the transportation of hazardous material, and in promulgating HM-200, the Secretary has fulfilled the statutory mandate to prescribe such rules. Therefore, the Commission makes no changes to the adopted rule.

Subchapter H. Nonspecification Transport Containers; Trucks Transporting LP-Gas in Portable Containers

16 TAC §9.651
The amendment is adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and pursuant to 49 U.S.C. §§5101 - 5127 and 49 C.F.R. §1.53.

The Texas Natural Resources Code, §113.051, is affected by the adopted amendment.

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

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Deputy General Counsel, Office of General Counsel
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Subchapter P. Farm Carts

16 TAC §9.1351
The new section is adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and pursuant to 49 U.S.C. §§5101 - 5127 and 49 C.F.R. §1.53.

The Texas Natural Resources Code, §113.051, is affected by the adopted new section.

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Subchapter T. DOT MC-330 and MC-331 Transport Containers

16 TAC §9.1751, §9.1752
The amendments are adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health,
The Texas Natural Resources Code, §113.051, is affected by the adopted amendments.

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Chapter 15. Alternative Fuels Research and Education

Subchapter A. General Rules

The Railroad Commission of Texas adopts the repeal of §§15.1, 15.2, and 15.21-15.27, relating to definitions; loading rack registration; fee on delivery of odorized liquefied petroleum gas (LPG); report and remittance of fees; exemptions; loading rack refunds; commission refund; penalty for failure to report as required; and civil penalties, without changes to text published in the November 21, 1997, issue of the Texas Register (22 TexReg 11200). The commission simultaneously adopts new §§15.1, 15.3, 15.5, 15.41, 15.45, 15.50, 15.55, 15.60, 15.65, 15.70, 15.75, 15.80, 15.85, 15.90, 15.95, and 15.100, relating to purpose; general provisions; AFRED forms; definitions; registration of odorizers, odorizer agents, and importers; fee on delivery of odorized LPG; report and remittance of fees; exemptions; odorizer or importer refunds; commission refund; penalty for failure to report as required; civil penalties; records; power of entry; audits and investigations; procedure for compliance with or challenge to audit results; and interpretation and application, with changes to text published in the November 21, 1997, issue of the Texas Register (22 TexReg 11200). The commission adopts simultaneously the repeal of existing rules and new rules to permit renumbering and insertion of new rules in a logical sequence and to implement the provisions of Senate Bill 925 (S.B. 925) enacted by the 75th legislature and effective September 1, 1997. The new rules delete and amend some definitions, and add new ones; provide for new collection mechanisms; and add rules relating to exemptions, refunds, and penalties.

New §15.1 states the purpose of the rules, new §15.3 states general provisions governing the calculation of deadlines, and new §15.5 lists the forms used for odorizer, odorizer agent, and importer registration, fee reporting and remitting, and exemption and refund requests.

New §15.41, relating to definitions, has been renumbered from repealed §15.1; the text has been altered to delete definitions for terms no longer used in the statute, e.g., "cargo container," "first sale," "loading rack," and "loading rack operator"; and to add definitions for "AFRED," "continuous movement," "delivery," "director," "importer," "marketer," "means of conveyance," "odorizer," "owner of LPG at time of import," "owner of LPG at time of odorization," "person," "sold and placed into commerce," "supplier," "time of import," and "time of odorization."

New §15.45, relating to registration of odorizers, odorizer agents, and importers, replaces repealed §15.2, relating to loading rack registration. The new rule declares persons odorizing LPG within the State of Texas or importing odorized LPG into the State of Texas to be subject to this section on September 1, 1997, or on the date that the person first odorizes LPG within the State of Texas or imports odorized LPG into the State of Texas, and requires these persons to register within prescribed deadlines using AFRED forms. The new rule also sets out conditions under which odorizers may delegate duties to suppliers.

New §15.50, fee on delivery of odorized LPG, replaces repealed §15.21, with amendments to implement the requirements of S.B. 925 assigning collecting, reporting and remitting responsibilities to persons odorizing LPG in Texas or importing odorized LPG into Texas.

New §15.55, report and remittance of fees, replaces repealed §15.22; makes the wording consistent with S.B. 925 requirements; and provides persons who are required to report and remit fees an opportunity to submit amended reports for the months of September 1997 through March 1998, without penalty, provided the amended reports are postmarked by April 27, 1998.

New §15.60, exemptions (an amended version of repealed §15.23), conforms wording to S.B. 925 language and requirements.

New §15.65, odorizer or importer refunds, replaces repealed §15.24; the new language conforms to S.B. 925.

New §15.70, commission refund, is only slightly changed from repealed §15.25, again to make the wording consistent with that in S.B. 925.

New §15.75, penalty for failure to report as required, replaces repealed §15.26 and changes only the term "loading rack operator" to "persons."

New §15.80, civil penalties, is identical to repealed §15.27.

New §15.85, records, requires odorizers and importers to maintain, for a minimum of four years, documentation regarding their operations to enable the commission to determine whether odorizers and importers have remitted the proper AFRED fees due under new §15.50.

New §15.90, power of entry; audits and investigations, clarifies the commission’s authority to enter an office, premises, or place of business of an odorizer or importer to inspect and obtain copies of papers, books, accounts, documents, or other business records, for the purpose of conducting an audit or investigation or enforcing or administering the LP delivery fees or commission rules.

New §15.95, procedure for compliance with or challenge to audit results, spells out procedures following a commission audit of an odorizer or importer.

Finally, new §15.100, interpretation and application, explains the commission’s interpretation and application of the fee rules in several fact situations, and demonstrates how the commission...
will determine which entities are responsible for paying and collecting and remitting the fee.

Significant changes made by S.B. 925 include (1) the application of delivery fees to imported LPG, (2) imposition of the fee upon delivery into any means of conveyance to be sold and placed into commerce, and (3) assignment of collecting, reporting and remitting duties to odorizers and importers rather than to loading rack operators.

S.B. 925’s express application of delivery fees to imported LPG will require some companies that receive LPG from a source of supply located outside Texas to report and remit fees to the commission. Nevertheless, the commission does not anticipate burdensome changes in the current fee administration system to result either from S.B. 925’s imposition of the fee at the time of odorization or import (rather than upon delivery of odorized LPG into a cargo container at a loading rack located in Texas) or from S.B. 925’s assignment of collecting, reporting and remitting duties to odorizers and importers (rather than to loading rack operators), because, in the majority of cases under the repealed rules, deliveries of LPG that are subject to the delivery fee appear to occur at the time of odorization, and, in the majority of cases under the repealed rules, the loading rack operator appears to be the person who odorizes the LPG. Furthermore, the fees themselves are not changing.

The commission believes that the new rules specify the least burdensome way to ensure equitable administration of delivery fees and comply fully with S.B. 925.

New §15.41 also defines “continuous movement,” to clarify eligibility for the statutory exemption of exported LPG from delivery fees. The new rules do not include significant changes in the existing system for documenting export exemption claims.

To illustrate the intended application and outcome of the new rules, the commission offers the following eight hypothetical situations involving the odorization of LPG or the import of odorized LPG. These examples are not exhaustive, however, and the commission will apply the statute and the rules in particular cases to achieve the intended statutory purpose of assessing the fee on LPG that is not otherwise exempt and is either odorized in Texas or imported in odorized form into Texas.

Treatments of Imports. Wholesale quantities of odorized LPG are imported into Texas under different business circumstances and contractual conditions. In each case, the statute requires the fee to be assessed on the total volume of LPG imported in the transport vehicle, regardless whether the entire load is delivered in Texas. The following examples are intended to illustrate how the new method of administering LPG delivery fees applies to five import situations.

Example 1. Import by Texas marketer. In this example, odorized LPG is sold and delivered at an out-of-state loading facility into a transport vehicle owned by a Texas LPG marketer. The LPG is hauled back into Texas and delivered into a bulk storage facility. Under the rules, the marketer is considered the importer by virtue of being the owner of odorized LPG at the time of import. The time of import is defined by statute as the time of entry into Texas (Texas Natural Resources Code, §113.244(c)). The marketer is responsible for registering as an importer on AFRED Form 6. The marketer or the marketer’s transportation subsidiary is responsible for registering as an importer on AFRED Form 1 and for reporting and remitting monthly as described in example 1 above.

Example 2. Import by licensee based outside Texas. In this example, odorized LPG is loaded into a bobtail or other transport vehicle at an out-of-state loading facility into a transport vehicle owned by a subsidiary of a Texas LPG marketer, hauled into Texas, and delivered into a bulk storage tank located in this state.

Example 3. Import by supplier. In this example, a supplier delivers odorized LPG to the LPG’s owner transport vehicle, hauls the LPG into Texas, and delivers it to a bulk storage facility located in this state.

Example 4. Import by common carrier. In this example, a supplier delivers odorized LPG at an out-of-state loading facility into a transport vehicle owned by a common carrier, who hauls the LPG into Texas and delivers it to an LPG marketer.

Example 5. Import by marketer’s transportation subsidiary. In this example, odorized LPG is delivered at an out-of-state loading facility into a transport vehicle owned by a subsidiary of an LPG marketer, hauled into Texas, and delivered into a bulk storage tank located in this state.

LPG Odorized in Texas. LPG that is odorized in Texas is also bought, sold, transferred, stored, and distributed under many different business arrangements and conditions. In each case, the fee is assessed on the total net volume of LPG odorized and delivered into any means of conveyance and
not in continuous movement to a destination outside Texas, regardless whether the entire load is ultimately consumed in Texas. The examples that follow are intended to illustrate how the new method of administering LPG delivery fees applies in three typical situations.

Example 6. Odorizer owns the LPG. In this example, an LPG supplier that holds title to undorized LPG adds odorant to each load of LPG delivered at the supplier’s refinery, natural gas processing plant, underground storage cavern, or other LPG loading facility.

Under the rules, this supplier’s operations related to delivery-fee administration continue virtually unchanged, since the duties and responsibilities of odorizers are the same as the duties and responsibilities of loading rack operators prior to the effective date of S.B. 925. The supplier continues to be responsible for registering with the commission, as an odorizer, and continues to collect, report, and remit fees by virtue of being the person who odorizes the LPG (Texas Natural Resources Code, §113.244(b)).

Example 7. Storage or terminal operator odorizes supplier’s LPG. In this example, undorized LPG owned by one or more LPG suppliers is stored underground in a cavern owned by an unaffiliated operator or shipped through a pipeline to a terminal owned by an unaffiliated operator. The storage or terminal operator odorizes the LPG load by load upon delivery into transport vehicles or other means of conveyance that may be owned by suppliers, common carriers, marketers, or other persons. Under previous law that assigned collecting, reporting and remitting duties to loading rack operators, LPG handled in this manner was normally invoiced, and delivery fees were collected and remitted, by the supplier who owned the LPG, not by the storage or terminal operator who added the odorant. Suppliers were assigned collecting and remitting responsibilities by the “first invoicer” provision of the commission’s March 1992 rule, which defined “loading rack operator” as the person or entity invoicing the first sale of odorized LPG dispensed into a cargo container at a loading rack, if the person or entity controlling the day-to-day operations of the loading rack was not the person or entity invoicing the first sale of the LPG.

S.B. 925 expressly requires the person who odorizes the LPG to collect the fee and remit it to the commission. To avoid unnecessary disruption and minimize administrative cost to the industry, the commission’s rules permit a supplier to continue to collect and remit fees as agent for an odorizer at a storage or terminal facility if (1) the odorizer never held title to the LPG; and (2) the odorizer and supplier execute and file with the commission AFRED Form 6A, to make the supplier legally responsible for performing the odorizer’s duties related to administration of delivery fees under Texas Natural Resources Code, §§113.241-113.250, inclusive. If no AFRED Form 6A is on file with the commission, any person who odorizes LPG is responsible for registering as an odorizer and for collecting and remitting fees to the commission on all nonexempt loads the person odorizes.

This choice is intended to minimize disruption and administrative costs by allowing suppliers and operators of storage or terminal facilities to continue their existing delivery-fee arrangements or enter into new arrangements, where these are cost-effective and appropriate, while fully implementing all requirements of S.B. 925.

Example 8. Storage operator odorizes marketer’s LPG; delivery in the absence of a sale. In this example, a marketer either contracts with a supplier for later delivery from the supplier’s storage or purchases undorized LPG and places it in a storage facility owned by a supplier or other operator. At a later date, the LPG is retrieved from storage, odorized by the storage facility operator, and either transported to the marketer or picked up by the marketer in the absence of a sale at the time of odorization.

S.B. 925 expressly requires the owner of LPG at the time of odorization to pay the fee and requires the person who odorizes the LPG to collect the fee and remit it to the commission. Under the rules, the marketer is responsible for paying the fee to the person who odorized the marketer’s LPG on each load odorized and delivered upon retrieval from storage, by virtue of the marketer’s being the owner of LPG at the time of odorization, whether or not a sale took place simultaneously. The commission views S.B. 925 as applying to deliveries of all nonexempt loads of LPG that are sold and placed into commerce in Texas, without limitation as to the timing of the sale. In this example, the fee is collected, reported, and remitted to the commission by the storage facility operator. In this example, the storage facility operator is the “first invoicer” of the storage facility operator’s being the person who odorized the LPG. Further, in this example, the storage facility operator may not designate the marketer as an odorizer agent on AFRED Form 6A because no supplier is involved.

The commission received no comments on the proposed repeals and new rules from any groups or associations. The commission received two comments on the proposed repeals and new rules from companies engaged in the sale or distribution of LPG.

TE Products Pipeline Company, Limited Partnership ("Teppco") commented that S.B. 925 unfairly places hydrocarbon storage operators that do not own the LPG they store into the regulatory framework for collection and administration of LPG delivery fees. The commission reminds Teppco that the commission took no position on S.B. 925 during the legislative session; nevertheless, the commission acknowledges that the legislature’s assignment of collecting and remitting duties to odorizers in S.B. 925 clearly imposes a new administrative responsibility on operators of storage facilities that do not own the stored product. The commission’s goal is to minimize the burden on these operators and other affected persons by administering S.B. 925 as efficiently as possible consistent with the legislature’s clear intent. The commission believes this goal is achieved by the framework set out in the rules, under which owners of stored LPG may assume odorizers’ administrative responsibilities when such an arrangement is in the parties’ mutual interest.

Teppco commented that in Examples 7 and 8 in the preamble to the proposed rule and in proposed §§15.100(c)(2) and (3) the commission makes an unnecessary distinction between a supplier and a marketer to reach the conclusion that a marketer cannot be designated as the collection agent. The commission responds that the terms "supplier" and "marketer" are used merely to clarify the distinction commonly made in the LPG industry between companies whose primary business is producing and/or wholesaling (i.e., supplying) LPG to resellers and companies whose primary business is reselling (i.e., marketing) LPG to end users. The commission is aware that some companies do both; however, whether a company functions primarily as a supplier or as a marketer may be considered in determining that company’s role in administering the fee.
Teppco further urged the commission to allow remitters to remit only those fees actually collected during the preceding month, while reporting total fees accrued during that month. The commission responds that the provision to which Teppco objects has been in effect since 1991 and has occasioned no complaints from persons subject to the fee since that time. Persons who are required to collect and remit LPG delivery fees but whose customers who do not pay within the 25- to 56-day period between the date a delivery is made and the 25th day of the month following the delivery, when the fee is due and payable to the commission, have a number of remedies immediately available, include refusing to do business with such customers or doing business on a cash-only basis. The commission does not need to specify such private remedies in the rules.

In addition, Teppco commented that the commission should adopt specific regulations to avoid duplicate payments of fees for the period September 1997 through January 1998 and to permit refunds of any such duplicate payments. The commission is aware that double collections may occur during the implementation of §15.90, but disagrees that additional regulations are required to address this possibility. Since 1991 the commission’s regulations have included specific procedures for requesting, documenting and receiving refunds for duplicate and erroneous payments of LPG delivery fees. These procedures have been tested in several cases and have proved effective in remedying problems arising from duplicate or erroneous payments. The new rules continue these procedures in effect, and the commission finds no need to alter them at this time.

Teppco also urged the commission to require load exemptions to be filed with an odorizer not less than 14 days prior to a delivery of LPG, to simplify administration by reducing the number of variables for which odorizers’ collection systems must provide. The commission responds that, while imposing such a requirement upon adoption of the rule is beyond the scope of the notice given in this rulemaking, nothing in the statute or regulations prohibits odorizers or odorizer agents from adopting an advance-notice requirement on load exemptions as a matter of company policy. The commission believes such a requirement would be a reasonable business practice and consistent with both S.B. 925 and commission regulations. In addition, if the commission finds it necessary to include such a provision in the rules, notice of the proposal to do so would be given in advance.

Teppco further urged the commission to amend §15.90 to provide safeguards for confidential and proprietary information. The commission’s audit procedures rarely, if ever, result in the commission having possession of the audited entity’s documents; rather, audit reports typically comprise aggregated data regarding the number and sizes of loads for each month audited. Customer names, prices, or other specific information about the audited entity’s operations are not pertinent to an audit under the fee rules. Finally, the audited entity may request that, in the event the commission receives a request for information that the audited entity considers confidential and/or proprietary, the commission notify the audited entity so that it may assert its claims pursuant to the Public Information Act.

WelchGas/Cass County Butane asked the commission to exempt LPG that is delivered from the company’s bobtail trucks to customers in Arkansas and to devise a system of prorated cash refunds or credits to persons making out-of-state retail deliveries.

The distribution chain described in WelchGas/Cass County Butane’s comment is as follows. LPG is odorized in Texas by Warren Gas Liquids, Inc., sold by Warren to Welch Energy, and delivered by Warren into a transport vehicle owned and operated by Welch Energy. Welch Energy hauls the odorized LPG to Atlanta, Texas, where it is sold to WelchGas/Cass County Butane and delivered into WelchGas/Cass County Butane’s bulk storage facility, where it is commingled with other LPG. WelchGas/Cass County Butane loads LPG from the Atlanta bulk storage facility into bobtails and delivers it to retail customers, some of whom are located in Texas and some of whom are located in Arkansas.

Enactment of S.B. 925 did not affect administration of LPG delivery fees on these loads. Under both old and new systems, Warren Gas Liquids, Inc., collects the fee due on each load from Welch Energy and remits the fee to the commission by the 25th day of the following month. Welch Energy and WelchGas/Cass County Butane may pass the fee through to their customers or not, as they see fit. The comment states that Welch Energy’s invoices to WelchGas/Cass County Butane include the LPG delivery fee.

WelchGas/Cass County Butane commented that the commission’s rules should allow persons who deliver partial bobtail loads outside Texas to receive refunds based on an accumulation of net gallons exported. The comment proposed that companies selling partial loads out of state apply monthly to the commission for cash refunds or, alternatively, that the commission create a system of credits that such companies could pass up through the chain of distribution to the person who paid the fee and the person who collected the fee and remitted it to the commission.

The commission has made no change to the rule in response to this comment. The commission understands the export exemption in Texas Natural Resources Code, §113.244, to apply only at the time of odorization or import, and only to a discrete quantity (net gallon amount; load) of LPG that at the time of odorization or import is identified as destined for export and that in continuous movement in its entirety to a destination outside Texas. The commission does not understand the export exemption to apply to other deliveries of LPG, including a delivery of LPG that is hauled from the point of odorization or import to a storage facility or other destination located in Texas, offloaded, stored and commingled there with other LPG, and subsequently exported in whole or in part. In the commission’s judgment, LPG exported under these conditions has lost its identity as an assessable or exempt delivery, and the continuous movement of the LPG to a destination outside Texas is considered to have been interrupted, when all or part of the LPG is removed from the transport vehicle or other means of conveyance in which it was originally loaded at the time of odorization or in which it was originally imported, placed into a stationary storage facility and there commingled with other LPG.

The commission responds further that even if the statutory exemption could be understood as applying to partial loads re-tailed outside Texas by a reseller of previously assessed, non-exempt LPG, any resulting system for receiving, evaluating, paying and verifying the accuracy of refunds would be administratively burdensome, inefficient, and not an effective use of the division’s resources on behalf of the state’s propane industry and consumers.
The commission makes several clarifying changes in the adopted rules. The wording in §15.45(a) has been modified to make it clear that odorizers and importers are subject to the commission’s rules on September 1, 1997 (the date S.B. 925 became effective), or the date that the person first odorizes LPG within the State of Texas or imports odorized LPG into the State of Texas. Another change concerns §15.45(b). As it was proposed, this subsection requires persons who are subject to the rule to register with the commission within 30 days of the action that brings them within the ambit of the rules and on May 1 of each succeeding year. This wording might have permitted some persons to go longer than one year before re-registering. The commission intends, however, for one year to be the longest interval between registrations of odorizers, importers, and odorizer agents; therefore, the commission has clarified the text of §15.45(b)(2) to require registration on each succeeding May 1 following initial registration.

In §15.45(c)(2), the commission has added language clarifying that the delegation of odorizer duties to a supplier is based on the voluntary agreement of the supplier. The commission does not intend that an odorizer would be able to impose this duty on a supplier as a condition of the supplier’s being able to continue transacting business with the odorizer, since the statute clearly places this duty on the odorizer. The commission’s rule permitting delegation is intended only to accommodate existing or future mutually beneficial business arrangements, not to permit odorizers to avoid an obligation imposed by law.

In §15.45(d), the commission has added language clarifying that it must be notified if an agency relationship between an odorizer and a supplier has terminated.

As proposed, §15.55 would have permitted the filing of amended reports for the months September 1997 through January 1998, without penalty. As adopted, the rule extends permission for filing amended reports to include reports for March 1998.

Finally, the commission has made clarifying changes to §15.1, and to §15.100 to provide more detail to the examples of how the fee rules are intended to operate.

16 TAC §§15.1, 15.2, 15.21–15.27

The commission adopts the rules under the Texas Natural Resources Code, §113.246, which requires the commission to adopt rules necessary for the administration, collection, reporting and payment of the fees payable or collected under Texas Natural Resources Code §§113.241-113.250, inclusive.

Texas Natural Resources Code, §§113.241-113.250, are affected by the repeals.

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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§15.41. Definitions.

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

1. AFRED–The Alternative Fuels Research and Education Division of the Railroad Commission of Texas.

2. Cargo tank–Any receptacle mounted on a transport vehicle, including but not limited to a rail car, bobtail or semitrailer, designed and used for the transportation or storage of liquefied petroleum gas.


4. Continuous movement–Movement of odorized LPG in the same transport vehicle from the time of odorization or import to a destination outside Texas. The term does not apply to odorized LPG that is offloaded from Texas from the transport vehicle into a storage facility, to LPG that is commingled in Texas with other LPG, or to partial loads.

5. Delivery–The first introduction of odorized LPG into a means of conveyance or the first import of odorized LPG into Texas, regardless whether a sale occurs simultaneously.

6. Director–The executive head of AFRED appointed by the commission to administer the AFRED program pursuant to Texas Natural Resources Code, §§113.241-113.250, inclusive, and the rules adopted pursuant thereto, 16 Texas Administrative Code, §§15.1, et seq., or the director’s delegate.

7. Division–The Alternative Fuels Research and Education Division (AFRED) of the Railroad Commission of Texas.

8. Importer–A person who causes odorized LPG to be moved into Texas from a location outside Texas.

9. Liquefied petroleum gas or LPG–Any material that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, normal butane, isobutane, or butylenes.

10. Marketer or LPG marketer–A person engaged in the business of buying and selling odorized LPG to wholesale or retail customers.

11. Means of conveyance–Any transport vehicle, including but not limited to a rail car, bobtail or semitrailer, designed and used for the transportation of LPG.

12. Odorizer–A person who adds odorant to LPG within Texas, including but not limited to an LPG supplier, terminal operator, loading rack operator, or a person subject to filing odorization reports with the commission and complying with the commission’s odorization rule, §9.152 of this title (relating to report of odorization), or a supplier who has been designated as the agent of such person on AFRED Form 6A.

13. Owner of LPG at the time of import–The person holding legal title to odorized LPG at the time of import into Texas, including but not limited to an LPG marketer or supplier.

14. Owner of LPG at the time of odorization–The person holding legal title to odorized LPG immediately after odorant has been added to the LPG, including but not limited to an LPG marketer.

15. Person–An individual, partnership, firm, corporation, joint venture, association, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision, including but not limited to an LPG supplier or LPG marketer.

16. Sold and placed into commerce–Sold or otherwise transferred to a reseller or end user for eventual resale or consumption, including but not limited to a sale or other transfer to a marketer; to an industrial, commercial, agricultural or other business; to a federal or state agency; to a political subdivision; or to a nonprofit organization.

17. Supplier–A person engaged in the business of selling or otherwise transferring bulk quantities of LPG to an LPG marketer or other customer to be sold and placed into commerce.

18. Time of import–The time of first entry of odorized LPG into Texas from another state or from outside the United States.

means of conveyance in the previous month, regardless of whether
month. Fees are due to the commission on all LPG delivered into a
penalty for failure to report as required and civil penalties).

fees or penalties under §15.75 and §15.80 of this title (relating to
to file as required will subject the odorizer or importer to additional
postmarked on or before the deadline for filing. Late filings or failure
to file on AFRED Form 6, and shall be
importer shall file a report and remit to the commission all fees due
falls on a Saturday, Sunday, or a legal holiday, each odorizer and
business day after the 25th day of each month in which the 25th
§15.55. Report and Remittance of Fees.

(a) On or before the 25th day of each month, or the first
business day after the 25th day of each month in which the 25th
falls on a Saturday, Sunday, or a legal holiday, each odorizer and
importer shall file a report and remit to the commission all fees due
odorized LPG delivered into a means of conveyance in the previous
month. Fees are due to the commission on all LPG delivered into a
means of conveyance in the previous month, regardless of whether
the fees were actually collected from persons responsible for paying
the fees in that month. The report shall be prepared on AFRED Form 1, Odorizer’s or Importer’s Report of Fees Collected, shall be
filed by mailing the completed form and fees to AFRED, and shall be
postmarked on or before the deadline for filing. Late filings or failure
to file as required will subject the odorizer or importer to additional
fees or penalties under §15.75 and §15.80 of this title (relating to
penalty for failure to report as required and civil penalties).

(b) Odorizers and importers may file amended reports for the
months of September 1997 through March 1998 without penalty, provided such reports are postmarked on or before April 27, 1998.

§15.60. Exemptions.

(a) No fee shall be collected on any deliveries of odorized
LPG destined for export out of Texas if the LPG is in continuous
movement to a destination outside the state, unless such a fee
is required to be levied and collected under the federal Propane

(b) Persons or their representatives claiming an exemption
under this section must complete the appropriate form as specified in
subsections (c) or (d) of this section and return it to the person
making the exempt delivery.

(c) AFRED Form 2, Load Exemption Certificate of LPG Destined for Export, or another form specifically approved in advance
in writing as equivalent by the division, shall be completed by any
person certifying that a particular load of LPG is exempt from the
fee.

(d) AFRED Form 4, Blanket Exemption, or another form
specifically approved in advance in writing as equivalent by the
division, shall be completed by any person obtaining an exemption
for all LPG purchased and filed annually with the odorizer or importer
and a copy filed with AFRED. Each odorizer or importer shall keep
all exemption forms on file for a minimum of four years and readily
available in a convenient and organized manner for commission
inspection.

§15.65. Odorizer or Importer Refunds.

Any person who pays a fee to an odorizer or importer on a load of
LPG that is exempt under §15.60 of this title (relating to exemptions)
may apply to the odorizer or importer for a refund of the amount
paid. To apply for the refund, the person shall complete AFRED Form 5, Refund Request to Odorizer or Importer, and return it to the
odorizer or importer that collected the fee. Any odorizer or importer
that refunds a fee based on receipt of AFRED Form 5 shall report the
amount of the refund on Schedule A of AFRED Form 1. All amounts
refunded and reported in this manner may be deducted from the total
amount of fees collected to arrive at the total amount of fees to be
remitted to the commission. An odorizer or importer shall maintain
on file for a minimum of four years the refund request forms for
all refunds reported to the commission, and shall make these forms
readily available for commission inspection.

§15.70. Commission Refund.

An odorizer or importer may petition the commission for refund
of fees remitted to the commission in error. An odorizer or importer
seeking a refund shall complete AFRED Form 3, Fee on
Delivery of Odorized LPG: Refund Request to Commission; shall
include a statement of the reason for the refund and all supporting
documents, ledgers and journal entries tied to export documents.

Supporting documentation shall include, but are not limited to, bills of lading, shipping manifests and load tickets. Supporting fee-payment documents include, but are not limited to, invoices, ledgers and journal entries tied to export documents.

§15.75. Penalty for Failure To Report as Required.

(a) Odorizers and importers filing a report or remitting fees
later than the 25th day of the month in which fees are due, or later
than the first business day after the 25th day of a month in which the
25th falls on a Saturday, Sunday, or a legal holiday, but within 30
days of the deadline, shall remit a penalty in the amount of 5.0% of
the amount of fees originally due and payable.
(b) Odorizers and importers filing a report or remitting fees more than 30 days after the deadline shall remit a penalty in the amount of 10% of the amount of fees originally due and payable.

(c) The director may impose an additional penalty of 75% of the amount of the fees and penalties due and payable if the director determines that the failure to file a report or to remit the fees collected is the result of fraud or an intent to evade the provisions of the Texas Natural Resources Code, §§113.241-113.245, or commission rules.

§15.80. Civil Penalties.

(a) Any person who violates the provisions of the Texas Natural Resources Code, §§113.241-113.245, or the rules of the commission implementing those provisions forfeits to the state a civil penalty in an amount not less than $25 and not more than $200.

(b) At the request of the commission, the attorney general is empowered to sue in a court of competent jurisdiction to collect any fee or penalty due under the provisions of the Texas Natural Resources Code, §§113.241-113.250, inclusive.

§15.85. Records.

Odorizers and importers shall maintain sufficient papers, books, accounts, documents, and other business records regarding their operations, including copies of all forms filed at the commission and their supporting documentation, if any, to enable the commission to determine whether the odorizers and importers have remitted all fees due under §15.50 of this title (relating to fee on delivery of odorized LPG). Odorizers and importers shall make available all such papers, books, accounts, documents, and other business records to the commission for inspection under §15.90 of this title (relating to power of entry; audits and investigations), and shall maintain all such records for a minimum of four years.

§15.90. Power of Entry; Audits and Investigations.

(a) A member or employee of the commission, the director, or another person authorized or designated by any such person, at reasonable times and for reasonable purposes, may enter an office, premises, or place of business of an odorizer or importer to test equipment and to inspect, examine, and obtain copies of the papers, books, accounts, documents, business records, and other materials maintained under §15.85 of this title (relating to records) for the purpose of conducting an audit or investigation or enforcing or administering the AFRED program or commission rules.

(b) Odorizers and importers and their officers, employees, or agents may not refuse or deny entry under this section to a member or employee of the commission, the director, or another person authorized or designated by any such person, at reasonable times and for reasonable purposes, if the entry is to be made for the purpose of enforcing or administering the AFRED program or commission rules.

The odorizer or importer is entitled to be represented when a member or employee of the commission, the director, or another person authorized or designated by any such person enters to make inspections, examinations, and tests on the premises of the odorizer or importer. A member or employee of the commission, the director, or another person authorized or designated by any such person shall allow reasonable time of not more than 24 hours for the odorizer or importer to secure a representative before entering.

§15.95. Procedure for Compliance With or Challenge to Audit Results.

(a) Upon completion of an audit or investigation, the auditor or investigator shall deliver a written copy of the findings to the director and shall mail by certified mail a copy to the odorizer or importer that is the subject of the audit or investigation. The odorizer or importer may file a written response, and shall have 20 days from the date the findings are postmarked to file the response with the director.

(b) Upon receipt of the audit or investigation findings and any written response, the director may gather any additional information necessary or appropriate to making a full and complete analysis of the findings and response.

(c) If the director determines that an odorizer or importer has not remitted the fee required by §15.50 of this title (relating to fee on delivery of odorized LPG) for the audit period, the director may prepare a report that states the facts on which the determination is based and the director’s recommendation as to the amount of the fees or additional fees to be remitted by the odorizer or importer, or the penalty, if any, to be paid by the odorizer or importer or the amount of the refund of fees due to the odorizer or importer.

(d) The director shall give the odorizer or importer written notice of the report by mailing it to the odorizer or importer by certified mail. The notice shall include a statement that the odorizer or importer has a right to a hearing on the director’s determination contained in the report.

(e) Within 20 days after the date the notice is postmarked, the odorizer or importer shall file a written response either accepting the director’s determination, and recommended penalty, if any, or requesting a hearing on the director’s determination.

(f) If the odorizer or importer accepts the director’s determination that fees and/or a penalty are due, the odorizer or importer shall remit payment of the full amount to the director within 30 days of the postmark of the odorizer’s or importer’s acceptance under subsection (c) of this section. The director may permit payment of the fees and/or penalty over a reasonable period not to exceed six months, provided that the odorizer or importer agrees in writing to the terms of the payment.

(g) If an odorizer or importer requests a hearing or fails to respond timely to the notice given under subsection (b) of this section, the director shall refer the matter to the Office of General Counsel for the setting of a hearing. The Office of General Counsel shall assign an examiner to conduct a hearing, which shall be conducted under the Commission’s General Rules of Practice and Procedure, 16 Texas Administrative Code, Chapter 1.

(h) Following hearing, the commission may find that the odorizer or importer has violated commission rules; may determine the amount of the fee due or to be refunded; may impose a penalty, may find that no violation has occurred; and may make any other finding based on the evidence in the record.

(i) If the odorizer or importer does not remit the fee and pay the penalty, if any, determined or imposed by the commission, and if the enforcement of the commission’s order is not stayed, then the Office of General Counsel may refer the matter to the attorney general for collection of the fee and the penalty, if any, determined or imposed by the commission.

§15.100. Interpretation and Application.

(a) The fact situations in subsections (b) and (c) of this section illustrate the commission’s interpretation and application of Texas Natural Resources Code, §§113.241, et seq., and the rules adopted pursuant thereto, 16 Texas Administrative Code, §§15.1, et seq., and demonstrate how the commission will determine which entities are responsible for paying and for collecting and remitting the fee.

(b) Treatment of imports. Wholesale quantities of odorized LPG are imported into Texas under different business circumstances
and contractual conditions. In each case, the statute requires the fee to be assessed on the total volume of LPG imported in the transport vehicle, regardless whether the entire load is delivered in Texas. The following examples are intended to illustrate how the commission’s rules for administering LPG delivery fees apply to five import situations.

1) Import by Texas marketer. In this example, odorized LPG is sold and delivered at an out-of-state loading facility into a transport vehicle owned by a Texas LPG marketer. The LPG is hauled back into Texas and delivered into a bulk storage facility. Under the commission’s rules, the marketer is considered the importer by virtue of being the owner of odorized LPG at the time of import. The time of import is defined by statute as the time of entry into Texas (Texas Natural Resources Code, §113.244(c)). The marketer is responsible for registering as an importer on AFRED Form 6. The marketer is also responsible for reporting each month on AFRED Form 1 and remitting to the commission the appropriate delivery fee on all loads imported. These reports and remittances are due on the 25th day of the following month, e.g., October 25 for loads imported during September. The statute assesses a mandatory late penalty of 5 percent on remittances that are 30 days late or less and a mandatory late penalty of 10 percent on remittances that are more than 30 days late.

2) Import by licensee based outside Texas. In this example, odorized LPG is loaded into a bobtail or other transport vehicle at an out-of-state bulk storage plant or other loading facility and delivered to customers in Texas by a marketer whose principal place of business and outlets are all outside Texas. Under the commission’s rules, the marketer is considered an importer by virtue of being the owner of odorized LPG at the time of import. The time of import is defined by statute as the time of entry into Texas (Texas Natural Resources Code, §113.244(c)). The marketer is responsible for registering as an importer on AFRED Form 6. The marketer is also responsible for reporting each month on AFRED Form 1 and remitting to the commission the appropriate delivery fee on all volumes of odorized LPG imported.

3) Import by supplier. In this example, a supplier delivers odorized LPG at an out-of-state loading facility into the supplier’s own transport vehicle, hauls the LPG into Texas, and delivers it to a bulk storage facility located in this state. Under the commission’s rules, the supplier is considered the importer by virtue of owning the LPG at the time of import. The supplier is responsible for registering as an importer on AFRED Form 6 and for reporting and remitting monthly as described in paragraph (1) of this subsection.

4) Import by common carrier. In this example, a supplier delivers odorized LPG at an out-of-state loading facility into a transport vehicle owned by a common carrier, who hauls the LPG into Texas and delivers it to an LPG marketer. Under the commission’s rules, the owner of the LPG at the time of import is responsible for registering as an importer and for reporting and remitting the fee to the commission. The owner would not normally be the common carrier, who does not take title to the LPG. If the marketer holds title to the LPG at the time of import, the fee is administered as in the example in paragraph (1) of this subsection. If the supplier holds title to the LPG at the time of import, the fee is administered as in the example in paragraph (3) of this subsection.

5) Import by marketer’s transportation subsidiary. In this example, odorized LPG is delivered at an out-of-state loading facility into a transport vehicle owned by a subsidiary of an LPG marketer, hauled into Texas, and delivered into a bulk storage tank located in this state. Under the commission’s rules, the marketer or the marketer’s transportation subsidiary is considered the importer, depending on which entity owned the LPG at the time of import. The marketer or the transportation subsidiary is responsible for registering as an importer on AFRED Form 6 and for reporting and remitting monthly as shown in the example in paragraph (1) of this subsection.

(c) LPG Odorized in Texas. LPG that is odorized in Texas is also bought, sold, transferred, stored, and distributed under many different business arrangements and conditions. In each case, the fee is assessed on the total net volume of LPG odorized and delivered into any means of conveyance and not in continuous movement to a destination outside Texas, regardless whether the entire load is ultimately consumed in Texas. The examples that follow are intended to illustrate how the commission’s rules for administering LPG delivery fees apply in three typical situations.

1) Odorizer owns the LPG. In this example, an LPG supplier that holds title to unodorized LPG adds odorant to each load of LPG delivered at the supplier’s refinery, natural gas processing plant, underground storage cavern, or other LPG loading facility. Under the commission’s rules, this supplier’s operations related to delivery-fee administration continue virtually unchanged, since the duties and responsibilities of odorizers are the same as the duties and responsibilities of loading rack operators prior to the effective date of Senate Bill 925, 75th Legislature, Regular Session. The supplier continues to be responsible for registering with the commission as an odorizer, and continues to collect, report, and remit fees by virtue of being the person who odorizes the LPG, under Texas Natural Resources Code, §113.244(b).

2) Storage or terminal operator odorizes supplier’s LPG. In this example, unodorized LPG owned by one or more LPG suppliers is stored underground in a cavern owned by an unaffiliated operator or shipped through a pipeline to a terminal owned by an unaffiliated operator. The storage or terminal operator odorizes the LPG load by load upon delivery into transport vehicles or other means of conveyance that may be owned by suppliers, common carriers, marketers, or other persons. Under previous law that assigned collecting, reporting and remitting duties to loading rack operators, LPG handled in this manner was normally invoiced, and delivery fees were collected and remitted, by the supplier who owned the LPG, not by the storage or terminal operator who added the odorant. Suppliers were assigned collecting and remitting responsibilities by the “first invoicer” provision of the commission’s March 1992 rule, which defined “loading rack operator” as the person or entity invoicing the first sale of odorized LPG dispensed into a cargo container at a loading rack, if the person or entity controlling the day-to-day operations of the loading rack was not the person or entity invoicing the first sale of the LPG. As amended by S.B. 925, 75th Legislature, Texas Natural Resources Code, §113.244(b), expressly requires the person who odorizes the LPG to collect the fee and remit it to the commission. To avoid unnecessary disruption and minimize administrative cost to the industry, the commission’s rules permit a supplier to continue to collect and remit fees as agent for an odorizer at a storage or terminal facility if the odorizer never held title to the LPG and the odorizer and supplier execute and file with the commission AFRED Form 6A, to make the supplier legally responsible for performing the odorizer’s duties related to administration of delivery fees under Texas Natural Resources Code, §§113.241-113.250, inclusive. If no AFRED Form 6A is on file with the commission, any person who odorizes LPG is responsible for registering as an odorizer and for collecting and remitting fees to the commission on all nonexempt loads the person odorizes. This choice is intended to minimize disruption and administrative costs by allowing suppliers and operators of storage or terminal facilities...
to continue their existing delivery-fee arrangements or enter into new arrangements, where these are cost-effective and appropriate, while fully implementing all requirements of Texas Natural Resources Code, §113.244.

(3) Storage operator odorizes marketer’s LPG; delivery in the absence of a sale. In this example, a marketer either contracts with a supplier for later delivery from the supplier’s storage or purchases unodorized LPG and places it in a storage facility owned by a supplier or other operator. At a later date, the LPG is retrieved from storage, odorized by the storage facility operator, and either transported to the marketer or picked up by the marketer in the absence of a sale at the time of odorization. Texas Natural Resources Code, §113.244(b) expressly requires the owner of LPG at the time of odorization to pay the fee and requires the person who odorizes the LPG to collect the fee and remit it to the commission. Under the commission’s rules, the marketer is responsible for paying the fee to the person who odorized the marketer’s LPG on each load of the marketer’s LPG odorized and delivered upon retrieval from storage, by virtue of the marketer’s being the owner of LPG at the time of odorization, whether or not a sale took place simultaneously. The commission views Texas Natural Resources Code, §113.244, as applying to deliveries of all nonexempt loads of LPG that are sold and placed into commerce in Texas, without limitation as to the timing of the sale. In this example, the fee is collected, reported, and remitted to the commission by the storage facility operator, by virtue of the storage facility operator’s being the person who odorized the LPG. Further, in this example, the storage facility operator may not designate the marketer as an odorizer agent on AFRED Form 6A because no supplier is involved.

(d) The fact situations in subsections (b) and (c) of this section are illustrative only. In all situations, the commission will apply the provisions of Texas Natural Resources Code, §§113.241, et seq., and the rules adopted pursuant thereto, 16 Texas Administrative Code, §§15.1, et seq., to achieve the intended statutory purpose of assessing the fee on LPG, not otherwise exempt, that is either odorized in Texas or imported in odorized form into Texas.

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 24, 1998.

TRD-9802714
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Effective date: March 16, 1998
Proposal publication date: November 21, 1997
For further information, please call: (512) 463–7008

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Customer Service and Protection

16 TAC §23.52, §23.56

The Public Utility Commission of Texas adopts the repeal of §23.52, relating to Tel-Assistance and Lifeline Service and §23.56, relating to Statewide Dual-Party Relay Service as published in the January 2, 1998, issue of the Texas Register (23 TexReg 36). On December 17, 1997, the commission adopted §23.142 relating to Lifeline Service and Link Up Service Programs, §23.143 relating to Tel-Assistance Service and §23.144 relating to Telecommunications Relay Service. Upon adoption of these new rules, §23.52 and §23.56 became duplicative and no longer necessary. The repeals of §23.52 and §23.56 are adopted under Project Number 18426.

No parties filed comments in response to the proposed repeals. These repeals are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated, §14.002 (Vernon 1998) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.


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 26, 1998.

TRD-9802858
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: January 2, 1998
For further information, please call: (512) 936–7308

Part 22. EXAMINING BOARDS

Part VI. Texas Board of Professional Engineers

Chapter 131. Practice and Procedure

Subchapter A. Bylaws and Definitions

22 TAC §§131.1–131.3, 131.7–131.10, 131.12, 131.14, 131.15, 131.17–131.19

The Texas Board of Professional Engineers adopts amendments to §§131.1–131.3, 131.7–131.10, 131.12, 131.14, 131.15, and 131.17–131.19, concerning bylaws and definitions, without changes to the proposed text as published in the January 9, 1998, issue of the Texas Register (23 TexReg 290). The amendments provide consistency with the provisions of Senate Bill 623 and clarify the board’s bylaws and definitions.

Comments were received from the Consulting Engineers Council of Texas supporting the amendment to §131.18(9) defining direct supervision.

The amendments are adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with Senate Bill 623.

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.
Subchapter B. Application for License

22 TAC §§131.52–131.55

The Texas Board of Professional Engineers adopts amendments to §§131.52-131.55, concerning application for license, without changes to the proposed text as published in the January 9, 1998, issue of the Texas Register (23 TexReg 293).

The amendments clarify the subdisciplines within electrical engineering and also the requirements for submission of an application for a license.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with Senate Bill 623.

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

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TRD-9802906
John R. Speed, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: March 18, 1998
Proposal publication date: January 9, 1998
For further information, please call: (512) 440–7723

Subchapter C. References

22 TAC §131.71

The Texas Board of Professional Engineers adopts an amendment to §131.71, concerning references, without changes to the proposed text as published in the January 9, 1998, issue of the Texas Register (23 TexReg 293).

The amendment provides the stipulation that engineers serving as references cannot be compensated.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with Senate Bill 623.

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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John R. Speed, P.E.
Executive Director
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For further information, please call: (512) 440–7723

Subchapter E. Education

22 TAC §131.91

The Texas Board of Professional Engineers adopts an amendment to §131.91, concerning education, without changes to the proposed text as published in the January 9, 1998, issue of the Texas Register (23 TexReg 295).

The amendment provides clarification of the educational requirements necessary for licensure.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with Senate Bill 623.

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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John R. Speed, P.E.
Executive Director
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For further information, please call: (512) 440–7723
Subchapter F. Examinations

22 TAC §§131.101–131.104

The Texas Board of Professional Engineers adopts amendments to §§131.101–131.104, concerning examinations, without changes to the proposed text as published in the January 9, 1998, issue of the Texas Register (23 TexReg 295).

The amendments clarify the examination waiver requirements for applicants with Ph.D. degrees, provide clear and concise guidelines pertaining to examinations for record purposes, and clarify the eligibility requirements for certification as an engineer-in-training.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with Senate Bill 623.

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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John R. Speed, P.E.
Executive Director
Texas Board of Professional Engineers
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Proposal publication date: January 9, 1998
For further information, please call: (512) 440–7723

Subchapter G. Board Review of Application

22 TAC §131.113

The Texas Board of Professional Engineers adopts an amendment to §131.113, concerning board review of application, without changes to the proposed text as published in the January 9, 1998, issue of the Texas Register (23 TexReg 296).

The amendment clarifies the conditions under which the board will not reconsider applications for licensure.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with Senate Bill 623.

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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John R. Speed, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: March 18, 1998
Proposal publication date: January 9, 1998
For further information, please call: (512) 440–7723

Subchapter H. Licensing

22 TAC §131.131

The Texas Board of Professional Engineers adopts an amendment to §131.131, concerning licensing, without changes to the proposed text as published in the January 9, 1998, issue of the Texas Register (23 TexReg 297).

The amendment provides consistency with the terminology contained in Senate Bill 623 and clarifies language pertaining to regular and temporary licenses.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with Senate Bill 623.

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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For further information, please call: (512) 440–7723

23 TexReg 2812 March 13, 1998 Texas Register
The amendments provide consistency with the terminology contained in Senate Bill 623 and clarify language pertaining to regular and temporary licenses.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with Senate Bill 623.

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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John R. Speed, P.E.
Executive Director
Texas Board of Professional Engineers
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For further information, please call: (512) 440–7723

Subchapter I. Professional Conduct and Ethics
22 TAC §131.151, §131.152

The Texas Board of Professional Engineers adopts amendments to §131.151 and §131.152, concerning professional conduct and ethics, without changes to the proposed text as published in the January 9, 1998, issue of the Texas Register (23 TexReg 297).

The amendments provide clarification of what constitutes misconduct by an engineer and also conflicts of interest.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with Senate Bill 623.

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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John R. Speed, P.E.
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For further information, please call: (512) 440–7723

Subchapter J. Compliance and Enforcement
22 TAC §§131.162, 131.163, 131.166, 131.167

The Texas Board of Professional Engineers adopts amendments to §§131.162, 131.163, 131.166, and 131.167, concerning compliance and enforcement. Section 131.162 is adopted with changes to the proposed text as published in the January 9, 1998, issue of the Texas Register (23 TexReg 298). Sections 131.163, 131.166, and 131.167 are adopted without changes and will not be republished.

Section 131.162 is adopted with a grammatical correction in the last sentence. Full-time engineer employee is replaced with full-time employee engineer.

The amendments clarify language pertaining to both a firm and an engineer’s compliance with the TEPA; provide correct examples of engineers’ seals consistent with Senate Bill 623; and provide correct cross references to statute and rules in §131.167.

Comments were received from the Consulting Engineers Council of Texas supporting the amendments to §131.162 and §131.163, concerning a firm and engineers’ compliance with the Act.

The amendments are adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with Senate Bill 623.

§131.162. Firm Compliance

The board shall not consider any firm, partnership, association, corporation, or other business entity as being in compliance with the Texas Engineering Practice Act (Act), §17 and §18, unless a licensed professional engineer is a regular full-time employee of the firm, partnership, association, corporation or other business entity. The engineer shall provide to the board evidence of such employment upon its request. This section does not prohibit a licensed professional engineer from performing consulting engineering services on a part-time basis as an individual. An engineering firm shall provide that at least one full-time employee engineer directly supervises all engineering work performed in branch, remote, or project offices.

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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John R. Speed, P.E.
Executive Director
Texas Board of Professional Engineers
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Proposal publication date: January 9, 1998
For further information, please call: (512) 440–7723

Subchapter J. Compliance and Enforcement
22 TAC §131.168

The Texas Board of Professional Engineers adopts new §131.168, concerning compliance and enforcement, without changes to the proposed text as published in the January 9, 1998, issue of the Texas Register (23 TexReg 299).

The new section establishes the investigative process and resulting action the board will follow to ensure due process.
when non-license holders or firms are found to have violated the Texas Engineering Practice Act.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with Senate Bill 623.

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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For further information, please call: (512) 440–7723

Part XV. Texas State Board of Pharmacy

Chapter 283. Licensing Requirements for Pharmacists

22 TAC §§283.2, §283.4

The Texas State Board of Pharmacy adopts amendments to §§283.2 and §283.4, concerning definitions and Internship Requirements, without changes to the proposed text as published in the January 2, 1998, Texas Register (23 TexReg 46). The amendments establish a definition for the "Texas Pharmacy Jurisprudence Exam" and establish an expiration date for pharmacist internship as specified in SB 609 passed by the 75th Legislature.

No comments were received on the amendments as proposed.

The amendments are adopted under the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes, §17(a)(3) which gives the Board the responsibility for the specification and enforcement of requirements for practical training including internship and §20(a) which gives the Board the authority to adopt rules regarding the expiration date of internship.

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

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 27, 1998.

TRD-9802923
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: March 19, 1998
Proposal publication date: January 2, 1998

Chapter 291. Pharmacies

22 TAC §§291.51-291.54

The Texas State Board of Pharmacy adopts the repeal of §§291.51 - 291.54 and simultaneously adopts new §§291.51 - 291.55, concerning purpose, definitions, personnel, operational standards, and records in a Nuclear Pharmacy (Class B), without changes to the proposed text as published in the January 9, 1998, Texas Register (23 TexReg 300).

These rules replace the current Nuclear Pharmacy (Class B) rules and specify the purpose, definitions, personnel, operational standards, and records for operation of a Nuclear Pharmacy (Class B). The rule are the result of recommendations to the Board of Pharmacy by a Task Force on Nuclear Pharmacy. This Task Force was established by the Board to review the current Class B (Nuclear) Pharmacy rules to identify and make recommendations for areas that need to be updated; make recommendations to incorporate appropriate requirements for the compounding of sterile pharmaceuticals; and make recommendations concerning areas of regulatory overlap between agencies, such as the Texas Department of Health - Bureau of Radiation Control and the Texas State Board of Pharmacy. The rules update the prior rules regarding Nuclear Pharmacies (Class B) to include appropriate requirements for the preparation of sterile radiopharmaceuticals; clarify the duties of a pharmacist and the responsibilities of the pharmacist-in-charge; specify training requirements for pharmacists and pharmacy technicians; establish education, training, and evaluation requirements for pharmacy personnel who compound or directly supervise the compounding of sterile radiopharmaceuticals; establish and/or update the requirements for licensing, environment, prescription dispensing and delivery, pharmaceutical care services, equipment, radiopharmaceutical and/or radioactive materials, loading bulk drugs into automated compounding devices, and sterile radiopharmaceuticals; and bring many of the recordkeeping provisions for a Community (Class A) Pharmacy Compounding Sterile Pharmaceuticals to the Nuclear Pharmacy (Class B) practice setting, such as permitting electronic radioactive prescription drug orders, radioactive prescription drug orders for certain drugs from practitioners not licensed in the state of Texas, contents of the various radioactive prescription drug orders, and other records required to be maintained by the pharmacy.

No comments were received on the proposed repeal.

The repeals are adopted under the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes): Section 4 which specifies that the purpose of the Act is to protect the public through the effective control and regulation of the practice of pharmacy; Section 16(a) which gives the Board the authority to adopt rules for the proper administration and enforcement of the Act; Section 17(b)(3) which gives the Board the authority to specify minimum standards for drug storage, maintenance of prescription drug records and procedures for the delivery, dispensing in a suitable container appropriately labeled, providing of prescription drugs or devices within the practice of pharmacy.

The statutes affected by this rule: Texas Civil Statutes, Article 4542a-1.
Texas proposed text as published in the January 9, 1998, 
Sections 291.51–291.54 are adopted without changes to the 
standards, and records in a Nuclear Pharmacy (Class B). 
291.54, concerning purpose, definitions, personnel, operational 
291.55 and simultaneously adopts the repeal of §§291.51 -

The Texas State Board of Pharmacy adopts new §§291.51 -
291.55 and simultaneously adopts the repeal of §§291.51 -
291.54, concerning purpose, definitions, personnel, operational 
standards, and records in a Nuclear Pharmacy (Class B). 
Sections 291.51–291.54 are adopted without changes to the 
proposed text as published in the January 9, 1998, Texas 
Register (23 TexReg 300). Section 291.55 is adopted with 
changes to the proposed text to correct a Texas Register format 
requirement. 

These rules replace the current Nuclear Pharmacy (Class B) 
rules and specify the purpose, definitions, personnel, opera-
tional standards, and records for operation of a Nuclear Phar-
acy (Class B). The rules are the result of recommendations to 
the Board of Pharmacy by a Task Force on Nuclear Pharmacy. 
This Task Force was established by the Board to review the 
current Class B (Nuclear) Pharmacy rules to identify and make 
recommendations for areas that need to be updated; make rec-
ommendations to incorporate appropriate requirements for the 
compounding of sterile pharmaceuticals; and make recommen-
dations concerning areas of regulatory overlap between agen-
cies, such as the Texas Department of Health - Bureau of Radi-
ation Control and the Texas State Board of Pharmacy. The rules 
update the prior rules regarding Nuclear Pharmacies (Class B) 
to include appropriate requirements for the preparation of ster-
ile radiopharmaceuticals; clarify the duties of a pharmacist and 
the responsibilities of the pharmacist-in-charge; specify training 
requirements for pharmacists and pharmacy technicians; 
establish education, training, and evaluation requirements for 
pharmacy personnel who compound or directly supervise the 
compounding of sterile radiopharmaceuticals; establish and/or 
update the requirements for licensing, environment, prescription 
dispensing and delivery, pharmaceutical care services, equip-
ment, radiopharmaceutical and/or radioactive materials, loading 
bulk drugs into automated compounding devices, and sterile ra-
diopharmaceuticals; and bring many of the recordkeeping provi-
sions for a Community (Class A) Pharmacy Compounding Ster-
ile Pharmaceuticals to the Nuclear Pharmacy (Class B) prac-
tice setting, such as permitting electronic radioactive prescrip-
tion drug orders, radioactive prescription drug orders for certain 
drugs from practitioners not licensed in the state of Texas, con-
tents of the various radioactive prescription drug orders, and 
other records required to be maintained by the pharmacy. 

No comments were received on the new sections as proposed. 
The new sections are adopted under the Texas Pharmacy Act 
(Article 4542a-1, Texas Civil Statutes): Section 4 which speci-
ifies that the purpose of the Act is to protect the public through 
the effective control and regulation of the practice of pharmacy; 
Section 16(a) which gives the Board the authority to adopt rules 
for the proper administration and enforcement of the Act; Sec-
tion 17(b)(3) which gives the Board the authority to specify min-
imum standards for drug storage, maintenance of prescription 
drug records and procedures for the delivery, dispensing in a 
suitable container appropriately labeled, providing of prescrip-
tion drugs or devices within the practice of pharmacy. 
The statutes affected by this rule: Texas Civil Statutes, Article 
4542a-1. 

§291.55. Records. 

(a) Maintenance of records. 

(1) Every inventory or other record required to be kept 
under this section shall be kept by the pharmacy and be available, 
for at least two years from the date of such inventory or record, for 
inspecting and copying by the board or its representative, and other 
authorized local, state, or federal law enforcement agencies. 

(2) Records of controlled substances listed in Schedules 
I and II shall be maintained separately from all other records of the 
pharmacy. 

(3) Records of controlled substances, other than original 
precription drug orders, listed in Schedules III-V shall be maintained 
separately or readily retrievable from all other records of the 
pharmacy. For purposes of this subsection, “readily retrievable” 
means that the controlled substances shall be asterisked, red-lined, or 
in some other manner readily identifiable apart from all other items 
appearing on the record. 

(4) Records, except when specifically required to be 
maintained in original or hard-copy form, may be maintained in an 
alternative data retention system, such as a data processing system 
or direct imaging system provided: 

(A) the records maintained in the alternative system 
contain all of the information required on the manual record; and 

(B) the data processing system is capable of producing 
a hard copy of the record upon the request of the board, its 
representative, or other authorized local, state, or federal law 
 enforcement or regulatory agencies. 

(b) Prescriptions. 

(1) Professional responsibility. Pharmacists shall exer-
cise sound professional judgment with respect to the accuracy and 
authenticity of any radioactive prescription drug order they dispense. 
If the pharmacist questions the accuracy or authenticity of a radioac-
tive prescription drug order, he/she shall verify the order with the 
practitioner prior to dispensing. 

(2) Verbal radioactive prescription drug orders. 

(A) Only an authorized nuclear pharmacist or a 
pharmacist-intern under the direct supervision of an authorized 
nuclear pharmacist may receive from a practitioner or a practitioner’s 
designated agent: 

(i) a verbal therapeutic prescription drug order; or 

(ii) a verbal diagnostic prescription drug order in 
instances where patient specificity is required for patient safety (e.g., 
radiolabeled blood products, radiolabeled antibodies). 

(B) A practitioner shall designate in writing the 
name of each agent authorized by the practitioner to communicate 
prescriptions verbally for the practitioner. The practitioner shall
maintain at the practitioner’s usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner’s written authorization for a specific agent on the pharmacist’s request.

(C) If a radioactive prescription drug order is transmitted to an authorized nuclear pharmacist verbally, the pharmacist shall note any substitution instructions by the practitioner or practitioner’s agent on the file copy of the prescription drug order. Such file copy may follow the two-line format indicated in paragraph (3)(B) of this subsection, or any other format that clearly indicates the substitution instructions.

(D) A pharmacist may not dispense a verbal radioactive prescription drug order for a Schedule III, IV, or V controlled substance issued by a practitioner licensed in another state unless the practitioner is also registered under the Texas Controlled Substances Act.

(E) A pharmacist may not dispense a verbal radioactive prescription drug order for a dangerous drug or a controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(3) Written radioactive prescription drug orders.

(A) Practitioner’s signature. Written radioactive prescription drug orders shall be manually signed by the practitioner (electronically produced or rubber stamped signatures may not be used).

(i) A practitioner may sign a radioactive prescription drug order in the same manner as he would sign a check or legal document, e.g., J.H. Smith or John H. Smith.

(ii) The radioactive prescription drug order may not be signed by a practitioner’s agent but may be prepared by an agent for the signature of a practitioner. However, the prescribing practitioner is responsible in case the radioactive prescription drug order does not conform in all essential respects to the law and regulations.

(B) Required radioactive prescription drug order format.

(i) A pharmacist may not dispense a written radioactive prescription drug order issued in Texas unless it is ordered on a form containing two signature lines of equal prominence, side by side, at the bottom of the form. Under either signature line shall be printed clearly the words “product selection permitted,” and under the other signature line shall be printed clearly the words “dispense as written.”

(ii) The two signature line requirement does not apply to the following types of radioactive prescriptions drug orders:

(I) radioactive prescription drug orders issued by a practitioner in a state other than Texas;

(II) radioactive prescription drug orders for dangerous drugs issued by a practitioner in the United Mexican States or the Dominion of Canada; and

(III) radioactive prescription drug orders issued by practitioners practicing in a federal facility provided they are acting in the scope of their employment.

(C) Preprinted radioactive prescription drug order forms. No radioactive prescription drug order form furnished to a practitioner shall contain a preprinted order for a radiopharmaceutical by brand name, generic name, or manufacturer.

(D) Radioactive prescription drug orders written by practitioners in another state.

(i) Dangerous drug prescription orders. A pharmacist may dispense a radioactive prescription drug order for dangerous drugs issued by practitioners in a state other than Texas in the same manner as radioactive prescription drug orders for dangerous drugs issued by practitioners in Texas are dispensed.

(ii) Controlled substance prescription drug orders. A pharmacist may dispense radioactive prescription drug orders for controlled substances issued in Schedule III, IV, or V by a practitioner in another state provided:

(I) the radioactive prescription drug order is an original written prescription issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration registration number, and who may legally prescribe Schedule III, IV, or V controlled substances in such other state;

(II) the radioactive prescription drug order is not dispensed or refilled more than six months from the initial date of issuance and may not be refilled more than five times; and

(III) if there are no refill instructions on the original written radioactive prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original written radioactive prescription drug order have been dispensed, a new written radioactive prescription drug order is obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(E) Radioactive prescription drug orders written by practitioners in the United Mexican States or the Dominion of Canada.

(i) Controlled substance prescription drug orders. A pharmacist may not dispense a radioactive prescription drug order for a Schedule II, III, IV, or V controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States.

(ii) Dangerous drug prescription drug orders. A pharmacist may dispense a radioactive prescription drug order for a dangerous drug issued by a person licensed in the Dominion of Canada or the United Mexican States as a physician, dentist, veterinarian, or podiatrist provided:

(I) the radioactive prescription drug order is an original written prescription; and

(II) if there are no refill instructions on the original written radioactive prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original written radioactive prescription drug order have been dispensed, a new written radioactive prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of dangerous drugs.

(iii) Prescription drug orders for Schedule II controlled substances. No Schedule II controlled substance may be dispensed without a written prescription drug order of a practitioner on a triplicate prescription form as required by the Texas Controlled Substances Act, §481.075.

(4) Electronic radioactive prescription drug orders. For the purpose of this paragraph, electronic radioactive prescription drug
orders shall be considered the same as verbal radioactive prescription drug orders.

(A) An electronic radioactive prescription drug order may be transmitted by a practitioner or a practitioner’s designated agent:

(i) directly to a pharmacy; or

(ii) through the use of a data communication device provided:

(I) the prescription information is not altered during transmission; and

(II) confidential patient information is not accessed or maintained by the operator of the data communication device unless the operator is authorized to receive the confidential information as specified in subsection (f) of this section.

(B) A practitioner shall designate in writing the name of each agent authorized by the practitioner to electronically transmit prescriptions for the practitioner. The practitioner shall maintain at the practitioner’s usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner’s written authorization for a specific agent on the pharmacist’s request.

(C) A pharmacist may not dispense an electronic radioactive prescription drug order for a:

(i) Schedule II controlled substance;

(ii) Schedule III, IV, or V controlled substance issued by a practitioner licensed in another state unless the practitioner is also registered under the Texas Controlled Substances Act; or

(iii) dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(D) The practitioner or practitioner’s agent shall note any substitution instructions on the electronic radioactive prescription drug order. Such electronic radioactive prescription drug order may follow the two-line format indicated in paragraph (3)(B) of this subsection or any other format that clearly indicated the substitution instructions.

(5) Authorization for generic substitution.

(A) A pharmacist may dispense a generically equivalent drug product if:

(i) the generic product cost the patient less than the prescribed drug product;

(ii) the patient does not refuse the substitution; and

(iii) the prescribing practitioner authorizes the substitution of a generically equivalent product; or

(iv) the practitioner or practitioner’s agent does not clearly indicate that the verbal or electronic prescription drug order shall be dispensed as ordered.

(B) Practitioners shall indicate their dispensing instructions by signing on either the “Dispense as Written” or “Product Selection Permitted” line on the radioactive prescription drug order. If the practitioner’s signature does not clearly indicate the radioactive prescription drug order shall be dispensed as written, the pharmacist may substitute a generically equivalent drug product.

(C) A pharmacist may not substitute on radioactive prescription drug orders identified in paragraph (3)(D) and (E) of this subsection unless the practitioner has authorized substitution on the radioactive prescription drug order.

(D) If the practitioner has not authorized substitution on the written radioactive prescription drug order, a pharmacist shall not substitute a generically equivalent drug product unless:

(i) the pharmacist obtains verbal or written authorization from the practitioner (such authorization shall be noted on the original radioactive prescription drug order); or

(ii) the pharmacist obtains written documentation regarding substitution requirements from the State Board of Pharmacy in the state, other than Texas, in which the radioactive prescription drug order was issued. The following is applicable concerning this documentation.

(I) The documentation shall state that a pharmacist may substitute on a prescription drug order issued in such other state unless the practitioner prohibits substitution on the original prescription drug order.

(II) The pharmacist shall note on the original radioactive prescription drug order the fact that documentation from such other state board of pharmacy is on file.

(III) Such documentation shall be updated yearly.

(6) Original prescription drug order records.

(A) Original prescriptions shall be maintained by the pharmacy in numerical order and remain legible for a period of two years from the date of filling or the date of the last refill dispensed.

(B) If an original prescription drug order is changed, the pharmacist shall label it as altered.

(C) Original prescriptions shall be maintained in one of the following formats:

(i) in three separate files as follows:

(I) prescriptions for controlled substances listed in Schedule II;

(II) prescriptions for controlled substances listed in Schedule III-V; and

(III) prescriptions for dangerous drugs and nonprescription drugs; or

(ii) within a patient medication record system provided that original prescriptions for controlled substances are maintained separate from original prescriptions for noncontrolled substances and triplicate prescriptions for Schedule II controlled substances are maintained separate from all other original prescriptions.

(D) Original prescription records other than triplicate prescriptions may be stored on microfilm, microfiche, or other system which is capable of producing a direct image of the original prescription record, e.g., digitalized imaging system. If original prescription records are stored in a direct imaging system, the following is applicable.

(i) The record of refills recorded on the original prescription must also be stored in this system.
The original prescription records must be maintained in numerical order and as specified in subparagraph (C) of this paragraph.

The pharmacy must provide immediate access to equipment necessary to render the records easily readable.

(7) Prescription drug order information.

(A) All original radioactive prescription drug orders shall bear:

(i) name of the patient, if applicable at the time of the order;

(ii) name of the institution;

(iii) name, and if for a controlled substance, the address and DEA registration number of the practitioner

(iv) name of the radiopharmaceutical;

(v) amount of radioactive material contained in millicuries (mCi), microcuries (uCi), or bequerels (Bq) and the corresponding time that applies to this activity, if different than the requested calibration date and time;

(vi) date and time of calibration;

(vii) if a liquid, the volume in milliliters;

(viii) date of issuance; and

(ix) if telephoned to the pharmacy by a designated agent, the full name of the designated agent.

(B) All original electronic radioactive prescription drug orders shall bear:

(i) name of the patient, if applicable at the time of the order;

(ii) name of the institution;

(iii) name, and if for a controlled substance, the address and DEA registration number of the practitioner

(iv) name of the radiopharmaceutical;

(v) amount of radioactive material contained in millicuries (mCi), microcuries (uCi), or bequerels (Bq) and the corresponding time that applies to this activity, if different than the requested calibration date and time;

(vi) date and time of calibration;

(vii) if a liquid, the volume in milliliters;

(viii) a statement which indicates that the prescription has been electronically transmitted (e.g., Faxed to or electronically transmitted to);

(ix) name, address, and electronic access number of the pharmacy to which the prescription was transmitted;

(x) telephone number of the prescribing practitioner;

(xi) date the prescription drug order was electronically transmitted to the pharmacy, if different from the date of issuance of the prescription;

(xii) date of issuance; and

(xiii) if telephoned to the pharmacy by a designated agent, the full name of the designated agent.

(C) At the time of dispensing, a pharmacist is responsible for the addition of the following information to the original prescription:

(i) unique identification number of the prescription drug order;

(ii) initials or identification code of the person who compounded the sterile radiopharmaceutical and the pharmacist who checked and released the product;

(iii) name, quantity, lot number, and expiration date of each product used in compounding the sterile radiopharmaceutical; and

(iv) date of dispensing, if different from the date of issuance.

(8) Refills. A radioactive prescription drug order must be filled from an original prescription which may not be refilled.

(c) Policy and procedure manual.

(1) All nuclear pharmacies shall maintain a policy and procedure manual. The nuclear pharmacy policy and procedure manual is a compilation of written policy and procedure statements.

(2) A technical operations manual governing all nuclear pharmacy functions shall be prepared. It shall be continually revised to reflect changes in techniques, organizations, etc. All pharmacy personnel shall be familiar with the contents of the manual.

(3) The nuclear pharmacy policies and procedures manual shall be prepared by the pharmacist-in-charge with input from the affected personnel and from other involved staff and committees to govern procurement, preparation, distribution, storage, disposal, and control of all drugs used and the need for policies and procedures relative to procurement of multisource items, inventory, investigational drugs, and new drug applications.

(d) Other records. Other records to be maintained by a pharmacy:

(1) a permanent log of the initials or identification codes which will identify each dispensing pharmacist by name (the initials or identification code shall be unique to ensure that each pharmacist can be identified, i.e., identical initials or identification codes shall not be used);

(2) copy 3 of DEA order form (DEA 222) which has been properly dated, initialed, and filed, and all copies of each unaccepted or defective order form and any attached statements or other documents;

(3) a hard copy of the power of attorney to sign DEA 222 order forms (if applicable);

(4) suppliers’ invoices of dangerous drugs and controlled substances; pharmacists or other responsible individuals shall verify that the controlled drugs listed on the invoices were actually received by clearly recording their initials and the actual date of receipt of the controlled substances;

(5) suppliers’ credit memos for controlled substances and dangerous drugs;

(6) a hard copy of inventories required by §291.17 of this title (relating to Inventory Requirements);

(7) hard-copy reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;
transmitted directly between a pharmacy and a physician but are
refill authorization, or other confidential health information are not
information. If radioactive prescription drug orders, requests for
radioactive prescription drug order and patient medication records to
which may legally own and maintain prescription drug records.
these sections, a pharmacy licensed under the Act is the only entity
authorized official.
two business days of written request of a board agent or any other
all or any part of such records to the pharmacy location within
render the records easily readable, the pharmacy shall provide access
film, computer media, or in any form requiring special equipment to
for dangerous drugs may be maintained at a central location.

(2) Confidential records are privileged and may be
released only to:
(A) the patient or the patient’s agent;
(B) practitioners and other pharmacists when, in the
pharmacist’s professional judgment, such release is necessary to
protect the patient’s health and well-being;
(C) other persons, the board, or other state or federal
agencies authorized by law to receive such information;
(D) a law enforcement agency engaged in investigation
of suspected violations of the Controlled Substances Act or the
Dangerous Drug Act;
(E) a person employed by any state agency which
licenses a practitioner as defined in the Act if such person is engaged
in the performance of the person’s official duties; or
(F) an insurance carrier or other third party payor
authorized by a patient to receive such information.
This agency hereby certifies that the adoption has been re-
viewed 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 27,
1998.
TRD-9802922
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: March 19, 1998
Proposal publication date: January 9, 1998
For further information, please call: (512) 305-8026

Chapter 305. Education Requirements
22 TAC §305.1
The Texas State Board of Pharmacy adopts amendments to
§305.1, concerning Pharmacy Education Requirements, with-
out changes to the proposed text as published in the January
2, 1998, Texas Register (23 TexReg 47). These amendments
will modify the description of a professional practice degree to
match language in SB 609 passed by the 75th Texas Legis-

No comments were received regarding the proposed amend-
ments.
The amendment is adopted under the Texas Pharmacy Act
Article 4542a-1, Texas Civil Statutes, §17(a)(3) which gives
the Board the authority to determine and issue standards for
recognition and approval of degree requirements of colleges of
pharmacy whose graduates shall be eligible for licensing in this
state; and §21(a) and (e) which give the Board the authority to
require that a candidate for licensure must have graduated and
received a professional practice degree, as defined by the rules
adopted by the Board, from an accredited pharmacy degree
program approved by the Board.
The statutes affected by this rule: Texas Civil Statutes, Article 4542a-1.

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 27, 1998.

TRD-9802924
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: March 19, 1998
Proposal publication date: January 2, 1998
For further information, please call: (512) 305-8026

Part XXV. Structural Pest Control Board

Chapter 599. Treatment Standards

22 TAC §§599.5, §599.6

The Texas Structural Pest Control Board adopts amendments to §599. 5 and §599.6, with changes to the proposed text published in the issue of the Texas Register (23 TexReg 48-49).

Justification for the rule is that the amendments clarify that a licensed technician or certified applicator must perform all inspections for the issuance of an Official Texas Wood Destroying Insect Report. The amendments also incorporate the use of baits and the new treatment definitions into the official wood destroying insect report.

The rule will function in that Section 599.5 has been amended to state clearly that the Official Wood Destroying Insect Report must be completed by a licensed technician or certified applicator in the termite category. The form itself already required this and the amendment makes this requirement explicit. The amendments to 599.6 changed the Texas Official Wood Destroying Insect Report. The changes from the existing report are as follows: Added: 1. address of structure inspected to top of page 1. 2. Section A-Scoped Changed to; only the multi-family structure, primary dwellings or place of business. Added: unless specifically noted in section 5 of this report. 3. Section B-Scoped Changed Structure to Structure(s). Added visible in or on the structure. 4. Section F-Scoped Changed to WARRANTY AS TO THE ABSENCE. 5. Section G-Scoped Changed structure to structure(s). Added: approval by a certified applicator in the termite category. Added: (including pesticides, baits or other methods). Change graph to diagram. 6. Section I-Scoped Changed: (1) there is visible evidence of an active infestation in or on the structure. 7. Section I-Scoped-ended Section I after 1st two sentences. Begin a new section J with "If treatment is recommended solely on the...". 8. Created New Section J-Scoped-changed different methods to strategies and changed professional to licensed pest control operator New Section J. 9. Added: If treatment is recommended based solely on the presence of conducive conditions, a preventive treatment or correction of conducive conditions may be recommended...There may be instances where the inspector will recommend correction... 10. Section 1D-Added-(please print). 11. Section 1E-changed to check boxes Certified Applicator [ ] Technician [ ] 12. Section 4A-Added boxes for management company and other 13. Section 4B: Added: Owner/Seller-Section 4C-delete "and the" add parenthetical statement; (only the purchaser of service is required to receive a copy) Section 5 changed to 14. The structure(s) listed below were inspected in accordance... A diagram must be attached including..... deleted sentence regarding having a copy of inspection procedures 15. Section 7B-changed house to structure(s) Added: 16. Section 8-Inspection Reveals Visible evidence in or on the structure: Section 8F-change phrase to: (including pesticides, baits, existing treatment stickers, or other methods) Section 9B changed 17. A preventive treatment and/or correction of conducive conditions as identified in 7A and 7B is recommended as follows: 18. Changed 10A to read as follows: This company has treated or is treating the structure for the following wood destroying insects... Treatment method was: conventional [ ] bait [ ] other [ ] If treating for subterranean termites, the treatment was partial [ ] spot [ ] If treating for drywood termites or related insects, the treatment was full [ ] limited [ ] 19. Added 10B Name of Pesticide, Bait, or other method. 20. Changed 10B to read: date of treatment by inspecting company Added: if yes, copy(ies) of warranty and treatment diagram must be attached. 21. Changed: Diagram of Structure(s) Inspected The inspector must draw a diagram including approximate perimeter measurements. The inspector must draw a diagram, including approximate perimeter measurements, and...B-Wood Destroying Insects, H-Carpenter.... 22. Primary Use: Added box for multi-family 23. Section 11B: Added Certified Applicator License Number 24. Section 12A-changed hot water heater to water heater closet The new report will go into effect on September 1, 1998.

Several individual comments were received, mostly in support of the proposed changes to the wood destroying insect report. Some individuals provided additional ideas for editorial changes. Many of these were incorporated into the adopted document. Comments that were adopted included lettering the conducive release phrase to: (including pesticides, baits, existing treatment stickers, or any other methods) Section 9B changed. 17. A preventive treatment and/or correction of conducive conditions as identified in 7A and 7B is recommended as follows: 18. Changed 10A to read as follows: This company has treated or is treating the structure for the following wood destroying insects... Treatment method was: conventional [ ] bait [ ] other [ ] If treating for subterranean termites, the treatment was partial [ ] spot [ ] If treating for drywood termites or related insects, the treatment was full [ ] limited [ ] 19. Added 10B Name of Pesticide, Bait, or other method. 20. Changed 10B to read: date of treatment by inspecting company Added: if yes, copy(ies) of warranty and treatment diagram must be attached. 21. Changed: Diagram of Structure(s) Inspected The inspector must draw a diagram including approximate perimeter measurements. The inspector must draw a diagram, including approximate perimeter measurements, and...B-Wood Destroying Insects, H-Carpenter.... 22. Primary Use: Added box for multi-family 23. Section 11B: Added Certified Applicator License Number 24. Section 12A-changed hot water heater to water heater closet The new report will go into effect on September 1, 1998.

The agency agreed with the editorial comments made and adopted most of them. The agency chooses not to completely revise the form at this time for reasons of efficient use of limited staff resources and the lack of significant industry interest in doing so.

The amendment is adopted under Article 135b-6, which provides the Structural Pest Control Board with the authority to regulate persons who perform structural pest control services.

§599.5. Inspection Procedures.

(a) Inspections for the purpose of issuing a wood destroying insect report or for post-construction termite treatment shall be conducted in a manner consistent with the procedures described in this section. Inspections for the purpose of issuing a Wood Destroying Insect Report must be conducted by a licensed certified applicator or technician in the termite category. The purpose of the inspection is to provide a report regarding the absence or presence of Wood Destroying Insects (W.D.I.). The inspection should provide the basis for recommendations of preventive or remedial actions to minimize economic losses. For purposes of a Real Estate Transaction
Inspection (§599.6) only, there must be visible evidence of active infestation in the structure or visible evidence of a previous infestation in the structure with no evidence of prior treatment to recommend a corrective treatment. The inspection must be conducted so as to ensure examination of visible accessible areas in accordance with accepted procedures. While such an examination may reveal W.D.I., there are instances when concealed infestations and/or damage may not be discovered. Examinations of inaccessible or obstructed areas are not required.

(b) Inaccessible or obstructed areas recognized by the Board include, but are not limited to:
   (1)-(5) (No change.)
   (c) The inspector shall have knowledge of:
   (1)-(4) (No change.)
   (d) The inspector shall describe structure(s) inspected and include the following:
   (1)-(4) (No change.)
   (e) The inspection shall include, but is not limited to, the following areas if accessible and unobstructed:
   (1)-(8) (No change.)
   (f) Visible evidence of the following conditions must be reported:
   (1)-(6) (No change.)

§599.6. Real Estate Transaction Inspection Reports.

(a)-(b) (No change.)
   (c) The Texas Official Wood Destroying Insect Report Form SPCBT-3 is adopted by reference. The form may be examined in the office of the Texas Register and the Structural Pest Control Board. Forms for reproduction may be obtained from the Structural Pest Control Board office, 1106 Clayton Lane, Suite 100LW, Austin, Texas.
   (d) No change
   (1)-(2) (No change.) a valid exercise of the agency’s legal authority. Issued in Austin, Texas, February 10, 1998

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 March 2, 1998.

TRD-9802989
Benny M. Mathis, Jr.
Executive Director
Structure Pest Control Board
Effective date: March 22, 1998
Proposal publication date: February 2, 1998
For further information, please call: (512) 451–7200

Part XXXI. Texas State Board of Examiners of Dietitians

Chapter 711. Dietitians

22 TAC §§711.7, 711.9, 711.17

The Texas State Board of Examiners of Dietitians (board) by majority vote on November 8, 1997, enters this order finally adopting amendments to §§711.7, §711.9 and §711.17, concerning the regulation of licensed dietitians and provisional licensed dietitians, without changes to the proposed text as published in the October 3, 1997, issue of the Texas Register (22 TexReg 9803).

Specifically, the sections cover references required for the application procedure, clarification of supervision during the upgrade process for a provisional licensed dietitian, and further definition of continuing education requirements for poster sessions and conference exhibits. Section 711.7(d)(4) clarifies that upon application, two professional references must be submitted by licensed dietitians or registered dietitians who can attest to the applicant’s dietetic skills and professional standards of practice. Section 711.9(c)(6) clarifies that supervision requirements must continue until the provisional licensed dietitian becomes a licensed dietitian. Section 711.17(g)(6) further clarifies that participation in poster sessions will be credited as one hour of continuing education for six poster sessions with a maximum of two clock hours of continuing education for 12 poster sessions.

Section 711.17(h)(6) provides clarification that participation in conference exhibits is not an activity acceptable as continuing education.

Sections 711.7, 711.9 and 711.17 are amended to clarify rules applicable to the licensing of dietitians and thereby improving the regulation of dietitians, ensuring continued competency and protecting the public.

The following comments were received concerning the proposed sections. Following the comment is the board’s response and any resulting change(s).

Comment: Concerning §711.17(g)(6), a commenter requested that the rule be changed to allow one hour of continuing education credit for six poster sessions, with a maximum of 30 poster sessions.

Response: The board disagrees. No change was made as a result of the comment. The poster sessions were intentionally limited to two hours of continuing education credit of the six hours required for license renewal. This assures that dietitians participate in a variety of continuing education activities such as workshops, seminars, symposiums and self-assessment modules.

Comment: Concerning §711.9(h)(6), the same commenter also suggested that "participation in conference exhibits" be deleted from the list of unacceptable continuing education.

Response: The board disagrees. No change was made as a result of the comment. The board believes that other continuing education activities will ensure continued competency.

The commenter was Lillian Reyes Gates, who had particular concerns and objections regarding some of the proposed amendments, but was not against the amendments in their entirety.

The amendments are adopted under the Licensed Dietitian Act, Texas Civil Statutes, Article 4512h, §6, which provides the Texas State Board of Examiners of Dietitians with the authority to adopt rules concerning the regulation and licensure of dietitians.

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.
Part XXXIII. Texas State Board of Examiners of Perfusionists

Chapter 761. Perfusionists

22 TAC §761.6

The Texas State Board of Examiners of Perfusionists (board), by majority vote of the board on February 4, 1998, enters this order finally adopting an amendment to §761.6, concerning the practice of perfusion, without changes to the proposed text as published in the January 2, 1998, issue of the Texas Register (23 TexReg 49).

The amendment requires that certain criteria for approval of exemption be met and that notification of intended exemption dates be made. The exempt person must be authorized to perform the activities and services of perfusion under the state law of the person's residence and be currently certified as a Certified Clinical Perfusionist. Notification to the board must be made at least three working days prior to the requested exemption dates and the person must not have exceeded the maximum of ten days in the last 365 days.

The amendment implements Texas Civil Statutes, Article 4529e, §17 which sets out exemptions by defining approval criteria, and by establishing a notification process and the allowable time period for exemption from licensure in Texas for out of state residents.

No comments were received on the proposed rule during the comment period.

The amendment is adopted under Texas Civil Statutes, Article 4529e, which provides the Texas State Board of Examiners of Perfusionists with the authority to adopt rules concerning the regulation of perfusionists.

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 March 2, 1998.

TRD-9803025

Susan K. Steeg

General Counsel

Texas State Board of Examiners of Dietitians

Effective date: March 16, 1998

Proposal publication date: October 3, 1997

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

Part I. Texas Natural Resource Conservation Commission

Chapter 324. Used Oil

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §§324.4 and 324.11-324.14, the repeal of §§24.17-324.20, and a new §324.22, concerning used oil recycling. Sections 324.12 and 324.22 are adopted with changes to the proposed text as published in the October 17, 1997, issue of the Texas Register (22 TexReg 10240). Sections 324.4, 324.11, 324.13, and 324.14, and the repeal of §§324.17-324.20 are adopted without changes and will not be republished.

EXPLANATION OF ADOPTED RULE The primary purpose of the adopted amendments and new section is to incorporate requirements necessary pursuant to Texas Health and Safety Code Chapter 371,§371.026, concerning Registration and Reporting Requirements of Used Oil Handlers Other Than Generators. One minor additional amendment is adopted to delete some unnecessary and confusing language. Also, the repeal of several sections is adopted to remove unnecessary requirements already clearly stated in statute.

In response to comment, adopted §324.12(4) has been revised to eliminate the need to send a written request for an extension from December 1 to January 25 of the following year if the used oil activities of the processor/rerefiner continue through December 31.

In response to comment, adopted §324.22(d)(1)(B) (relating to Financial Responsibility Technical Requirements), has been changed from the proposed language to delete the requirement that a certifying engineer or other qualified professional be "independent." In §324.22(d)(3), in the first sentence after the phrase "or otherwise handled", the proposed language has been changed to add this additional clarification: "including but not limited to loading docks, parking areas, storage areas, and any other areas where shipments of used oil are held for more than 24 hours." In §324.22(d)(3)(B), the proposed language has been changed to add the word "either" after the word "plus." In §324.22(d)(3)(D), the proposed language has been changed to add the words "from discovery" after the words "within 24 hours."

TAKINGS IMPACT ASSESSMENT The commission has prepared a takings impact assessment for these rules pursuant Texas Government Code §2007.043. The following is a summary of that assessment. The specific adoption of the amendments and new section is to bring 30 TAC Chapter 324 on Used Oil into compliance with Health and Safety Code Chapter 371, Section 371.026, Registration and Reporting Requirements of Used Oil Handlers Other Than Generators. The rule amendments and new section will substantially advance this specific purpose by eliminating biennial registration and annual reporting requirements and implementing in rule the state statutory requirement for financial responsibility. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rule amendments because financial responsibility was already required by state statute but not federal rule, and the new state rule financial assurance requirements do not affect property values; they just provide funds for cleanup of contamination, if any, at site closure.
Also, the following exception to the application of Chapter 2007 of the Texas Government Code listed in Texas Government Code §2007.003 apply to these rules: the rulemaking is reasonably taken to fulfill an obligation mandated by federal law in 40 Code of Federal Regulations, Part 279, Standards for the Management of Used Oil.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW The executive director has reviewed the adopted rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adopted rule is not subject to the Coastal Management Program.

HEARINGS AND COMMENTERS A public hearing was not held for this rulemaking. The comment period closed November 17, 1997. Safety-Kleen Corporation was the only commenter. Some of the comments were in support of the adopted changes and others recommended revisions.

ANALYSIS OF COMMENTS Concerning §324.12(4), Safety-Kleen recommended changing the biennial reporting date from December 1 to January 25 or March 1 of the following year to avoid unnecessary written requests for an extension of the filing date.

The commission agrees with this comment. Section 324.12(4) has been revised to eliminate the need to send a written request for an extension from December 1 to January 25 of the following year if the used oil activities of the processor/rerefiner continue through December 31.

Concerning §324.22(a), Safety-Kleen commented: “Additionally, §324.22(a) defines used oil handlers as owners and operators of used oil transfer, processing, refining, and off-specification used oil burning facilities, however, the active area in which the financial assurance must be provided includes any transportation related area, while §324.11 provides requirements for Transporters and Transfer Facilities, should be subject only to §324.11 and not §324.22.”

The commission does not agree with this comment. Section 324.11 provides the registration and federal requirements for used oil transporters and transfer facilities. It does not state that these are the only requirements that transporters and transfer facilities must meet. Section §324.22(a) (relating to Financial Responsibility Technical Requirements) clearly states that it “applies to owners and operators of used oil transfer, processing, rerefining, and off-specification used oil burning facilities, hereinafter referred to as used oil handlers.” State law applies the financial responsibility requirement to all used oil handlers other than generators (Texas Health and Safety Code,§371.026 (a)(C)). Therefore, §324.22 applies to owners and operators of used oil transfer facilities, as it does to other used oil handlers; and since this is the intent of state law, no change has been made in response to this comment.

Concerning §324.22(c), Safety-Kleen proposed that Used Oil Handlers who conduct used oil management in facilities that already provide financial assurance for closure under hazardous waste permits should be exempt from this rule.

The commission agrees with this comment. A used oil handler who already provides financial assurance for soil remediation of its used oil management facility under a separate commission permit would not have to secure financial assurance per new Chapter 37, Subchapter L (relating to Financial Responsibility for Used Oil Recycling). No change is required to §324.22(c) in response to this comment.

Concerning §324.22(c), Safety-Kleen commented that the “active area” for which financial responsibility is to be provided is poorly defined and proposed that the commission provide more definition of the “earthen area.”

The commission does not agree with this comment. The commission offers the following clarification. Under §324.22(c), the active area is “the earthen area at the facility over which any transportation, storage, or processing of used oil occurs.” A straightforward interpretation of this definition, which is the commission’s intent, is that the active area is any earthen (e.g., not paved or lined with non-earthen material) area, or ground, at the facility where used oil is taken, stored, or can contaminate. It includes earthen area over which used oil trucks travel. It includes ground where used oil storage, processing, or transfer activities take place. It includes land under or around the surface of any ponds that contain any used oil, such as could be the case if the pond is used as a spill containment unit, or if the pond is contaminated from rainfall runoff containing used oil. These are examples of “active areas” because this land would be an earthen area over which used oil transportation, storage, or processing occurs. It does not include ground such as unused or vacant areas at the facility which have no potential to be contaminated with used oil, whether by spill or de minimis loss. The intent is to include as active areas all land areas that have the potential to become contaminated with used oil. Therefore, anywhere used oil is taken, anywhere used oil “goes,” or anywhere used oil is handled in any way over the land at the facility qualifies as “active area.” The commission believes that the meaning of the term “active area” is sufficiently clear as written in the proposed rule, so no change has been made in response to this comment.

Concerning §324.22(d)(1)(B), Safety-Kleen did not feel that the certifying engineer had to be an “independent” engineer.

The commission agrees with this comment. The word “independent” has been deleted.

Concerning §324.22(d)(3), Safety-Kleen stated: “Facilities that are managed under 40 CFR Subpart E, as Transfer Facilities, should be subject only to §324.11 and not §324.22. The phrase or otherwise handled is vague and should be clarified. Safety-Kleen proposes significant clarification of otherwise handled or deletion of the phrase.”

The commission does not agree with all of these comments. It has already responded to the first sentence in its response to Safety-Kleen’s comments concerning §324.22(a).

In response to the comment that the phrase “or otherwise handled” under the optional or alternate requirements of §324.22(d)(3) is vague, a revision has been incorporated to help clarify the meaning, based upon the federal definition of “used oil transfer facility.” The revised language now reads: “Used oil handler facilities must be provided with secondary containment for all areas where used oil is stored, transferred, or otherwise handled, including but not limited to loading docks, parking areas, storage areas, and any other areas where shipments of used oil are held for more than 24 hours....”

With regard to §324.22(d)(3)(A), Safety-Kleen quoted Texas Health and Safety Code §371.028 This section states: “Unless otherwise required by federal or state law, the rules, standards,
The commission does not agree that these requirements are precluded by state statute. The requirements in §324.22(a)-(d) implement the state statutory requirement for financial responsibility in Texas Health and Safety Code §371.026(a)(1)(C). Section 324.22(d) provides a "voluntary" alternative to provide a smaller amount of financial assurance in exchange for meeting requirements that are more protective of the environment. The commission does not interpret this voluntary alternative for a smaller amount of financial assurance than would otherwise be required to be in conflict with state law.

Concerning §324.22(d)(3)(B), Safety-Kleen proposed changing the language to add "either" after the word "plus."

The commission agrees with this comment. The proposed change has been made.

Concerning §324.22(d)(3)(D), Safety-Kleen proposed adding the words "from discovery" after the words "within 24 hours."

The commission agrees with this comment. The proposed change has been made.

Concerning §324.22(d)(4), Safety-Kleen believes the wording is not clear on how the capability is to be met to provide "spill response capability to adequately respond to a catastrophic spill" and requests further clarification.

The commission does not agree with this comment. The commission offers the following explanation. A catastrophic spill would be one that occurs suddenly, as opposed to a slow leak resulting in a relatively small spill. A sudden rupture of a tank or container resulting in a significant portion of the contents being released rapidly from the unit would be an example of a catastrophic spill. To meet the requirement of providing spill response capability to adequately respond to a catastrophic spill, the owner or operator would need to be able to adequately respond to this sudden release by discovering it in a timely manner, containing it, and cleaning it up. Catastrophic spills could, in severe cases, breach secondary containment. The owner or operator would need to be able to quickly respond, contain, and clean up the release. There are so many used oil facility types, designs, and configurations that the commission believes it is simply not feasible to craft a rule which addresses each type of facility with regard to what types of procedures, equipment, and provisions its owner or operator would need to be able to provide adequate catastrophic spill response capability. Therefore, no change has been made in response to this comment.

Concerning state registration, Safety-Kleen stated: "Since the used oil activity has to be notified to the United States Environmental Protection Agency (EPA) using Form 8700-12, Safety-Kleen proposes that the TNRCC eliminate the requirement for a separate form provided by the commission. The commission does not agree with this comment. The Health and Safety Code §371.026(1) (relating to Registration and Reporting Requirements of Used Oil Handlers Other Than Generators) mandates registration with the commission and makes providing proof of financial responsibility a requirement for registration. Because the EPA does not have a used oil handler financial responsibility requirement as a condition of registration, satisfaction of this state statutory requirement is not included on their registration Form 8700-12.

Subchapter A. Used Oil Recycling

30 TAC §§324.4, 324.11-324.14, 324.22

STATUTORY AUTHORITY The amended and new sections are adopted under Texas Health and Safety Code, Chapter 371, §371.026, which provides the commission with the authority to establish rules on Registration and Reporting Requirements of Used Oil Handlers Other Than Generators. The amended and new sections are also proposed under Texas Water Code, §§5.103, 5.105, and 26.011, which provide the commission the authority to adopt rules necessary to carry out its powers, duties, and policies and to protect water quality in the state.


Standards for used oil processors and rerefiners shall be as in 40 CFR Part 279, Subpart F and as specified in this section.

(1) (No change.)

(2) Registration. Processors and rerefiners must register with the EPA and the commission one time on their used oil activities. Processors and rerefiners must register their used oil activities within 90 days of initiation under this rule if they have not previously registered their specific used oil activities with the commission and the EPA prior to the effective date of this rule. Processors and rerefiners must register, through the commission, using the EPA Form 8700-12 (one time) and a form provided by the commission. Registration forms should be mailed to the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, MC 125, P.O. Box 13087, Austin, Texas 78711-3087.

(3) (No change.)

(4) Biennial report. The processor/rerefiner biennial report required by 40 CFR §279.57(b) covering each odd numbered year shall be provided to the commission by December 1 of the odd numbered year if all used oil operations have been completed for that year; if not, the processor/rerefiner shall submit the report by January 25 of the following even numbered year. The information shall be entered on a commission-prescribed form and forwarded to the commission. Mail the report form to the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, MC 125, P.O. Box 13087, Austin, Texas 78711-3087.


(a) This section applies to transporters of used oil who are seeking registration under this chapter. It also applies to owners and operators of used oil transfer, processing, rerefining, and off-specification used oil burning facilities, hereinafter referred to as
"used oil handlers". It does not apply to a used oil handler which is owned or otherwise effectively controlled by the owners or operators where the used oil is generated.

(b) Within 90 days after the effective date of this rule, transporters of used oil must meet the financial responsibility requirements provided in 30 Texas Administrative Code Chapter 37, §37.202 and used oil handlers subject to the requirements of either subsection (c) or (d) of this section must meet the financial responsibility requirements provided in §37.2011 of this title (relating to Financial Responsibility Requirements for Used Oil Handlers).

(c) Used oil handlers meeting the requirements of this subsection must provide financial assurance for soil remediation in the amounts specified. A used oil handler subject to this subsection must, within 30 days after an increase in the active area of the facility which results in a higher financial assurance requirement, provide for increased financial assurance. Additionally, a used oil handler must, at a minimum, update its financial assurance annually to cover any increased cost due to inflation and to account for any other appropriate adjustments, including a lower financial assurance amount due to a decrease in the active area of the facility. The active area of the facility is the earthen area at the facility over which any transportation, storage, or processing of used oil occurs. Records demonstrating the size of the active area of the facility and related financial assurance are to be maintained in the operating record of the facility. (Also, see 30 TAC §37.2011(c) of this title (relating to Financial Responsibility Requirements for Used Oil Handlers.)) The specified amount for which financial assurance must be provided is as follows:

1. for a facility with an active area of over 1,000 square feet up to 10,000 square feet, $410 for each 1,000-square-foot increment;
2. for a facility with an active area of over 10,000 square feet up to 100,000 square feet, $4,100 for each 10,000-square-foot increment;
3. for a facility with an active area of over 100,000 square feet up to 1,000,000 square feet, $41,000 for each 100,000 square-foot increment and $4,100 for each 10,000 square-foot increment;
4. for a facility with an active area of over 1,000,000 square feet, $410,000 for each 1,000,000-square-foot increment, $41,000 for each 100,000-square-foot increment, and $4,100 for each 10,000-square-foot increment; or
5. Used oil handlers may meet the following alternate requirements:
   1. used oil handlers must demonstrate compliance with this chapter, as follows:
      (A) used oil handlers must annually provide a certification statement to the executive director that the used oil handler is in compliance with the applicable requirements of this chapter; and
      (B) all used oil handlers must obtain certification from a Registered Professional Engineer or other qualified independent professional that the used oil facility units have been designed and constructed in accordance with appropriate design standards, and that the units exhibit mechanical integrity. Such a certification must be obtained for each unit added to the facility, and for each unit that has undergone repair to restore mechanical integrity, within 90 days of the addition or completion of repair;
   2. Used oil handlers must ensure that used oil spills in quantities of 25 gallons or greater are reported to the agency in accordance with the spill reporting requirements of Chapter 327 of this title (relating to Spill Prevention and Control);
3. Used oil handler facilities must be provided with secondary containment for all areas where used oil is stored, transferred, or otherwise handled, including but not limited to loading docks, parking areas, storage areas, and any other areas where shipments of used oil are held for more than 24 hours; and the facility’s used oil tanks, containers, and secondary containment must be constructed, operated, and maintained to conform to the requirements of Title 40 Code of Federal Regulations §§264.174, 264.193(c)-(f), and 264.195(b), as if the used oil were hazardous waste, or to conform to the following:
   A. the secondary containment must be stationary and constructed of non-earth material (e.g., concrete) and which is maintained to be free of cracks, gaps, or holes, and which is overlain with a synthetic liner with a thickness of at least 40 mils;
   B. the secondary containment must be large enough to contain a catastrophic spill of 100% of the capacity of the largest used oil storage, transfer, or other handling equipment or device within the containment area, plus either at least 12 inches of freeboard or sufficient freeboard to hold the precipitation which would be collected within the containment area, including any runon or infiltration of precipitation, which would occur as a result of a 25-year, 24-hour rainfall event;
   C. the secondary containment system must prevent the release of used oil or other accumulated liquid from the secondary containment system to the soil, ground water, or surface water until the collected material is removed;
   D. used oil or other accumulated liquid must be removed from the secondary containment system within 24 hours from discovery, or in as timely manner as possible;
4. Used oil handlers must provide spill response capability to adequately respond to a catastrophic spill of 100% of the capacity of the largest used oil storage, transfer, or other handling equipment or device, plus 10% of the capacity of the remaining used oil, storage, transfer, and other handling equipment and devices; and
5. Used oil handlers must meet the requirements of subsection (c) of this section, except the specified amount for which financial assurance must be provided is 10% of the amount that would otherwise be required under subsection (c).

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 25, 1998.

TRD-9802793
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Effective date: March 17, 1998
Proposal publication date: October 17, 1997
For further information, please call: (512) 239-6087

30 TAC §§324.17-324.20

The repeal are adopted under Texas Health and Safety Code, Chapter 371, §371.026, which provides the commission with the authority to establish rules on Registration and Reporting
The General Land Office (GLO) adopts new §§13.60-13.67

Former Superconducting Collider Tracts

Land Sales–Preferential Right to Purchase Certain Former Superconducting Cuper Collider Tracts

§13.60. Purpose and Scope.

§13.61. Definitions.


§13.63. Effect of Notice.

§13.64. Notice to GLO.


§13.66. Transfer of Preferential Right.

Person - An individual, a duly organized corporation, business trust, estate, trust, partnership, limited liability company, association or other business entity, or a government or governmental subdivision or agency.

Preference right - A statutory priority right to purchase property in accordance with this subchapter by a person, or combination of persons, whose interests constitute joint ownership of the entire property.

Property - A tract of land acquired by the state by deed or condemnation for use by the superconducting super collider research facility in Ellis County, Texas, or portion thereof, which has not been offered for sale, or sold prior to January 1, 1998.

Successor - A subsequent holder of the preference right of another entity which was acquired by operation of law.

TNRLC - The Texas National Research Laboratory Commission, a state agency which ceased to exist by act of the legislature, and whose authority to manage, control, market and dispose of real property and interests in real property was transferred to the GLO under the Government Code §465.018(d).

§13.62. Preference Right
(a) There is no preference right as to any property sold, under contract for sale, or offered for sale prior to January 1, 1998. For purposes of this section, the phrase offered for sales shall include, any of the following activities:
   (1) the publication of a list of properties to be sold by sealed bid sale held by the GLO under the provisions of the Texas Natural Resource Code §31.158; or
   (2) any traditional and customary real estate industry actions or practices taken to elicit offers for the sale of property, including without limitation, the placement of "For Sale" signs, advertisement for sale in newspapers, magazines, brochures, flyers, or the internet, evidence of which shall be retained in the GLO land files pertaining to the sale of the property;
(b) As to property not offered for sale prior to January 1, 1998, a preference right shall accrue and be limited to a person, or the person’s heirs or successor who conveyed land to the state for use by the superconducting super collider research facility in Ellis County, Texas.
(c) Before the GLO initiates formal action to sell a particular tract of property to any other party, notice shall be given to a person with a preference right, in accordance with the provisions of §13.63 of this subchapter (relating to Notice of Preference Right).
(d) A preference right may not be sold, transferred or assigned to a third party.
(e) A preference right is not an interest in the property.

The notice of preference right shall contain:
(1) the date of the notice;
(2) a legal description of the property subject to the preference right;
(3) an application to purchase the tract in a form prescribed by the GLO;
(4) a statement informing the addressee that in order to exercise the preference right, the addressee must deliver a signed application to the GLO at the address set forth in the application on or before the 30 days after the date of the notice, and pay to the GLO a fee in the amount of $300.00, which shall be applied to the cost of an appraisal of the property described in the application. The required fee shall not be refundable and shall not apply to the purchase price of the property from the GLO; and
(5) a statement that within 15 days after receipt of written notice from the GLO of appraised value, the addressee shall enter into a contract to purchase the property described in the application at the appraised value, on the terms and conditions contained in a form of purchase contract prescribed by the GLO, or the preference right is conclusively deemed to have been waived.

§13.66. Exercise of Preference Right
A person or a person’s heirs or successor entitled to a preferential right shall strictly comply with the deadlines and other conditions of sale set forth in this subchapter and any contract of sale, or the preference right shall be deemed waived without further action of the GLO.

The property sold under this subchapter shall be conveyed subject to any easements, covenants, restrictions, rights-of-way and any other encumbrances or other matters of record in the official records of the GLO or Ellis County, Texas, and any other matters contained in the contract of sale.

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.
Part II. Texas Parks and Wildlife Department

Chapter 51. Executive

Subchapter G. Nonprofit Organizations

31 TAC §51.164

The Texas Parks and Wildlife Commission in a regularly scheduled public hearing on January 22, 1998 adopted an amendment to §51.164, concerning Gifts to the Department without changes to the proposed text as published in the December 19, 1997, issue of the Texas Register (22 TexReg 12424).

Senate Bill 145 passed by the 75th Legislature provides specific direction to state agencies regarding the acceptance of gifts. The Act provides that all gifts of money or property with a value of $500 or more must be accepted by the Commission in an open meeting. The Act further states that the name of the donor, a description of the gift and a statement of the purpose of the gift must be recorded in the minutes of the meeting.

The Department received no public comments concerning the proposed amendments.

The amendment is adopted under Parks and Wildlife Code, §11.026 which provides authority for the department to accept gifts of property or money in support of any department purpose authorized by the Parks and Wildlife 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 February 25, 1998.

TRD-9802756
Bill Harvey.
Regulatory Coordinator
Texas Parks and Wildlife Department
Effective date: March 17, 1998
Proposal publication date: December 19, 1997
For further information, please call: (512) 389–4642

Chapter 57. Fisheries

Subchapter I. Mandatory Boater Education Program

31 TAC §§57.701, 57.703, 57.705, 57.707

The Texas Parks and Wildlife Commission in a regularly scheduled public hearing on January 22, 1998 adopted new §§57.701, 57.703, 57.705, and 57.707, concerning Mandatory Boater Education Program. Sections 57.703, 57.705, and 57.707 were adopted without changes to the proposed text as published in the December 19, 1997, issue of the Texas Register (22 TexReg 12425). Section 57.701 was adopted with changes in §57.701(a)-(b) include the inclusion of the term “and equivalency exam processes” for clarification of the scope of the new rules.

To comply with new Parks and Wildlife Code §§31.108-31.110 enacted by the 75th legislature, Education and Law Enforcement Division staff reviewed revised sections regarding Personal Watercraft (§31.106) and Operation of Motorboat (§31.107), and new sections regarding a Mandatory Boater Education Program. Similar to the evolution of mandatory hunter education is Texas, the department currently has in place a voluntary boater education program which began in 1977. The new emphasis on boater education and water safety awareness will give staff the opportunity to reach thousands of new boaters. Staff plans to use many diverse teaching methods such as home study, challenge exams and a course available on the world wide web to make it as convenient as possible for boaters to comply with the new provisions. Future generations will experience safer, more enjoyable boating despite more crowded conditions as a result of this comprehensive effort to reach more boaters and other users of the public waterways of Texas.

The Department received public comment from the Texas Boating Trades Association. The comments suggest changes in §57.701(a)-(b) to clarify the scope of the new rules.

Staff agrees with these suggestions and changes in the rules as adopted to reflect the suggestion are included.

Because the subject of the proposed amendments is in all cases public property and no restrictions are imposed by the regulations on the use of private property, there is no takings impact within the purview of the private Real Property Rights Preservation Act, (the Act) Chapter 2007 of the Government Code. Furthermore, there are no governmental actions allowed by the proposed regulations which fall under the purview of the definition of a “taking” in §2007.002(5) of the Act. Rules relating to regulation of activities: Takings Impact Assessment. Because the subject of the proposed amendments relates to activities only on public property and no restrictions are imposed by the regulations on the use of private property, there is no takings impact within the purview of the private Real Property Rights Preservation Act, (the Act) Chapter 2007 of the Government Code. Furthermore, there are no governmental actions allowed by the proposed regulations which fall under the purview of the definition of a “taking” in §2007.002(5) of the Act.


§55.701. Boater Education Program.

(a) All courses approved for certification and equivalency exam processes must be approved by the department using minimum national standards as means of approval.

(b) Courses and equivalency exams shall consist of the following subjects:
(1) Boats - boat uses, capacities, trailers, equipment, numbering, titling;
(2) Boating safety - accident causes, prevention and emergency procedures;
(3) Boating operation - preparation, float plans, navigation rules, navigation aids, local hazards and weather; and
(4) State laws - Texas Water Safety Act, Boating While Intoxicated (BWI) Laws, violation prevention and basic boating responsibilities.

c) The course is successfully completed when the student:
   (1) attends at least six hours of training;
   (2) is evaluated by the instructor as acceptable in attitude, knowledge and skill; and
   (3) scores a minimum of 70% on a course exam prescribed by the department.

d) In lieu of a course, a person may complete an equivalency exam process consisting of a multiple-choice exam proctored by an agent appointed by the department or accessed through a department-sponsored web site.
   (1) Home study and equivalency exam passage shall be set at a minimum 80 percent passing score.
   (2) A person who fails the exam may retake it one time at least 24 hours after the time of first completion.

e) The department shall:
   (1) train and certify boater education instructors upon completion of an application, game warden interview and proof of student and instructor course completion;
   (2) administer all records of certifications; and
   (3) approve the standard form for a boater education identification to be issued to a person who successfully completes a boater education course or equivalency exam.

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 25, 1998.

TRD-9802753
Bill Harvey
Regulatory Coordinator
Texas Parks and Wildlife Department
Effective date: March 17, 1998
Proposal publication date: December 19, 1997
For further information, please call: (512) 389-4642

FULL PARDON AND RESTORATION OF RIGHTS OF CITIZENSHIP

37 TAC §143.2

The Policy Board of the Texas Board of Pardons and Paroles adopts an amendment to §143.2, concerning pardons for innocence, without changes to the proposed text as published in the December 19, 1997, Texas Register (22 TexReg 12440). The adopted text will not be republished.

The justification for the amendment to §143.2 is that the requirements for consideration of an application for full pardon based upon innocence will be clarified. Specifically, in order for the Board to consider the application, if the recommendation from current trial officials is based on evidence not previously available, the application must contain a certified order or judgment from a court having jurisdiction accompanied by a certified copy of the findings of fact.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Article 42.18, §6A (c)(1), Code of Criminal Procedure, which provides the Policy Board with power to adopt rules relating to the decision-making processes used by the Board of Pardons and Paroles, and under the Texas Constitution, Article IV, Section 11, and the Texas Code of Criminal Procedure, Article 48.01, which provide the Board with authority to recommend reprieves, commutations of punishments and pardons.

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 March 2, 1998.

TRD-9803038
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Effective date: March 22, 1998
Proposal publication date: December 19, 1997
For further information, please call: (512) 463-1883

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part XX. Texas Workforce Commission

Chapter 800. General Administration

Subchapter F. Interagency Matters

40 TAC §§800.201–800.204

The Texas Workforce Commission (Commission) adopts new §§800.201–800.204, concerning Interagency Matters without changes to the proposed text as published in the January 2, 1998, issue of the Texas Register (23 TexReg 100). The adopted text will not be republished herein.

These rules are being added to relocate the rules concurrently repealed into the first chapter of 40 TAC Part XX concerning the Texas Workforce Commission rules and to incorporate technical and clarity changes. The new rules will include much
Chapter 819. Interagency Matters

New Subchapter F. Interagency Matters will be the location of the new rules.

New §800.201, relating to Title and Purpose, sets out the title and purpose of the subchapter.

New §800.202, relating to Memorandum of Understanding with the Texas Commission for the Deaf and Hard of Hearing, sets out the memorandum text by reference.

New §800.203, relating to Memorandum of Understanding with Texas Education Agency, sets out the memorandum text by reference.

New §800.204, relating to Memorandum of Understanding with Texas Department of Economic Development, sets out the memorandum text by reference.

No comments were received regarding the adoption of the new rules.

The new sections are adopted under Texas Labor Code, §301.061, which provides that the Commission has the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of the Act.

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 27, 1998.

TRD-9802945
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Effective date: March 19, 1998
Proposal publication date: January 2, 1998
For further information, please call: (512) 463–8812

Chapter 819. Interagency Matters

40 TAC §§819.1–819.3


The adoption of the repeal will be concurrent with the adoption of new §§800.201-800.204 concerning Interagency Matters.

These rules are being repealed to relocate the rules into the first chapter of 40 TAC Part XX concerning the Texas Workforce Commission rules and incorporate technical and clarity changes. The new rules will include much of the language from the existing §§ 819.1-819.3 pertaining to memorandums of understanding of the agency, but will also include additional language which the Commission deems appropriate in order to implement the purpose under its enabling legislation.

No comments were received regarding the adoption of the repeals.

The rules are repealed under Texas Labor Code, §301.061, which provides that the Commission has the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of the Act.

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

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TRD-9802944
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Proposal publication date: January 2, 1998
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 TITLE 43, TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 25. Traffic Operations

Subchapter G. Specific Information Logo Sign Program

43 TAC §§25.401, 25.407, 25.409

The Texas Department of Transportation adopts amendments to §25.401, concerning definitions, and §25.407 and §25.409, concerning the specific information logo sign program. Section 25.401 is adopted with changes to the proposed text as published in the November 14, 1997, issue of the Texas Register (22 TexReg 11065). Sections 25.407 and 25.409 are adopted without changes and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS. These amendments are adopted under Transportation Code, §§391.091-391.098, which authorizes the department to erect and maintain specific information logo signs, major shopping area guide signs, and major agricultural interest signs along eligible highways. Senate Bill 370, §2.04, 75th Texas Legislature, 1997, added §391.098 requiring the Texas Transportation Commission to authorize the executive director to grant variances on a case-by-case basis to the eligibility, location, or placement of specific information logo signs, major shopping area guide signs, and major agricultural interest signs. This statute allows the executive director to grant a variance if the director determines that a variance would promote traffic safety or promote traffic flow, if an existing commercial sign is obstructed by a highway structure, or for any other condition or guideline prescribed by rule.

The three types of sign programs include: specific information logo signs displaying the names of commercial establishments that provides gas, food, lodging, or camping; major shopping area guide signs displaying the names of major shopping areas; and major agricultural interest signs displaying the name of a farm, ranch, winery, nursery, greenhouse, or other facility.
Section 25.401 clarifies various definitions to indicate that the signs in these programs are supplemental signs as defined by the Texas Manual on Uniform Traffic Control Devices. This change is to ensure that logo signs are of an appropriate size. This section has been changed to number the definitions in accordance with the Texas Register style.

Section 25.407 describes the conditions under which a major shopping area guide sign may be conveyed to improve traffic safety, traffic flow, and mitigate potentially adverse operational impacts to the state highway system. The department may convey a sign if the participating retail shopping area temporarily closes or if the department determines that the retail shopping mall’s parking is so insufficient that it caused undue congestion of the state highway system. In order to ensure that traffic congestion problems at a retail shopping mall are corrected, this section also allows the contractor, at the request of the department, to remove a major shopping area guide sign if the participating retail mall does not correct items or conditions that the department has identified as causing undue congestion within 90 days.

The department recognizes that there are malls that merit signage because of traffic flow and safety considerations, but which are not eligible for participation in the program because they do not meet each criteria requirement. In order to allow these malls to participate in the major shopping areas sign program and to comply with the requirements of Transportation Code, §391.098, the amendments to §24.409 establishes procedures and policies for variances from the requirements of the program. The section allows a person to request a variance for the major shopping area guide sign program for waiver of the requirements concerning building area, land acreage, or that the buildings of the retail shopping establishment be connected by a common continuous roof, and outlines the procedure. In order to ensure that the executive director has sufficient data to make an informed variance decision, the section authorizes the department to require additional documentation including, but not limited to, traffic studies, maps, traffic flow analysis, crash data analysis, and a detailed site plan of the major shopping area. This section also describes the conditions under which the executive director may grant or deny the variance.

In order to ensure that an entity requesting a variance is informed of the reasons for the executive director’s decision, the section requires that the executive director issue the reason for granting or denying the requested variance in writing.

RESPONSE TO COMMENTS. On December 2, 1997 a public hearing was held for the purpose of receiving comments relating to the proposed adoption of amendments to §§25.401, 25.407, and 25.409. Three oral comments were received at the hearing from the Texas Hotel and Motel Association, Tanger Outlet Center in San Marcos, and City of Waller. The department received written comments from Representative Mike Jackson from the Texas House of Representatives, the Texas Hotel and Motel Association, and the Waller civic and business community. The commenters did not indicate whether they were for or against the amendments.

Comment: Tanger Outlet Center in San Marcos (Tanger) commented on the amendments. Tanger summarized the economic benefits and number of visitors generated by outlet centers in Texas. Tanger requested that the proposed revision to §25.409 be modified to allow consideration of variances for major shopping areas located on highways which have fewer than one million square feet and are in metropolitan areas of fewer than 200,000 population.

Response: Although, the amendments allow Tanger to request a variance as to building area square footage, the amendments did not address a waiver for population size. The department will request the necessity and criteria that should be used for waiving population and consider amending the rules at a future date.

Comment: Representative Mike Jackson stated that Senate Bill 370, §2.04 should apply to all sign programs, and not just be limited to major shopping area guide signs.

The Texas Hotel and Motel Association (THMA) expressed its concern that the proposed revisions did not meet the legislative intent of Senate Bill 370, §2.04. In particular, THMA stated that the intention of the amendment to Senate Bill 370 was to allow variances for all commercial signing programs operated by the department, not just the major shopping area guide sign program. THMA stated that there are circumstances where the granting of a variance for a sign would be reasonable and justified. THMA used an example of a hotel in the Hillsboro area which does not have driveway access to an eligible urban highway frontage road, ramp, intersecting cross street, or city street and is therefore not currently eligible for a sign. The department received similar written comments from THMA which reiterated its concern that the proposed revisions to §§25.401, 25.407 and 25.409 did not meet the legislative intent of Senate Bill 370, §2.04.

Response: The specific information logo sign is not the topic of these amendments. In considering these amendments, the department determined that the vast majority of the variances would be requested for major shopping area guide signs. The purpose of the amendments was to fully inform the traveling public of the location and availability of major shopping areas of interest. Thus, the amendments only address those signs. The department will consider proposing variances to the other two programs at a later date. The department still has information to gather concerning the specific information logo sign program before it can determine what variances are needed. The department will take the comments received concerning the specific information logo sign program into consideration in that decision. Since the major agricultural interest guide sign is a fairly new program, it is not clear whether variances will be needed and if they are, what type of variances these should be. Once the type of and criteria for necessary variances are determined, the department will consider promulgating appropriate rules.

Comment: The City of Waller requested a specific information logo sign on the US 290 bypass in order to display available restaurants, gas locations, and other attractions that are available in Waller. A document was submitted consisting of one letter from the Mayor of the City of Waller, one letter on behalf of a local restaurant, and six letters from various retail shops noting economic problems experienced by the City of Waller as a result of the recently completed Highway 290 bypass of Waller. Three graphs depicting changes in income for several local merchants were also submitted.

Response: The enabling legislation for the specific information logo sign program does not authorize the Texas Transportation Commission to add another primary motorist service as requested. “GAS”, “FOOD”, “LODGING”, AND “CAMPING” are the only motorist services that were included in the leg-
islation. Variances concerning the retail establishments that fall into these motorist services will be considered in future rule-making.

STATUTORY AUTHORITY. The amendments 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, §§391.091-391.098, which authorizes the department to erect and maintain specific information logo signs, major shopping area guide signs, and major agricultural interest signs along eligible highways, and to grant variances on a case-by-case basis to the eligibility, location, or placement of specific information logo signs, major shopping area guide signs and major agricultural interest signs.

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

(1) Business logo - A separate sign panel of specified dimensions attached to a specific information logo sign and containing the commercial establishment name, symbol, brand, trademark, or combination.

(2) Close proximity interchanges - Sequential interchanges in a direction of travel where exit ramp spacing or existing regulatory, guide, or warning signs preclude placement of a minimum of two specific information logo signs between exits.

(3) Commercial establishment - A privately owned business or corporation offering one or more of the primary motorist services.

(4) Commission - The Texas Transportation Commission.

(5) Contractor - A person, firm, group, or association in the State of Texas that acts as the authorized agent of the department in the operation of the specific information logo sign program.

(6) Department - The Texas Department of Transportation.

(7) Driveway access - A vehicle entrance, built in compliance with state and local standards and regulations, for use by the public providing access from a public street or highway to a commercial establishment or major shopping area.

(8) Eligible highway - A highway that is located outside an urbanized area with a population of 50,000 or more; and qualifies for a maximum speed limit of 65 miles per hour under 23 U.S.C. §154, or if that law is repealed, qualified for a maximum speed limit of 65 miles per hour on the day before the effective date of the repeal.

(9) Eligible urban highway - An interstate highway located inside an urbanized area with a population of 200,000 or more.

(10) Gross building area - Square footage of usable area within a building, or series of buildings under one roof, that is considered usable by the retail businesses and the public; if a building is multi-level, this includes the square footage available on each level.

(11) Information logo sign - A specific information logo sign or a major shopping area guide sign.

(12) Interchange - The intersection of the centerlines of an eligible highway or eligible urban highway and a crossroad.

(13) Interstate highway - Any highway which is part of the national system of interstate and defense highways designed to be a multi-lane and divided full control access roadway.

(14) Major shopping area - An enclosed retail shopping mall offering goods and services for sale to the public located on a minimum 30 acres of land that contains 1,000,000 square feet or more of gross building area.

(15) Major shopping area guide sign - A rectangular supplemental sign panel imprinted with the name of the retail shopping area as it is commonly known to the public and containing directional information.

(16) Major shopping area ramp sign - A supplemental sign with the common name of the retail shopping mall, directional arrows, and/or distances placed near an eligible urban highway exit ramp or access road.

(17) Multiple crossroad interchange - An interchange in which one exit in a direction of travel from an eligible highway provides the only point of access for two or more crossroads; the center of a multiple crossroad interchange is the mid-point of the intersection of the centerline of the eligible highway and centerlines of the affected crossroads.

(18) Primary motorist service - Gas, food, lodging, or camping available to the traveling public.

(19) Ramp business logo - A reduced size separate sign panel of specified dimensions attached to a ramp and containing the commercial establishment name, symbol, brand, trademark, or combination.

(20) Ramp sign - A supplemental sign with ramp business logos or the name of the major shopping area, directional arrows, and distances placed near an eligible highway or eligible urban highway exit ramp.

(21) Retail shopping mall - Retail businesses located within a building, or a series of buildings, connected by a common continuous roof and walls, and enclosing and covering all inner pedestrian walkways and common areas.

(22) Specific information logo sign - A rectangular supplemental sign panel imprinted with the words “GAS,” “FOOD,” “LODGING,” or “CAMPING,” or with a combination of those words, and the names (or business logos) of commercial establishments offering those services.

(23) State - The State of Texas.


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 27, 1998.

TRD-9802963
Bob Jackson
Acting General Counsel
Texas Department of Transportation
Effective date: March 19, 1998
Proposal publication date: November 14, 1997
For further information, please call: (512) 463-8630
Subchapter D. Regional Tollway Authorities

43 TAC §§27.40-27.43

The Texas Department of Transportation adopts new §§27.40-27.43, concerning regional tollway authorities, with changes to the proposed text as published in the December 5, 1997, issue of the Texas Register (22 TexReg 12027).

EXPLANATION OF RULE. Transportation Code, Chapter 366, Subchapter B, authorizes the creation of a regional tollway authority when certain conditions are met subject to the approval of the Texas Transportation Commission (the "commission") unless one of the counties has a population of more than 1.5 million. This new subchapter also authorizes the commission to approve the transfer of a segment of the free state highway system to a regional tollway authority when the commission determines that it is the most feasible and economical means to accomplish necessary expansion, improvements, or extensions to the state highway system.

New §27.40 summarizes the relevant provisions of Senate Bill 370 enacted by the 75th Legislature, 1997, to describe that the purpose of new Subchapter D is to: set forth the conditions under which two or more counties may petition the commission for the creation of a regional tollway authority; describe the criteria and procedures by which the commission may consider and approve the creation of a regional tollway authority; and describe the conditions under which an existing segment of the free state highway system may be transferred to a regional tollway authority.

New §27.41 provides the meaning of words and terms specific to this subchapter.

New §27.42 describes the conditions under which a regional tollway authority may be created and the procedures used to apply for commission approval when required.

To provide the information to the commission necessary for the commission to approve or disapprove the creation of a regional tollway authority, this section stipulates that the following information must be included in an application for creation: a resolution of support from each member county and each incorporated city and metropolitan planning organization within the jurisdiction of those counties; a description of how the existence of a regional tollway authority would expand the availability of funding for transportation projects; a description of how the first turnpike project proposed would be consistent with the Texas Transportation Plan and the Metropolitan Transportation Plan and State Implementation Plan, if applicable; and a study of the potential social, economic and environmental impacts of the project. This section provides that the executive director will submit the application to the commission for consideration once it has been determined that the required information has been provided.

To ensure coordinated development of statewide transportation systems, to reduce the burdens and demands on the limited funds available to the commission, to improve the effectiveness and efficiency of the department, to ensure the support of all impacted local governments, and to ensure the best interest of the state and the traveling public are sustained, this section provides that the commission may approve the creation of a regional tollway authority if it finds that such creation: will result in a project consistent with the Texas Transportation Plan that will reduce severe traffic congestion, improve air quality or address a safety issue, being completed at an earlier date than the department would otherwise attain these goals; will result in direct benefit to the state, local governments and the traveling public; will improve the efficiency of the state's transportation systems; will expand the availability of funding for transportation projects; is supported by each local government and metropolitan planning organization in the affected counties; and is in the best interest of the state.

To ensure the best interests of the state and the traveling public are preserved and that the commission does not approve the creation of a regional tollway authority without fully considering the social, economic or environmental impacts of the first project proposed, this section allows the commission to consider these potential impacts when deciding whether to approve creation of the regional tollway authority.

To provide for the health and safety of the traveling public, this section allows the commission to make its approval contingent upon the regional tollway authority complying with specific conditions as determined necessary by the commission.

To ensure that the commission and the department are not held accountable for the actions of a regional tollway authority, this section stipulates that the department will not assume any liability for projects under the jurisdiction of a regional tollway authority.

Section 27.42(b)(3)(A). The proposed rules stated that the application would include "an explanation of how the project will be consistent with the Statewide Transportation Plan and, if appropriate, with the metropolitan transportation plan developed by the appropriate metropolitan planning organization." To correct the name of the document and to clarify what the submission should include, the text now reads "an explanation of how the project will be consistent with the appropriate policies, strategies, and actions of the Texas Transportation Plan and, if appropriate, with the metropolitan transportation plan developed by the metropolitan planning organization."

Section 27.42(b)(3)(B). The proposed rules stated that if the project is in a Clean Air Act nonattainment area the application would include "an explanation of how the project will be consistent with the Statewide Transportation Improvement Plan, with the conforming plan and the Transportation Improvement Program (TIP) for the metropolitan planning organization in which the project is located (if necessary), and with the State Implementation Plan." To avoid confusing applicants with the inclusion of several document names, the wording has been changed to "an explanation of how the project will be consistent with the transportation air quality goals outlined in the State Implementation Plan."

Section 27.42(c)(2)(A). The proposed rules stated that the commission may grant approval for creation of a regional tollway authority if it finds that creation "will result in construction of a project included in the Texas Transportation Plan...." Since projects are not specifically included in this policy document and to clarify that the project must be consistent with this document, the wording has been revised to read "will result in construction of a project consistent with the appropriate policies, strategies, and actions of the Texas Transportation Plan...."
New §27.43 summarizes the provisions of Transportation Code §366.035 allowing the commission to transfer a segment of the free state highway system to a regional tollway authority upon approval of the governor and the affected regional tollway authority, if the commission finds that conversion to a turnpike project is the most feasible and economic means to accomplish necessary improvements.

To provide the general public with information on the possibility that an existing free facility may be converted to a turnpike project and to provide an opportunity for the public to comment on the proposal, this section requires a public hearing to be conducted and notice of the hearing to be published in the Texas Register and appropriate newspapers in accordance with 43 TAC §2.43 prior to any transfer.

To recover the public investment in the existing free facility proposed for transfer to a regional tollway authority, this section: provides for reimbursement to the commission by the regional tollway authority for the costs expended on the highway segment to be transferred; provides that costs anticipated to be expended by the department in the current three year Statewide Transportation Improvement Program will be deducted from the cost to be reimbursed to the state; and allows the commission to waive this reimbursement if it finds that the transfer will result in substantial net benefits to the state, the department and the traveling public that exceed that cost.

To ensure coordinated development of statewide transportation systems, to reduce the burdens and demands on the limited funds available to the commission, to improve the efficiency of the department, to ensure preservation of the public’s investment in existing facilities, and ensure the best interests of the state and the traveling public are sustained, this section provides that the commission may transfer an existing free highway to a regional tollway authority provided that: the regional tollway authority agrees to accept the highway for maintenance and operation, the transfer will not adversely affect regional mobility, construction of necessary improvements can be accomplished efficiently, expeditiously and with minimum public investment, the department will review and approve the design of all proposed improvements, the regional tollway authority agrees to meet Federal and department requirements regarding environmental studies, and the regional tollway authority agrees that the department will not accept the facility back unless it is found to be in an acceptable state of repair and in compliance with current design standards used by the department.

To comply with the provisions of Senate Bill 370, this section requires the commission to obtain approval from the governor prior to executing the transfer of the facility.

To ensure that the commission and the department are not held accountable for the actions of a regional tollway authority, this section provides that coincident with the transfer, the department will remove the segment from the designated state highway system, and that the department will not assume any liability for projects under the jurisdiction of a regional tollway authority.

Section 27.43(d) is adopted with changes to clarify that the commission will review the traffic and revenue projections and may use its judgment in determining project transferability.

RESPONSE TO COMMENTS. A public hearing was held on December 16, 1997 and no comments were received.

STATUTORY AUTHORITY. 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 366 which authorizes the department to carry out the provisions of the those laws governing the creation of regional tollway authorities.

§27.40. Purpose.
Transportation Code, Chapter 366, authorizes two or more counties, if one of the counties has a population of not less than 300,000 and the counties form a contiguous territory, to create a regional tollway authority for the purpose of the expansion and improvement of transportation facilities and systems in this state. Unless one of the counties has a population of 1.5 million or more, the creation of a regional tollway authority requires that the counties gain the approval of the Texas Transportation Commission. Chapter 366 also authorizes the Texas Transportation Commission to transfer a segment of the free state highway system to a regional tollway authority, to be owned, operated, and maintained as a turnpike project. This subchapter prescribes the policies and procedures governing commission approval of the creation of a regional tollway authority and the transfer of a segment of the free state highway system to a regional tollway authority.

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

(1) Commission - The Texas Transportation Commission.

(2) Commissioners Court - A county commissioners court.

(3) Department - The Texas Department of Transportation.

(4) Executive director - The chief administrative officer of the department.

(5) Metropolitan Planning Organization - An organization designated by the governor to carry out the transportation process in prescribed urbanized areas as required by Title 23, United States Code, §134.

(6) Turnpike project - A highway of any number of lanes, with or without grade separations, owned, operated or proposed by an existing or proposed regional tollway authority and any improvement, extension, or expansion to that highway.

§27.42. Creation.
(a) Purpose. Transportation Code, §366.031 authorizes two or more counties to create a regional tollway authority if: one of the counties has a population of not less than 300,000; the counties form a contiguous territory; and each county, acting through its respective commissioners court, passes an order to propose creation of a regional tollway authority. Unless one of the counties has a population of more than 1.5 million, §366.031 requires the approval of the commission for the creation of a regional tollway authority. This section prescribes the policies and procedures governing commission approval of the creation of a regional tollway authority.

(b) Application. To secure commission approval under this section for the creation of a regional tollway authority, the commissioners courts shall jointly submit to the executive director, in a form prescribed by the department, a written request for approval. The request shall be accompanied by:
§27.43. Transfer of Existing Public Highways.

(a) Purpose. Transportation Code, §366.035, provides that if the commission finds that the conversion of an existing segment of the free state highway system to a turnpike project is the most feasible and economic means to accomplish necessary expansion, improvements, or extensions to the state highway system, that segment may, on approval of the governor and the affected regional tollway authority, be transferred by order of the commission to the regional tollway authority.

(b) Public involvement. Prior to transferring an existing segment of the state highway system to the regional tollway authority, the commission will conduct a public hearing for the purpose of receiving comments from interested persons concerning the proposed transfer. The notice of the public hearing will be published in the Texas Register at least two weeks prior to the hearing date and, in accordance with §2.43 of this title (relating to Highway Construction Projects - State Funds), one or more newspapers of general circulation in the counties in which the segment is located, and a newspaper, if any, published in the counties of the applicable regional tollway authority. The department will prepare a summary of the public hearing and all comments received in response to the hearing.

(c) Reimbursement. The regional tollway authority will reimburse the commission for the cost of the transferred highway, unless the commission finds that the transfer will result in substantial net benefits to the state, the department, and the traveling public that exceed that cost. The cost shall include the total dollar amount expended by the department for the original construction of the transferred highway, including all costs associated with the preliminary engineering and design engineering for plans, specifications, and estimates, acquisition of necessary right of way, and actual construction of the highway and all necessary appurtenant facilities. Costs anticipated to be expended by the department, as evidenced by inclusion in the current three year Statewide Transportation Improvement Program, to expand, improve, or extend the highway shall be deducted from the costs to be reimbursed to the commission.

(d) Criteria. The commission may, after a review of the regional tollway authority’s traffic and revenue forecasts, transfer an existing highway to the regional tollway authority, provided that:

1. the regional tollway authority agrees, through binding written commitment, to accept the highway for maintenance and operation in a safe and efficient manner while protecting and preserving the state’s investment in the facility;
2. the transfer will not adversely affect regional mobility;
3. construction of the necessary expansion, improvement or extension can be accomplished efficiently, expeditiously, and with a minimum public investment;
4. the department will have design review and approval for all projects undertaken on the facility;
(5) The regional tollway authority agrees to complete a study of the social, economic, and environmental impacts of all projects, consistent with the spirit and intent of the National Environmental Policy Act, Title 42, United States Code, §§4321 et seq., Title 23, United States Code, §109(h), and shall provide for public involvement and meet all other requirements of §§2.40-2.51 of this title (relating to Environmental Review and Public Involvement for Transportation Projects); and

(6) The regional tollway authority agrees that the department will not accept the facility back into the state highway system unless it is found to be in an acceptable state of repair and maintenance and meets all current design standards used by the department.

(e) Transfer. Provided the commission finds that the conversion of a segment of the existing state highway system to a toll facility is the most feasible and economic means to accomplish necessary expansion, improvements, or extensions to the state highway system and that such conversion is in the best interest of the State of Texas, the commission will request approval from the governor to execute such a transfer. Coincident with the transfer, the commission will remove the segment of highway from the designated state highway system, and the regional tollway authority shall assume all liability, responsibility, and duty for financing, design, construction, maintenance and operation of the facility.

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 27, 1998.

TRD-9802964
Bob Jackson
Acting General Counsel
Texas Department of Transportation
Effective date: March 19, 1998
Proposal publication date: December 5, 1997
For further information, please call: (512) 463-8630
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.
Adopted Rule Reviews

Texas State Board of Pharmacy
The Texas State Board of Pharmacy adopts the review of Chapter 291, Pharmacies, §§291.51 - 291.54 in accordance with the Appropriations Act, §167. In conjunction with this review, the agency adopts the repeal the existing Sections 291.51 - 291.54 and adopts new §§291.51 - 291.55 in accordance with the Appropriations Act, §167. The adopted repeal and new rules are published in the Adopted Rule Section of this Texas Register.

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

TRD-9802919
Gay Dodson, R.Ph
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: February 27, 1998

Proposed Rule Review
Coastal Coordination Council
The Coastal Coordination Council (Council) proposes to readopt the coastal management program (CMP) rules, Chapter 501, Coastal Management Program; Chapter 503, Coastal Management Program Boundary; Chapter 504, Coastal Management Program; Chapter 505, Council Procedures for State Consistency with Coastal Management Program Goals and Policies; and Chapter 506, Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies in accordance with the Appropriations Act, §167. The Council’s reasons for adopting the CMP rules continues to exist.

Comments on this proposal may be submitted to Carol Milner, Texas Register Liaison, General Land Office, 1700 North Congress Avenue, Room 626, Austin, Texas 78701 or to facsimile (512) 463-6311. Comments must be submitted by 5:00 p.m., Monday, April 13, 1998.

TRD-9803092
Garry Mauro
Chairman
Coastal Coordination Council
Filed: March 3, 1998
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.
<table>
<thead>
<tr>
<th>Species</th>
<th>Daily Bag</th>
<th>Minimum Length (Inches)</th>
<th>Maximum Length (Inches)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amberjack, greater.</td>
<td>1</td>
<td>32</td>
<td>No limit</td>
</tr>
<tr>
<td>Bass: Largemouth, smallmouth, spotted and Guadalupe bass.</td>
<td>5 (in any combination)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Largemouth and Smallmouth bass.</td>
<td></td>
<td>14</td>
<td>No limit</td>
</tr>
<tr>
<td>Spotted and Guadalupe bass.</td>
<td></td>
<td>12</td>
<td>No limit</td>
</tr>
<tr>
<td>Bass, striped, its hybrids, and subspecies.</td>
<td>5 (in any combination)</td>
<td>18</td>
<td>No limit</td>
</tr>
<tr>
<td>Bass, white</td>
<td>25</td>
<td>10</td>
<td>No limit</td>
</tr>
<tr>
<td>Catfish: channel and blue catfish, their hybrids, and subspecies.</td>
<td>25 (in any combination)</td>
<td>12</td>
<td>No limit</td>
</tr>
<tr>
<td>Catfish, flathead.</td>
<td>5</td>
<td>18</td>
<td>No limit</td>
</tr>
<tr>
<td>Catfish, gafftopsail.</td>
<td>No limit</td>
<td>14</td>
<td>No limit</td>
</tr>
<tr>
<td>Cobia.</td>
<td>2</td>
<td>37</td>
<td>No limit</td>
</tr>
<tr>
<td>Crappie: white and black crappie, their hybrids, and subspecies.</td>
<td>25 (in any combination)</td>
<td>10</td>
<td>No limit</td>
</tr>
<tr>
<td>Drum, black.</td>
<td>5</td>
<td>14</td>
<td>30</td>
</tr>
<tr>
<td>Drum, red.</td>
<td>3*</td>
<td>20</td>
<td>28*</td>
</tr>
</tbody>
</table>

*Special Regulation: During a license year, one red drum over the stated maximum length limit may be retained when affixed with a properly executed Red Drum Tag, a properly executed Exempt Red Drum Tag or with a properly executed Duplicate Exempt Red Drum Tag and one red drum over the stated maximum length limit may be retained when affixed with a properly executed Bonus Red Drum Tag. Any fish retained under authority of a Red Drum Tag, an Exempt Red Drum Tag, a Duplicate Exempt Red Drum Tag, or a Bonus Red Drum Tag may be retained in addition to the daily bag and possession limit as stated in this section.

| Flounder: all species, their hybrids, and subspecies.                  | 10*       | 14                      | No limit                |

*Special Regulation: The daily bag and possession limit for the holder of a valid Commercial Finfish Fisherman’s license is 60 flounder, except on board a licensed commercial shrimp boat.
<table>
<thead>
<tr>
<th>Species</th>
<th>Daily Bag</th>
<th>Minimum Length (Inches)</th>
<th>Maximum Length (Inches)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mackerel, king.</td>
<td>2</td>
<td>23</td>
<td>No limit</td>
</tr>
<tr>
<td>Mackerel, Spanish.</td>
<td>7</td>
<td>14</td>
<td>No limit</td>
</tr>
<tr>
<td>Marlin, blue.</td>
<td>No limit</td>
<td>114</td>
<td>No limit</td>
</tr>
<tr>
<td>Marlin, white.</td>
<td>No limit</td>
<td>81</td>
<td>No limit</td>
</tr>
<tr>
<td>Mullet: all species, their hybrids, and subspecies.</td>
<td>No limit</td>
<td>No limit</td>
<td>*</td>
</tr>
<tr>
<td><em>Special regulation: During the period October through January, no mullet more than 12 inches in length may be taken from public waters or possessed on board a vessel.</em></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sailfish</td>
<td>No limit</td>
<td>76</td>
<td>No limit</td>
</tr>
<tr>
<td>Saugeye</td>
<td>3</td>
<td>18</td>
<td>No limit</td>
</tr>
<tr>
<td>Seatrout, spotted.</td>
<td>10</td>
<td>15</td>
<td>No limit</td>
</tr>
<tr>
<td>Shark: all species, their hybrids, and subspecies.</td>
<td>5</td>
<td>No limit</td>
<td>No limit</td>
</tr>
<tr>
<td>(in any combination)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sheepshead.</td>
<td>5</td>
<td>12</td>
<td>No limit</td>
</tr>
<tr>
<td>Snapper, lane.</td>
<td>No limit</td>
<td>8</td>
<td>No limit</td>
</tr>
<tr>
<td>Snapper, red.</td>
<td>5</td>
<td>15</td>
<td>No limit</td>
</tr>
<tr>
<td>Snapper, vermilion.</td>
<td>No limit</td>
<td>10</td>
<td>No limit</td>
</tr>
<tr>
<td>Snook.</td>
<td>1</td>
<td>24</td>
<td>28</td>
</tr>
<tr>
<td>Tarpon.</td>
<td>0</td>
<td></td>
<td>Catch and release only*</td>
</tr>
<tr>
<td><em>Special Regulation: One tarpon 80 inches in length or larger may be retained during a license year when affixed with a properly executed Tarpon Tag.</em></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trout: rainbow and brown trout, their hybrids, and subspecies.</td>
<td>5</td>
<td>No limit</td>
<td>No limit</td>
</tr>
<tr>
<td>(in any combination)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Walleye.</td>
<td>5</td>
<td>16</td>
<td>No limit</td>
</tr>
<tr>
<td>Location (County)</td>
<td>Daily Bag</td>
<td>Minimum Length (Inches)</td>
<td>Special Regulation</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------------</td>
<td>-----------</td>
<td>-------------------------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td>Bass: largemouth, smallmouth, spotted and Guadalupe bass, their hybrids, and subspecies.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lake Texoma (Cooke and Grayson)</td>
<td>5</td>
<td>14</td>
<td></td>
</tr>
<tr>
<td>In all waters in the Lost Maples State Natural Area (Bandera)</td>
<td>0</td>
<td>No Limit</td>
<td>Catch and release only.</td>
</tr>
<tr>
<td>Bass: largemouth and smallmouth</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lake Toledo Bend (Newton, Sabine and Shelby).</td>
<td>8</td>
<td>14</td>
<td>Possession Limit is 10.</td>
</tr>
<tr>
<td>Bass: largemouth.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lakes Brownwood (Brown), Coleman (Coleman), Conroe (Montgomery and Walker), Fort Phantom Hill (Jones), Granbury (Hood), Lost Creek (Jack), Champion Creek (Mitchell), and Ratcliff (Houston).</td>
<td>5</td>
<td>16</td>
<td></td>
</tr>
<tr>
<td>Lakes Fairfield (Freestone), San Augustine City (San Augustine), Calaveras (Bexar), O.H. Ivie (Coleman, Concho, and Runnels), Bright (Williamson), Cooper (Delta and Hopkins), Alan Henry (Garza), Aquilla (Hill), Bellwood (Smith), Casa Blanca (Webb), Old Mount Pleasant City (Titus), Rusk State Park (Cherokee), Welsh (Titus), Braunig (Bexar), Bryan (Brazos), and Gilmer (Upshur).</td>
<td>5</td>
<td>18</td>
<td></td>
</tr>
<tr>
<td>Nelson Park Lake (Taylor) and Buck Lake (Kimble).</td>
<td>0</td>
<td>No Limit</td>
<td>Catch and release and only.</td>
</tr>
<tr>
<td>Location (County)</td>
<td>Daily Bag</td>
<td>Minimum Length (Inches)</td>
<td>Special Regulation</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------------</td>
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<td>---------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Puritis Creek State Park Lake (Henderson and Van Zandt), Gibbons Creek Reservoir (Grimes), and Raven (Walker).</td>
<td>0</td>
<td>No Limit</td>
<td>Catch and release only except that any bass 22 inches or greater in length may be retained in a live well or other aerated holding device and immediately transported to the Puritis Creek or Huntsville State Park, or Gibbons Creek weigh stations. After weighing, the bass must be released immediately back into the lake or donated to the ShareLunker Program.</td>
</tr>
<tr>
<td>Lakes Pinkston (Shelby), Waxahachie (Ellis), Bridgeport (Jack and Wise), Weatherford (Parker), Georgetown (Williamson), Tyler State Park (Smith), Striker (Rusk), Caddo (Marion and Harrison), Burke-Crenshaw (Harris), Grapevine (Denton and Tarrant), Davy Crockett (Fannin), and Madisonville (Madison).</td>
<td>5</td>
<td>14-18 Inch Slot Limit</td>
<td>It is unlawful to retain largemouth bass between 14 and 18 inches in length.</td>
</tr>
<tr>
<td>Lakes Bastrop (Bastrop), Houston County (Houston), Nacogdoches (Nacogdoches), Mill Creek (Van Zandt), Joe Pool (Dallas, Ellis, and Tarrant), Walter E. Long (Travis), Timpson (Shelby), and Athens (Henderson).</td>
<td>5</td>
<td>14-21 Inch Slot Limit</td>
<td>It is unlawful to retain largemouth bass between 14 and 21 inches in length. No more than 1 bass 21 inches or greater in length may be retained each day.</td>
</tr>
<tr>
<td>Lakes Fayette County (Fayette), Monticello (Titus), and Ray Roberts (Cooke, Denton, and Grayson).</td>
<td>5</td>
<td>14-24 Inch Slot Limit</td>
<td>It is unlawful to retain largemouth bass between 14 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.</td>
</tr>
<tr>
<td>Location (County)</td>
<td>Daily Bag</td>
<td>Minimum Length (Inches)</td>
<td>Special Regulation</td>
</tr>
<tr>
<td>-------------------------------------------------------</td>
<td>-----------</td>
<td>-------------------------</td>
<td>------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Lake Fork (Wood, Rains and Hopkins)</td>
<td>5</td>
<td>14-22 Inch Slot Limit</td>
<td>It is unlawful to retain largemouth bass between 14 and 22 inches in length. No more than 1 bass 22 inches or greater in length may be retained each day. During the period from September 1, 1999 through August 31, 2000, the upper limit of the slot will be 23 inches. Beginning September 1, 2000, the upper limit of the slot will be 24 inches.</td>
</tr>
<tr>
<td>Bass: smallmouth.</td>
<td></td>
<td>3</td>
<td>18</td>
</tr>
<tr>
<td>Lakes O. H. Ivie (Coleman, Concho, and Runnels), Belton (Bell and Coryell), Cisco (Eastland), Greenbelt (Donley), Oak Creek (Coke), Stillhouse Hollow (Bell), White River (Crosby), Whitney (Bosque, Hill and Johnson), Alan Henry (Garza), and Devil’s River (Val Verde) from State Highway 163 bridge crossing near Juno downstream to Dolan Falls.</td>
<td></td>
<td>12-15 Inch Slot Limit</td>
<td>It is unlawful to retain smallmouth bass between 12 and 15 inches in length.</td>
</tr>
<tr>
<td>Lake Meredith (Hutchinson, Moore, and Potter).</td>
<td>3</td>
<td>12-15 Inch Slot Limit</td>
<td>It is unlawful to retain smallmouth bass between 12 and 15 inches in length.</td>
</tr>
<tr>
<td>Bass: spotted</td>
<td></td>
<td>3</td>
<td>18</td>
</tr>
<tr>
<td>Lake Alan Henry (Garza)</td>
<td>3</td>
<td>18</td>
<td>Possession Limit is 10.</td>
</tr>
<tr>
<td>Lake Toledo Bend (Newton, Sabine and Shelby).</td>
<td>8</td>
<td>12</td>
<td>Possession Limit is 10.</td>
</tr>
<tr>
<td>Bass: striped, its hybrids, and subspecies.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lake Toledo Bend (Newton, Sabine and Shelby).</td>
<td>5</td>
<td>No Limit</td>
<td>No more than 2 striped bass 30 inches or greater in length may be retained each day.</td>
</tr>
<tr>
<td>Location (County)</td>
<td>Daily Bag</td>
<td>Minimum Length (Inches)</td>
<td>Special Regulation</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----------</td>
<td>----------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Lake Texoma (Cooke and Grayson).</td>
<td>10</td>
<td>No Limit</td>
<td>No more than 2 striped or hybrid striped bass 20 inches or greater in length may be retained each day. Striped or hybrid striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released. Possession limit is 10.</td>
</tr>
<tr>
<td>Red River (Grayson) from Denison Dam downstream to and including Shawnee Creek (Grayson).</td>
<td>5</td>
<td>No Limit</td>
<td>Striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released.</td>
</tr>
<tr>
<td>Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to the F.M. Road 3278 bridge.</td>
<td>2</td>
<td>18</td>
<td></td>
</tr>
<tr>
<td>Bass: striped and white bass, their hybrids, and subspecies.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lake Pat Mayse (Lamar) and Lake O' the Pines (Camp, Marion, Morris, and Upshur)</td>
<td>25</td>
<td>10</td>
<td>No more than 5 striped, white, or hybrid striped bass 18 inches or greater in length may be retained each day.</td>
</tr>
<tr>
<td>Bass: white</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lakes Conroe, Livingston, Limestone, Palestine, Somerville, Buchanan, Canyon, Georgetown, Inks, Lyndon B. Johnson, Marble Falls, and Travis.</td>
<td>25</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Lakes Texoma (Cooke and Grayson) and Toledo Bend (Newton, Sabine, and Shelby).</td>
<td>25</td>
<td>No Limit</td>
<td></td>
</tr>
<tr>
<td>Catfish: blue.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lakes E. V. Spence (Coke) and Fort Phantom Hill (Jones)</td>
<td>5</td>
<td>18</td>
<td></td>
</tr>
<tr>
<td>Catfish: channel and blue catfish, their hybrids, and subspecies.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Location (County)</td>
<td>Daily Bag (in any combination)</td>
<td>Minimum Length (Inches)</td>
<td>Special Regulation</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------------</td>
<td>-------------------------------</td>
<td>-------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Lake Livingston (Polk, San Jacinto, Trinity, and Walker).</td>
<td>50</td>
<td>12</td>
<td>Possession limit is 50. The holder of a commercial fishing license may not retain channel or blue catfish less than 14 inches in length.</td>
</tr>
<tr>
<td>Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to</td>
<td>10</td>
<td>12</td>
<td>No more than 2 channel or blue catfish 24 inches or greater in length may be retained each day.</td>
</tr>
<tr>
<td>the F.M. Road 3278 bridge.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lake Texoma (Cooke and Grayson).</td>
<td>15</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Community fishing lakes, Bellwood (Smith), Dixieland (Cameron), and Tankersley</td>
<td>5</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>(Titus).</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Catfish: flathead</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lake Texoma (Cooke and Grayson) and the Red River (Grayson) from Denison Dam to</td>
<td>5</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>and including Shawnee Creek (Grayson).</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Crappie: black and white crappie, their hybrids and subspecies.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lake Toledo Bend (Newton, Sabine, and Shelby).</td>
<td>50</td>
<td>10</td>
<td>Possession limit is 50. From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.</td>
</tr>
<tr>
<td>Lake Fork (Wood, Rains, and Hopkins) and Lake O’The Pines (Camp, Harrison,</td>
<td>25</td>
<td>10</td>
<td>From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.</td>
</tr>
<tr>
<td>Marion, Morris, and Upshur).</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lake Texoma (Cooke and Grayson).</td>
<td>37</td>
<td>10</td>
<td>Possession limit is 50.</td>
</tr>
<tr>
<td>Drum, red.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Location (County)</td>
<td>Daily Bag</td>
<td>Minimum Length (Inches)</td>
<td>Special Regulation</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------------</td>
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<td>-------------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Lakes Braunig and Calaveras (Bexar), Colorado City (Mitchell), Fairfield (Freestone), Nasworthy (Tom Green), and Tradinghouse Creek (McLennan).</td>
<td>3</td>
<td>20</td>
<td>No maximum length limit.</td>
</tr>
<tr>
<td>Shad: gizzard and threadfin shad.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Trinity River below Lake Livingston between Polk and San Jacinto Counties.</td>
<td>500</td>
<td>No Limit</td>
<td>Possession Limit 1,000 in any combination.</td>
</tr>
<tr>
<td>Sunfish: Bluegill, redear, green, warmouth, and longear sunfish, their hybrids and subspecies.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purtis Creek State Park Lake (Henderson and Van Zandt).</td>
<td>25</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>Trout: Rainbow and brown trout, their hybrids, and subspecies.</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Guadalupe River (Comal) from the second bridge crossing on the River Road upstream to the easternmost bridge crossing on F.M. Road 306.</td>
<td>1</td>
<td>18</td>
<td></td>
</tr>
<tr>
<td>Walleye.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lake Texoma (Cooke and Grayson).</td>
<td>5</td>
<td>18</td>
<td></td>
</tr>
</tbody>
</table>
See Figure for 40 TAC 92.62(1)(3)(B)

<table>
<thead>
<tr>
<th>No. of Beds</th>
<th>Area Per Bed Minimum</th>
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</thead>
<tbody>
<tr>
<td>4-16</td>
<td>15 sq. feet (min. 120 sq. ft.)</td>
</tr>
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</tr>
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</tr>
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See Figure for 40 TAC 92.62(1)(4)(C)

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</tr>
</tbody>
</table>
**Open Meetings**

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

**Emergency meetings and agendas.** Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the *Texas Register*.

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

Wednesday, March 11, 1998, 8:30 a.m.
333 Guadalupe Street, Tower III, Suite 900, Room 910
Austin
Uniform Accountancy Act Task Force

AGENDA:
A. Approval of minutes of February 18, 1998 task force meeting
B. Consideration of specific legislative objectives
C. Report on Deceptive Trade Practices Act and binding arbitration
D. Development of action list, deadlines, and assigned tasks


Filed: February 27, 1998, 4:31 p.m.
TRD-9802972

†††

Wednesday, March 11, 1998, 10:00 a.m.
333 Guadalupe Street, Tower III, Suite 900, Room 910
Austin
Major Case Enforcement Committee

AGENDA:
2. Discussion of investigative file nos. 95–10–03L and 95–10–04L.
3. Discussion of investigative file nos. 94–09–24L through 94–09–27L.
6. Discussion of possible investigation.
7. Information only, January 26–February 8, 1998, Accounting Today article.
8. Information only. Major cases summary and pending.


Filed: February 26, 1998, 1:52 p.m.
TRD-9802860

†††

Wednesday, March 11, 1998, 1:00 p.m.
333 Guadalupe Street, Tower III, Suite 900, Room 950F

OPEN MEETINGS  March 13, 1998  23 TexReg 2849
Austin

Rules Committee

AGENDA:
1. Revised Rule 505.10(e)(8)
2. Legal standards for regulation of constitutionally protected commercial speech
3. Revised Rule 501.47; Firm Names
4. *Unified Loans, Inc. v. Pettijohn*
5. Referral to CPE committee
6. Housekeeping changes
7. Opinion on 501.15
8. FTC ruling concerning the AICPA
9. Revisions to Chapter 519
10. Committee Report from previous meeting


Filed: February 26, 1998, 1:52 p.m.
TRD-9802862

Wednesday, March 11, 1998, 1:00 p.m.
333 Guadalupe Street, Tower III, Suite 900, Room 910
Austin

Qualifications Committee

AGENDA:
A. Review of information relating to the November 1997 examination.
B. Review of information relating to the May 1998 CPA examination.
C. Correspondence from the distribution of calculators.
D. Results from CPA survey on proctors.
E. Correspondence from the Washington Board of Accountancy.
F. Report from NASBA Administrators Conference on exam issues.
H. Review of Texas Ranking on the CPA examination.
I. Consideration of ACCT 378 taught at the University of Texas at Austin.


Filed: February 26, 1998, 1:52 p.m.
TRD-9802861

Wednesday, March 11, 1998, 3:00 p.m.
333 Guadalupe Street, Tower III, Suite 900, Room 910
Austin

Executive Committee

AGENDA:

A. Approval of the Board’s financial statements
B. Report on the February 17, 1998, Regulatory Compliance Committee meeting
C. Consultation to seek the advice of the Board’s attorney concerning pending or contemplated litigation (EXECUTIVE SESSION)
D. Review of AICPA/NASBA matters
F. Review of correspondence


Filed: February 26, 1998, 1:52 p.m.
TRD-9802863

Thursday, March 12, 1998, 9:00 a.m.
333 Guadalupe Street, Tower III, Suite 900, Room 910
Austin

Board

AGENDA:

Consideration of Committee Reports and recommendations from: Executive, Rules, Technical Standards Review, Behavioral Enforcement, Major Case Enforcement, Qualifications, and Continuing Professional Education committees; Consideration of adoption of Board rules; Consideration of Agreed Consent Orders, Board Orders and Proposals for Decision. Review of future meetings.


Filed: February 27, 1998, 4:31 p.m.
TRD-9802973

Texas Commission for the Blind

Wednesday, March 11, 1998, 10:00 a.m.
4800 North Lamar, Suite 320, (Administration Building)
Austin

Governing Board Planning Committee

AGENDA:
1. Discussion and action: Agency draft Strategic Plan
2. Discussion and action: Agency long-range planning

Contact: Diane Vivian, P.O. box 12868, Austin, Texas 78711, (512) 459–2601.

Filed: February 25, 1998, 2:55 p.m.
TRD-9802802

Texas Bond Review Board

Tuesday, March 10, 1998, 9:00 a.m.
Clements Building, Committee Room 5, 300 West 15th Street
Austin
Planning Session
AGENDA:
I. Call to Order
II. Approval of Minutes
III. Discussion of Proposed Issues
A. Texas Department of Mental Health and Mental Retardation — Lease Purchase of Transport Vans and Security Vehicles
B. Texas Department of Mental Health and Mental Retardation — Lease Purchase of PBX, Telephones, and Drop Cabling for Rusk State Hospital
C. Texas Public Finance Authority- General Obligation Refunding Bonds
D. Texas Department of Housing and Community Affairs — Multifamily Housing Revenue Refunding Bonds (Dallas-Oxford), Series 1998
E. Texas Department of Housing and Community Affairs — Multifamily Housing Revenue Bonds (Pebble Brook Apartments), Series 1998
F. Texas Department of Housing and Community Affairs — Multifamily Housing Revenue Bonds (Volente Brook Apartments), Series 1998
G. Texas Department of Housing and Community Affairs — Multifamily Housing Revenue Bonds (The Residences at the Oaks), Series 1998
IV. Other Business — Notice of change in March Board meeting to March 24, 1998
V. Adjourn
Contact: Jose A. Hernandez, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463–1741.
Filed: March 2, 1998, 3:22 p.m.
TRD-9803049

State Cemetery Committee
Thursday, March 12, 1998, 11:00 a.m.
909 Navasota Street
Austin
AGENDA:
I. Call to Order; II. Staff, Guests, and Members Present; III. Consideration of the following Agenda Items: Item 1. Presentation on Texas State Cemetery landscape issues by Texas A&M staff and students. Item 2. Other Texas State Cemetery landscape and design issues. Item 3. Texas State Cemetery site inspection. IV. Adjournment
Persons with disabilities who plan to attend the meeting and may need auxiliary services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, also non-English speaking persons who may need assistance are requested to contact Deborah Rotheber at (512) 463–0605 several working days prior to the meeting, or RELAY Texas 1–800–735–2989 so that appropriate arrangements can be made.
Contact: Ann Dillon, 1711 San Jacinto Boulevard, Austin, Texas 78701, (512) 463–3960.
Filed: March 3, 1998, 4:22 p.m.
TRD-9803106

Office of Court Administration
Friday, March 20, 1998, 1:00 p.m.
City Library in the Julia Idason Building, 500 McKinney, Reception Court, Third Floor
Houston
Texas Judicial Council Committee on Court Records
AGENDA:
I. Commencement of Meeting — Judge Mike Woods
II. Attendance of Members
III. Opening Remarks and Committee Update
IV. Committee Discussion of Public Access to Court Records
V. Public Testimony
VI. Other Business
VII. Adjourn
Contact: Amy Chamberlain, P.O. Box 12066, Austin, Texas 78711, (512) 463–1625.
Filed: March 5, 1998, 11:59 a.m.
TRD-9803172
Friday, March 27, 1998, 10:30 a.m.
State Capitol Extension Room E1.-12
Austin
Texas Judicial Council Committee on Judicial Selections
AGENDA:
I. Commencement of Meeting — Mr. Joseph Collier
II. Attendance of Members
III. Overview of Background Resources
IV. Identify and Discuss Issues to be Addressed by Committee
V. Invited and Public Testimony
VI. Set Objectives for Future Committee Action
VII. Other Business
VIII. Date of Next Meeting (Calendar)
IX. Adjourn
Contact: Amy Chamberlain, P.O. Box 12066, Austin, Texas 78711, (512) 463–1625.
Filed: March 5, 1998, 11:59 a.m.
TRD-9803171

Credit Union Department
Friday, March 6, 1998, 10:00 a.m.
914 East Anderson Lane, Credit Union Department Building
Austin
Field of Membership Committee for the Credit Union Commission
AGENDA:
To Conduct: Discussion of the Opinion of the U.S. Supreme Court in National Credit Union Administration v. First National Bank and Trust Co. et. al., Concerning the Interpretation of the Federal Credit Union Act’s Common Bond Requirement.
Contact: Carol P. Shaner, 914 East Anderson Lane, Austin, Texas 78752–1699, (512) 837–9236.
Filed: February 26, 1998, 2:24 p.m.
TRD-9802871

♦ ♦ ♦ ♦

Texas Department of Criminal Justice
Monday, March 9, 1998, 9:00 a.m.
Sam Houston Building, Room 175, 201 East 14th Street
Austin
Program Committee
AGENDA:
9am-9:30am — TDCJ Fundraising/ED 02.04
9:30am-10am — Summary/Proposal for Rehabilitation Tier
10-10:20am — Presentation on Dallas Trees and Parks Foundation
10:20-10:30am — Inmate Treatment Plan
10:30-11:15am — Sex Offender Treatment Program; Orchiectomy, Pending Sex Offender Civil Commitment Process Development; Youthful Offender Program; InnerChange Freedom Initiative; Overview of Annual Volunteer Report
11:15-11:45am — Reengineering and Data Services
11:45-12:30p — Substance Abuse Treatment Program; Beto Pre-Release Therapeutic Community; Capacity Coordination
12:30-1:00pm — Automated Offender Grievance Process; Offender Discipline Process; Counsel Substitute; Access to Courts; Offender Mail System
1:00–2:00pm — Controlled Substance Testing of Offenders; Federal Funds, Grants, and Legislation; Washington Liaison Activities and Legislative Priorities; Probation and Parole Interstate Compact; Institutional Hearing Program; Strategic Planning
Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.
Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, (512) 475–3250.
Filed: February 27, 1998, 9:05 a.m.
TRD-9802912

♦ ♦ ♦ ♦

Texas Commission for the Deaf and Hard of Hearing
Friday, March 6, 1998, 9:00 a.m.
Brown Healy Building, 4900 North Lamar Boulevard, Room 7230.

Austin

Board

AGENDA:
The Commission will discuss and possibly take action on the following items: Call to Order; Establish a Quorum; Public Comment; Members of the public are invited to make comments not to exceed five minutes on subjects relevant to the business of the Commission: Approval of Minutes of January 16, 1998 Meeting: ACTION; Executive Director’s Report including discussion and Possible Action Regarding Strategic Plan for 2000–2001 Biennium (ACTION); Board for Evaluation of Interpreters Report including Approval of Certification, Recertification, and Reinstatement (ACTION), and Approval of BEI Board Members (ACTION); Direct Services Report including Camp SIGN Update, Hard of Hearing Task Force Update, Tri-Lingual Task Force Update; Council Training Update, Discussion and Possible Action on Repealing 40 TAC §181.41. Telecommunication Devices for the Deaf (ACTION), Discussion and Possible Action on Repealing 40 TAC §181.810. Publications, and Discussion and Possible Action on Repealing 40 TAC §181.840 Sliding Fee Scale for Interpreter Services (ACTION); Specialized Telecommunications Devices Assistance Program Report including Discussion and Possible Action on Expanding the Definition of Basic Devices for Reimbursement (ACTION). Approval of a Request for Proposal (ACTION); Proposals for Training (ACTION); Discussion and Possible Action on Proposed Amendment to 40 TAC §182.21. Entities Authorized to Certify Disability (ACTION); Announcements, and Adjournment.

Contact: Margaret Susman, 4800 North Lamar, #310, Austin, Texas 78756, (512) 407–3250.

TRD-9802840

State Board of Dental Examiners

Friday, March 20, 1998, 10:00 a.m.

SBDE Offices, 333 Guadalupe Street, Tower 3, Suite 800, Conference Room

Austin

Dental Hygiene Advisory Committee

AGENDA:
I. Call to Order
II. Roll Call
III. Review of Minutes
IV. Orientation
V. Discuss Difficulties in Obtaining Sealant Certification Courses
VI. Discuss Avenues for Out-of-State Dental Hygienists to Practice for the WREB Examination
VII. Discuss International Symposium of Dental Hygiene
VIII. Discuss DHAC Budget
IX. Election of Chairperson
X. Announcements
XI. Adjourn

Contact: Mei Ling Clendennen, SBDE, 333 Guadalupe Street, Tower 3, Suite 800, Austin, Texas 78701, (512) 463–6400.

Filed: March 4, 1998, 10:08 a.m.

TRD-9803141

Advisory Commission on State Emergency Communications

Wednesday, March 11, 1998, 1:30 p.m.

333 Guadalupe Street, Tower I, Room 216

Austin

Poison Control Coordinating Committee

AGENDA:
The Committee Will Call the Meeting to Order and Recognize Guests; Hear Public Comment; Hear Reports, Discuss and take Committee Action, as Necessary: Approval of the December 17, 1997 Meeting Minutes; Subcommittee Reports; A. Report of the Subcommittee on Education, B. Report of the Medical Directors Subcommittee, C. Report of the Research Subcommittee, D. Report of the Operations Subcommittee; Ownership of the Electronic Medical Report; Discussion of FY 1999 Budget/Grants; Music on Hold for the TPCN; TPCN Equipment Needs; 1998 TPCN Conference in El Paso; TPCN Legal Responsibility for Child Neglect/Neglected Cases and Suicide Callers; 1997 Annual Report Discussion; Miscellaneous; Set Next Meeting Date; Adjourn.

Contact: Velia Williams, ACSEC, 333 Guadalupe Street, Austin, Texas 78701, (512) 305–6933.

Filed: February 26, 1998, 10:07 a.m.

TRD-9802835

Texas Board of Professional Engineers

Friday, March 13, 1998, 1:00 p.m.

1917 IH35 South, Board Room

Austin

AGENDA:
1. Call to Order
   A. Meeting Called to order by Board Chair at 1:00 p.m.
   B. Roll Call
   C. Welcome Visitors
2. Consider and Possibly Act on Proposed Alterations to the Following Board Rules:
   A. 22 TAC §131.18 Definitions; Discussion will Include, at a Minimum, the Definition of a Resident.
   B. 22 TAC §131.52 Applications for a Professional Engineer License; Discussion will Include, at a Minimum, Recognition of the Discipline of Software Engineering.
   C. 22 TAC §131.101 Engineering Examinations Required for a License to Practice as a Professional Engineer; Discussion will Include, at a Minimum, Examination Waivers.
   D. 22 TAC §131.114 Personal Interviews of Applicants.

OPEN MEETINGS March 13, 1998  23 TexReg 2853
E. 22 TAC §131.116 Issuance of a License: Discussion will Include, at a Minimum, Recognition of the Discipline of Software Engineering.

F. 22 TAC §131.155 Engineer’s Responsibility to the Profession; Discussion will Include, at a Minimum, Professional Conduct.

3. Adjourn

Contact: John R. Speed, 1917 IH35 South, Austin, Texas 78741, (512) 440–7723.
Filed: March 2, 1998, 2:36 p.m.

TRD-9803046

Friday, March 13, 1998, 1:30 p.m.
1917 IH35 South, Board Room
Austin

AGENDA:
1. Call to Order
   A. Meeting Called to order by Board Chair at 1:30 p.m.
   B. Roll Call
   C. Welcome Visitors

2. Discuss and Possibly Act on Issues for the Residential Foundation Committee:

   3. Discuss and Possibly Act on Communications Received.

   A. Position Pager Regarding Amicus Curiae.
   B. Issues Regarding Unsolicited Advertisements
   C. Issues Regarding Utility Poles and Section 20(f) Exemption.
   D. Requests to Serve on Committees
   E. Design-Build and Alternative Project Delivery Methods.
   F. Issues Regarding Consulting Engineering Services.

4. Discuss and Possibly Act on Ad Hoc Committee Issues.

   A. Industry and Education Advisory Committees.
   B. New Member Training Committee.
   C. Architect-Engineer Liaison Committee
   D. Continuing Professional Competency Advisory Committee

5. Receive, Discuss and Possibly Act on Testimony and General Input from Attendees.

6. Discuss and Possibly Act on Truss Policy.

7. Adjourn

Contact: John R. Speed, 1917 IH35 South, Austin, Texas 78741, (512) 440–7723.
Filed: March 2, 1998, 2:35 p.m.

TRD-9803045

Texas Genetics Network

Thursday, April 2, 1998, 1:00 p.m.
Radisson Hotel on Town Lake, 111 East Cesar Chavez Drive
Austin

TEXGENE Steering Committee

AGENDA:

The committee will discuss and possibly act on: public comments; adoption of the minutes of the December 5, 1997 meeting; Interagency Council for Genetic Services (IAC) (report on legislative activities (newborn screening; and resource allocation plan)); Texas Genetics Network (TEXGENE) subcommittee reports (Clinical Services; Consumer Issues; Data Collection; Education; Ethics; Laboratory Services; Newborn Screening; Ad Hoc Committee on Preventive Regional Initiatives for Minority and Ethnic Diseases (PRIMED); and the Ad Hoc Committee on Requests for Proposals (RFP)); reports from agency representatives on activities of their respective institutions (Texas Department of Health; Texas Department of Human Services; Texas Department of Mental Health and Mental Retardation; The University of Texas System; private service providers; community-based sickle cell agencies; and consumers); items for information and action (meeting format; mission/vision; Special Projects of Regional and National Significance (SPRANS) 1998 application; and electronic networking); program coordinator item (budget status); progress toward grant objectives and member/committee assignments; and the setting of June 12, 1998 as the next meeting date for the committee.

For ADA assistance, call Suzanna C. Currier, at (512) 458–7695 or TDD (512) 458–7708 at least four days prior to the meeting.

Contact: Judith Livingston, 1100 West 49th Street, Austin, Texas 78756, (5120 458–7111, extension 2129).
Filed: February 26, 1998, 11:24 a.m.

TRD-9802851

Thursday, April 2, 1998, 4:30 p.m.
Radisson Hotel on Town Lake, 111 East Cesar Chavez Drive
Austin

Interagency Council for Genetic Services

AGENDA:

The council will discuss and possibly act on: public comments; adoption of the minutes of the December 5, 1997 meeting; Texas Genetics Network (TEXGENE) status report; resource allocation plan; agency reports; (Texas Department of Health; Texas Department of Mental Health and Mental Retardation; Texas Department of Human Services; The University of Texas System; and the representative on contractors); program coordinator item (budget status); progress toward legislative mandates and members’ assignments (Sunset review); announcements/comments; and the setting of June 12, 1998 as the next meeting date for the council.

For ADA assistance, call Suzanna C. Currier, at (512) 458–7695 or TDD (512) 458–7708 at least four days prior to the meeting.

Contact: Judith Livingston, 1100 West 49th Street, Austin, Texas 78756, (5120 458–7111, extension 2129).
Filed: February 26, 1998, 11:24 a.m.

TRD-9802852

Office of the Governor

Wednesday-Thursday, March 11–12, 1998, 5:30 p.m. and 2:30 p.m. respectively
Texas Department of Health

Friday, March 27, 1998, 10:00 a.m.
Texas Animal Health Commission, 2105 Kramer Lane, Main Conference Room, (Corner of Kramer and Metric)
Austin

Human Immunodeficiency Virus (HIV) Medication Advisory Committee

AGENDA:
The committee will introduce new committee members and will discuss and possibly act on: approval of the minutes of the last committee meeting; staff reports (current budget; current guidelines; Human Immunodeficiency Virus Health Options to Promote Employment (HIV H.O.P.E.) project; Medication Plus project; and Ribonucleic Acid (RNA) viral load requirements); all wasting syndrome drugs; requested additions to the formulary; and the setting of the next meeting date for the committee.

For ADA assistance, call Suzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Sheral Skinner, 1100 West 49th Street, Austin, Texas 78756, (512) 490–2510.
Filed: February 26, 1998, 11:24 a.m.
TRD-9802850

Texas Health Care Information Council

Friday, February 27, 1998, 8:00 a.m.
Texas Department of Health, 1100 West 49th Street, Room M-618
Austin

Non-Hospital Discharge Data and Extended Information Plan Committee

EMERGENCY REVISED AGENDA:

The Texas Health Care Information Council Non-Hospital Discharge Data and Extended Information Plan Committee will convene in open session, deliberate and possibly take formal action on the following items: minutes of January 30, 1998; RFP for data analysis of 1997 HEDIS data during 1998; TAC report; appeals to Council for exemption from rules by HMO’s; recommendations concerning implementation of HMO HEDIS 3.0/98 data collection project on 1997 enrollments; discussion and recommendation to Council concerning collection of HEDIS data for other State agencies; recommendation concerning minimal enrollment populations for HEDIS data from HMO service areas; staff report and discussion on consumer education plans involving HMO’s and HEDIS data; and recommendation concerning the reporting of HEDIS 3.0/1998 on the Medicaid population.

Contact: Jim Loyd, 4900 North Lamar Boulevard, OOL-3407, Austin, Texas 78751, (512) 424–6490, fax: (512) 424–6491.
Filed: February 26, 1998, 9:39 a.m.
TRD-9802834

Monday, March 9, 1998, 1:00 p.m.
Brown Heatly Building, Room 1430, 4900 North Lamar Boulevard
Austin

Peer Review and Provider Quality Technical Advisory Committee

AGENDA:
The Texas Health Care Information Council’s Peer Review and Provider Quality Technical Advisory Committee will convene in open session, deliberate and possibly take formal action on the following items: approval of January 13, 1998 minutes; update on THCIC
meeting of February 27, 1998; and review and recommendations concerning minimal data elements for hospital discharge data rules.

Contact: Jim Loyd, 4900 North Lamar Boulevard, OOL-3407, Austin, Texas 78751, (512) 424–6480, Fax: (512) 424–6491. Filed: February 26, 1998, 12:04 p.m.

TRD-9802856

Texas Healthy Kids Corporation (“THKC”)

Wednesday, March 11, 1998, 9:30 a.m.

Brown-Heatly Building, 4900 North Lamar, Room 1420
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 the agenda, or to receive advice from legal counsel. II. BOARD AGENDA: 1. Call to order; certification of quorum and approval of minutes of 2/25/98 meeting. 2. Briefing from staff and Milliman and Robertson, Inc., deliberation on actuarial report prepared for THKC. 3. Staff briefing, deliberation, re information exchange meetings with TPAs (on 3/5), insurers/HMOs (3/6). 4. THKC staff briefing, deliberation and possible action regarding THKC Plan of Operation, Business Plan. 5. THKC staff briefing, deliberation and possible action regarding THKC health benefit program and plan, including briefing, deliberation and possible action regarding approval of draft invitations for bid (IFBs) and/or requests for proposals (RFPs) for eligible coverage provider(s), third party administrator(s), and including, but not limited to, briefing, deliberation and possible action on the following issues: Scoring criteria for IFBs, RFPs, participation criteria for coverage providers, compliance issues; Which age groups to cover, ways to cover various age groups, affordability considerations; Benefit plan design, including whether design should vary by age group, which types of benefits should be covered, copays, deductibles and other cost share issues, related affordability issues: Initial pilot program, including sites for program and length of program; affordability, availability, other issues relating to geographic areas in state, alternatives to achieve statewide coverage, possible necessity of offering different types of coverage, delivery systems in different areas; Enrollment projections, sliding scale premium models, premium stabilization account processes and funding and fundraising issues; marketing responsibilities.

Persons with disabilities who require auxiliary aids, services or materials in alternate format, contact Ms. Hamilton at (512) 305–7474 at least three business days before the meeting.


TRD-9803111

Texas Higher Education Coordinating Board

Wednesday, March 11, 1998, 9:30 a.m.

Chevy Chase Office Complex, Building One, Room 1.100B, 7700 Chevy Chase Drive

Austin

Advisory Committee on Instructional Telecommunications

AGENDA:

Review of Summary Notes of November 4, 1997 meeting; Action — Review Proposals: Lamar University-Orange and Vernon Regional Junior College; Expansion of Authority to offer degree programs by distance learning; Texas Woman’s University/University of North Texas; Stephen F. Austin State University; Midwestern State University; Texas Southern University; Texas Tech University Health Science Center (Nursing); Texas Tech University Health Science Center (Pharmacy); and Discussion of Revision of Subchapter H and Future Meetings.

Contact: Charles Hodge; P.O. Box 12788, Capitol Station; Austin, Texas 78711, (512) 483–6210. Filed: February 27, 1998, 11:50 a.m.

TRD-9802925

Texas House of Representatives

Wednesday, March 11, 1998, 9:00 a.m.

Capitol Extension, Room E2.010, Texas State Capitol Complex

Austin

Interim Committee on Business and Industry: Subcommittee: Internet Consumer Protection

AGENDA:

I. Call to Order
II. Invited Testimony
III. Discussion of Future Meetings
IV. Adjournment

Contact: Mance Bowden, P.O. Box 2910, Austin, Texas 78703, (512) 463–0766.

Filed: February 27, 1998, 3:26 p.m.

TRD-9802954

Wednesday, March 11, 1998, 1:30 p.m.

Capitol Extension, Room E2.010, Texas State Capitol Complex

Austin

Interim Committee on Business and Industry: Subcommittee: Truth-in-Hiring Practices

AGENDA:

I. Call to Order
II. Invited Testimony
III. Discussion of Future Meetings
IV. Adjournment

Contact: Mance Bowden, P.O. Box 2910, Austin, Texas 78703, (512) 463–0766.

Filed: February 27, 1998, 3:27 p.m.

TRD-9802955

Monday, March 16, 1998, 10:00 a.m.
Capitol Extension, Room E2.010, Texas State Capitol Complex
Austin
Interim Committee on Business and Industry: Subcommittee: Mergers and Acquisitions
AGENDA:
I. Call to Order
II. Invited Testimony
III. Discussion of Future Meetings
IV. Adjournment
Contact: Mance Bowden, P.O. Box 2910, Austin, Texas 78703, (512) 463–0766.
Filed: February 27, 1998, 3:27 p.m.
TRD-9802956

Wednesday, April 8, 1998, 10:00 a.m.
Capitol Extension, Room E2.010, Texas State Capitol Complex
Austin
Interim Committee on Business and Industry: Subcommittee: Telemarketing
AGENDA:
I. Call to Order
II. Invited Testimony
III. Discussion of Future Meetings
IV. Adjournment
Contact: Mance Bowden, P.O. Box 2910, Austin, Texas 78703, (512) 463–0766.
Filed: February 27, 1998, 3:26 p.m.
TRD-9802957

Texas Department of Housing and Community Affairs
Friday, March 6, 1998, 10:00 a.m.
Ramada Inn Hotel, 12801 Northwest Freeway
Houston
Low Income Housing Tax Credit Committee
AGENDA:
The Low Income Housing Tax Credit Committee of the Texas Department of Housing and Community Affairs will meet to consider and possibly act on: Minutes of Meeting of January 26, 1998; Status of and Approval of Extensions for Homes of Merrilltown Springs, TDHCA Development #96009, and Joe Garcia Company, TDHCA Development #96179; Adjourn.
Individuals who require ADA assistance for this meeting, please contact Margaret Donaldson, ADA Responsible Employee at (512) 475–3100 or Relay Texas at 1–800–735–2989 at least two days prior to meeting.
Contact: L.P. Manley, 507 Sabine, #900, Austin, Texas 78701, (512) 475–3934.
Filed: February 25, 1998, 4:12 p.m.
TRD-9802824

Texas Department of Human Services (TDHS)
Friday, March 6, 1998, 10:00 a.m.
701 West 51st Street, West Tower, 560W Conference Room
Austin
Aged and Disabled Advisory Committee
AGENDA:
Contact: James Tennison, P.O. Box 149030, Mail Code W-511, Austin, Texas 78751, (512) 438–3151.
Filed: February 25, 1998, 1:56 p.m.
TRD-9802798

Thursday, March 12, 1998, 10:00 a.m.
701 West 51st Street, Conference Room 305E
Austin
Child and Adult Care Food Program Advisory Committee
AGENDA:
I. Call to order. II Approval of Minutes of December 11, 1997, III. Special Nutrition Programs Director's Comments. IV. New Business: Administrative Sanctions- Tolerance Levels; Consolidation of Reviews Among State Agencies. V. Open Discussion. VI. Next Meeting/Adjournment.
Contact: Amber Cole, P.O. Box 149030, Mail Code W-511, Austin, Texas 78751, (512) 438–3941.
Filed: March 3, 1998, 3:51 p.m.
TRD-9803095

Texas Department of Insurance
Thursday, March 12, 1998, 10:00 a.m.
Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100
Austin
AGENDA:
Docket No. 454–97–2050.C — Prehearing Conference to consider whether disciplinary action should be taken against SYLVESTOR 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: March 4, 1998, 9:32 a.m.
TRD-9803125

Friday, March 13, 1998, 9:30 a.m.
333 Guadalupe, Room 102
Austin

Working Groups for the Interim Study For Agents and Agents’ Licensing Statutes

AGENDA:
1. Property/Casualty Working Group Meeting (Room 102, 9:30 a.m.)
   Discussion of the National Association of Insurance commissioners’ Universal Treatment proposal and issues of uniformity among states. Discussion of federal licensing legislation contained in House Resolution 10. Deliberation on non-resident licensing issues including individual and corporate licenses and retaliatory practices among states. Deliberation of regulatory, market and consumer protection issues relating to licensing criteria. Time for public comment. Discussion of adjuster and miscellaneous licenses. Deliberation and possible action regarding timelines, future meetings, other administrative or procedural matters.

2. Life/Accident/Health Working Group Meeting (Room 102, 1:30 p.m.)
   Discussion of the National Association of Insurance Commissioners’ Universal Treatment proposal and issues of uniformity among states. Discussion of federal licensing legislation contained in House Resolution 10. Discussion of the number, description and retirements of life/accident and health licenses including who should be licensed and what licensing retirements should be imposed. Deliberation of regulatory, market and consumer protection issues relating to licensing criteria. Time for public comment. Discussion of continuing education retirements. Deliberation and possible action regarding timelines, future meetings, other administrative or procedural matters.

Contact: Bill Elkjer, 333 Guadalupe Street, Austin, Texas 78701, (512) 463–6328.
Filed: March 4, 1998, 9:32 a.m.
TRD-9803127

Wednesday, March 25, 1998, 9:00 a.m.
William P. Hobby Jr. Building, 333 Guadalupe, Tower 1, Room 100
Austin

AGENDA:
The Commissioner of Insurance will hold a public hearing under Docket No. 2436 on March 25, 1998 at 9:00 a.m. in room 100 of the William P. Hobby building, 333 Guadalupe Street, Austin, Texas, to consider the Texas Healthy Kids Corporation’s (“Healthy Kids”) proposed health benefit plan(s). In accordance with §§109.033 and 109.061 of the Texas Health and Safety Code, as added by House Bill 3, 75th Legislature, the initial Board of Directors of Healthy Kids (“Board”) must submit the health benefit plan(s) to the Commissioner for approval. After such approval, the Board may implement the health benefit plan(s). TEX. HEALTH & SAFETY CODE §109.033, 109.061. The Commission will accept public comment on the proposed health plan(s) at the hearing.

Copies of the full text of the proposed health plan(s) are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714–9104. To request copies of the health benefit plan(s), please contact Angie Arizpe at (512) 322–4147. To request information about the

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: March 4, 1998, 9:32 a.m.
TRD-9803128
proposed health benefit plan(s), please contact the Texas Healthy Kids Corporation at (512) 305–7404. The agency hereby certifies that the proposed health benefit plan(s) submitted by the Healthy Kids and its’ Board will be reviewed by legal counsel and found to be within the agency’s authority to adopt prior to the adoption by the Commissioner.

Contact: Sylvia Gutierrez, 333 Guadalupe Street, Austin, Texas 78701, (512) 463–6327.

Filed: March 5, 1998, 12:00 p.m.
TRD-9803168

Thursday, March 26, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100
Austin
AGENDA:


Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.

Filed: March 4, 1998, 9:32 a.m.
TRD-9803129

Friday, March 27, 1998, 1:00 p.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100
Austin
AGENDA:

Docket No. 454–98–0286.C — To consider whether disciplinary action should be taken against ROBERT PORTILLO, El Paso, Texas, who holds a Group II, Insurance Agent’s license and Local Recording Agent’s License Issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, (512) 463–6328.

Filed: March 4, 1998, 9:32 a.m.
TRD-9803130

Board of Law Examiners

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: David Perwin; Kelli Powell; Andres Ramos; and Flavio Hernandez (character and fitness deliberations may be conducted in executive session, pursuant to §82.002(a), Texas Government Code.)

Contact: Rachael Martin, P.O. Box 13486, Austin, Texas 78711–3486, (512) 463–1621.

Filed: March 2, 1998, 11:21 a.m.
TRD-9803027

Tuesday, March 10, 1998, 9:00 a.m.
920 Colorado, E.O. Thompson Building, Fourth Floor, Room 420
Austin
Enforcement Division, Air Conditioning
AGENDA:

According to the complete agenda, the Department will hold an Administrative Hearing to consider possible assessment of administrative penalties against the Respondent, Mike Barrow, for performing air conditioning and/or refrigeration contracting without first obtaining the required license in violation of TEX. REV. CIV. STAT. ANN. art 8861 §3(B), pursuant to TEX. REV. CIV. STAT. ANN. art 8861 and 9100; the TEX. GOV'T CODE ch. 2001; and 16 TEX. ADMIN. CODE ch. 60.

Contact: Allyson Lednicky, 920 Colorado, Austin, Texas 78701, (512) 463–3192.

Filed: March 2, 1998, 11:21 a.m.
TRD-9803119

Friday, March 13, 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; William C. Lucas; Onunna Anaba; Larry W. Sweris; Robbie A. Moehlmann; and Mark S. Dzarnoski (character and fitness deliberations may be conducted in executive session, pursuant to §82.002(a), Texas Government Code.)

Contact: Rachael Martin, P.O. Box 13486, Austin, Texas 78711–3486, (512) 463–1621.

Filed: March 4, 1998, 8:23 a.m.
TRD-9803120

OPEN MEETINGS March 13, 1998 23 TexReg 2859
adopted the Final Order. The Respondent failed to comply with the order adopted by the Commissioner by failing to pay the $2,000 administrative penalty in violation of TEX. REV. CIV. STAT. ANN. art 9711 §17, pursuant to TEX. REV. CIV. STAT. ANN. art 8861 and 9100; and 16 TEX. ADMIN. CODE ch. 60.

Contact: Allyson Lednicky, 920 Colorado, Austin, Texas 78701, (512) 463–3192.

Filed: March 2, 1998, 11:22 a.m.

TRD-9803028

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Tuesday, March 10, 1998, 1:30 p.m.

920 Colorado, E.O. Thompson Building, Fourth Floor, Room 420

Austin

Enforcement Division, Air Conditioning

AGENDA:

According to the complete agenda, the Department will hold an Administrative Hearing to consider possible assessment of administrative penalties against the Respondent, Ronnie Shuck, for performing environmental air conditioning contracting without first obtaining a license with an environmental air conditioning endorsement in violation of TEK. REV. CIV. STAT. ANN. art 8861 (the Act) §4(c), for using his license to do work for a business other than the business listed as his business affiliation on his license in violation of 166 TEX. ADMIN. CODE §75.70(b); and for failing to provide the consumer proper installation, service and mechanical integrity in violation of the Act §5(a), pursuant to TEX. REV. CIV. STAT. ANN. art 8861 and 9100; the TEX. GOV’T CODE ch. 2001; and 16 TEX. ADMIN. CODE ch. 60.

Contact: Allyson Lednicky, 920 Colorado, Austin, Texas 78701, (512) 463–3192.

Filed: March 2, 1998, 11:24 a.m.

TRD-9803029

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Wednesday, March 11, 1998, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Fourth Floor, Room 420

Austin

Enforcement Division, Boilers

AGENDA:

According to the complete agenda, the Department will hold an Administrative Hearing to consider possible assessment of administrative penalties against the following Respondents: Louis Flores; Harris Cleaners; Hooper Cleaners; Motorola Incorporated; Mohammad G. Nawabi, Shamrock Cleaners; Summit Ridge Apartments; Vintage Cleaners; and Whispering Pines Apartments for failing to pay inspection/certification fees to obtain certificates of operation for the Respondents’ boiler(s), a violation of TEX. HEALTH & SAFETY CODE ANN. (the Code) ch. 755 and 16 TEX. ADMIN. CODE ch.65, pursuant to the Code and TEX. REV. CIV. STAT. ANN. art 9100; and TEX. GOV’T CODE ch. 2001 (APA); and 16 TEX. ADMIN CODE ch. 65.

Contact: Allyson Lednicky, 920 Colorado, Austin, Texas 78701, (512) 463–3192.

Filed: March 2, 1998, 11:26 a.m.

TRD-9803031

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Wednesday-Thursday, March 11–12, 1998, 1:00 p.m. and 8:00 a.m. respectively

The Meeting Place, 2100 Northland Drive

Austin

Texas Commission of Licensing and Regulation

AGENDA:

The Commission will hold a regular meeting according to the following outline: A. Call to Order; B. Roll Call and Certification of Quorum; C. Executive Session for the interviewing candidates for the position of Executive Director (Commissioner); D. Adjournment.

Contact: Allyson Lednicky, 920 Colorado, Austin, Texas 78701, (512) 463–3192.

Filed: March 2, 1998, 4:12 p.m.

TRD-9803053

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Monday, March 16, 1998, 9:30 a.m.

E.O. Thompson Building 920 Colorado Street, Fourth Floor

Austin

Texas Commission of Licensing and Regulation

AGENDA:

The Commission will hold a regular meeting according to the following outline: A. Call to Order; B. Roll Call and Certification of Quorum; C. Contested Cases; D. Agreed Orders; E. Discussion and possible action on appointment to the Architectural Barriers Advisory Council and the Property Tax Consultants Advisory Committee; F. Staff reports; G. Discussion and possible action on revising the agency’s Administrative Operating Procedures manual, §4.16 (Pre-employment process) under Article 9100, §12(e) and §15(a); H. Public Comment; I. Executive Session; J. Open Session for discussion and possible action on pending litigation and the appointment of the Executive Director (Commissioner); K. Discussion of date, time and location of next Commission meeting; L. Adjournment.

Contact: Phyllis Wilson, 920 Colorado, Austin, Texas 78701, (512) 463–3173.

Filed: March 4, 1998, 11:34 a.m.

TRD-9803157

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State Medical Education Board

Saturday, March 14, 1998, 1:30 p.m.

Chevy Chase Office Complex, Building IV, Room 4.100, 7715 Chevy Chase Drive

Austin

Board

AGENDA:

Review of accounts needing Board attention. Current considerations: Bernard F. Brady, M.D., Requests that his penalty be forgiven. He could not obtain a Texas license. He practices with the federal government working with the Justice Departments in the federal prisons under a license from Puerto Rico. His clinical privileges were suspended by a superior in May, 1997. Dr. Brady is now retired.

23 TexReg 2860 March 13, 1998 Texas Register

Contact: Sharon Cobb, P.O. Box 12788, Capitol Station, Austin, Texas 78711, (512) 427–6340.
Filed: March 3, 1998, 4:17 p.m.
TRD-9803105

Texas Natural Resource Conservation Commission

Thursday March 5, 1998, 9:00 a.m.
12100 Park 35 Circle, Building E, Room 201S
Austin

AGENDA:

This meeting is a work session for discussion between commissioners and staff. No public testimony or comment will be accepted except by invitation of the commission.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239–3317.
Filed: February 25, 1998, 3:53 p.m.
TRD-9802822

Tuesday, March 10, 1998, 10:00 a.m.
12100 Park 35 Circle, Building E, Room 201S
Austin

AGENDA:

The commission will consider approving the following matter on the agenda: Docket No. 97–0964–DIS. Consideration of a proposed order granting the conversion of H-M-W Water Supply Corporation to H-M-W Special Utility District of Harris and Montgomery Counties. H-M-W Water Supply Corporation requests conversion to a Special Utility District pursuant to Texas Water Code, §65.014 and 65.021, and 30 TAC §293.11.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239–3317.
Filed: March 2, 1998, 2:51 p.m.
TRD-9803048

Thursday, April 2, 1998, 7:00 p.m.
City of Iowa Park Council Chambers, 103 North Wall Street
Iowa Park
Office of the Chief Clerk

AGENDA:

For an informal public meeting concerning an application by BELL PROCESSING, INC. to the Texas Natural Resource Conservation Commission for a registration (Proposed Registration No. MSW40135) to construct and operate a Type V municipal solid waste transfer station to be used in conjunction with an existing landfill. The proposed facility site contains about 32 acres of land and, if approved, will receive approximately 26,000 tons of municipal solid waste per year. The proposed facility will be located approximately 1,500 feet southeast of the intersection of Smith road and Johnson road just west of the city limits of Iowa Park, Wichita County, Texas, and adjacent to the north boundary of the existing landfill.

Contact: Office of Public Assistance, Mail Code 108, P.O. Box 13087, Austin, Texas 78711, 3087. 1–800–687–4040
Filed: March 3, 1998, 11:15 a.m.
TRD-9803062

Tuesday, April 7, 1998, 7:00 p.m.
Benevides Civic Center, Highway 359, near intersection of County Road 339
Benavides

AGENDA:

Notice is hereby given by the Texas Natural Resource Conservation Commission that a public meeting will be held regarding revision to the Texas Underground Injection Control (UIC) program to designate two aquifers as exempt. To meet this requirement, the State of Texas has submitted to the U.S. Environmental Protection Agency (EPA) applications to revise the State’s UIC program to reflect exemption of the relevant portion of the aquifers, which will be in effect until exemption status is removed. A public meeting is intended for the taking of public comment, and is not a contested case hearing. TNRCC will consider public comments in making a decision regarding the aquifer exemptions.

The first proposed aquifer exemption is for a portion of the Goliad Formation associated with “in situ” uranium mining activities authorized under Class III UIC Permit No. UR02880–001 at the URI, Inc. Rosita project, and will be an extension to the existing aquifer exemption. The Rosita mine is located approximately 11 miles northwest of the City of San Diego north of State Highway 44 in northern Duval County, Texas. The production zone is approximately 10 to 50 feet thick in the Goliad Formation at a depth of 100 to 300 feet below land surface. A major amendment to Permit No. UR02880–001 was granted by the TNRCC on January 23, 1998 to authorize the operation of the Rosita Project under state law. The portion of the aquifer covered by the proposed aquifer exemption is the same 70 acres as added by the major amendment to Permit No. UR02880–001 on January 23, 1998.

The second proposed aquifer exemption is for a portion of the Oakville Sandstone Formation associated with “in situ” uranium mining activities authorized under Class III UIC Permit No. UR03050–001 at the URI, Inc. Vasquez Project. The Vasquez mine is located in Duval County, on the north side of Highway 359, approximately ten miles south-southeast of Bruni and approximately 50 miles east of Laredo. The production zone is approximately 45 to 70 feet thick in the Oakville Sandstone at a depth of 135 to 210 below land surface. Permit No. UR03050–001 was granted by the TNRCC on August 15, 1997, to authorize the operation of the Vasquez Project under state law. The portion of the aquifer covered by the proposed aquifer exemption is the same 841.66 acre tract as included in Permit No. UR03050–001 granted on August 15, 1997.

Contact: Office of Public Assistance, Mail Code 108, P.O. Box 13087, Austin, Texas 78711, 3087. 1–800–687–4040
Filed: March 3, 1998, 11:15 a.m.
TRD-9803063
Thursday, April 16, 1998, 9:00 a.m.
Stephen F. Austin Building, Suite 1100, 1700 North Congress Avenue
Austin

AGENDA:

SOAH Docket No. 582–98–0315; TNRCC Docket No. 97–0887–DIS; BEXAR METROPOLITAN WATER DISTRICT of Bexar, Atascosa, and Medina Counties (the “District”); The purpose of the hearing will be to consider the District’s resolution requesting approval of the levy of non-uniform impact fees for the service areas within the District’s boundaries. The impact fee would be charged for each new equivalent single family connection when new service is connected to the District’s facilities. The resolution is filed and the hearing will be held under the authority of Chapter 395 of the Local Government Code, the Texas Water Code, 30 Texas Administrative Code Chapters 55, 80, and 293, under the procedural rules of the Texas Natural Resource Conservation Commission, and under the procedural rules of the State Office of Administrative Hearings.

Contact: Scott Humphrey, MC-174, P.O. Box 13087, Austin, Texas 78711–3087, (512) 239–0600.

Filed: March 3, 1998, 1:09 p.m.
TRD-9803066

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Board of Nurse Examiners

Wednesday, March 11, 1998, 9:30 a.m.
Hobby Building, 333 Guadalupe, Tower II, Room 2–225
Austin

Law and Regulations Advisory Committee

AGENDA:

9:30 am — Call to order/ Roll Call
9:45 am — Review of January meeting minutes
10:00 am — Plans for Survey on RNs’ Perceptions of Regulatory Parameters of Practice
  • Newsletter Mailout— Sally Glaze
  • Survey Analysis — Dorothy Otto
10:30 am — Plans of NCSBN for Laws and Regulations Related to Practice — Tony Zara
11:00 am — Nursing Jurisprudence content list
  • Rating form — Lolly Lockhart
  • Discussion of rating form results
  • Begin selection of core knowledge set of laws and regulations
11:45 am — Working Lunch
3:00 pm — Adjourn

Contact: Mitchell Diaz, Box 430, Austin, Texas 78767–0430, (512) 305–6844.

Filed: March 2, 1998, 1:50 p.m.
TRD-9803041

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Texas Optometry Board

Wednesday, March 11, 1998, 9:00 a.m.
333 Guadalupe, Suite 2–420
Austin

AGENDA:

Rules Committee will meet to review all rules as required under Section 167, Article IX, House Bill 1, and to draft language regarding any changes that might be required as a result of the review process, to be submitted to the full Board when it next meets on April 17, 1998.

Contact: Lois Ewald, 333 Guadalupe Street, Suite 2–420, Austin, Texas 78701, (512) 305–8500.

Filed: March 2, 1998, 3:22 p.m.
TRD-9803050

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Texas Pension Review Board

Friday, March 13, 1998, 11:30 a.m.
303 West 15th Street, First Floor, 15th Street Cafe, Doubletree Guest Suites Hotel
Austin

Actuarial Committee

AGENDA:

1. Discussion of Possible Recommendations to the Full Board on the Pension Review Board’s Position on the Houston Firefighters’ Relief and Retirement Fund Proposed Benefit Increase.
2. Discussion of Possible Recommendations to the Full Board on Reporting Compliance Issues.
Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463–1736.
Filed: February 27, 1998, 3:43 p.m.
TRD-9802959

Friday, March 13, 1998, 1:30 p.m.
State Capitol Extension, Committee Room E.1.012
Austin

AGENDA:
1. Meeting called to order.
2. Roll Call
3. Reading and Adoption of Minutes of Previous Meeting
4. Discussion and Possible Action on the Houston Firefighters’ Relief and Retirement Fund Benefit Improvement Proposal
5. Discussion and Possible Action on Review of PRB Rules — Under §167, Article IX HB1
6. Discussion and Possible Action Authorizing the Executive Director to Designate Individuals to Approve Agency Expenditures pursuant to Chapter 2103, Texas Government Code nd 34 Texas Administrative Code §5.61

7. Committee Reports
   A. Actuarial — Chair Leonard Cargill
      (1) Compliance Update — (Ginger Smith)
      (2) Discussion and Possible Action on Central Texas Council of Governments, Decatur Fire, and Pharr Fire
   B. Administration — Chair Shad Rowe
   C. Legislative — Chair Shari Shivers
   D. Research — Chair Craig Goralski

8. Discussion and Action on Reviewing Criteria For Actuarial Experience Studies
9. Update and Possible Action on PRB June Seminar
10. Set Date and Location for Next Board Meeting
11. Old Business
12. Announcements and Invitation for Audience Participation
13. Executive Director’s Report
14. Chairman’s Report
   A. New Committee Assignments: The Chairman may make new committee assignments pursuant to TAC §603.50.
15. Adjournment

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463–1736.
Filed: March 5, 1998, 12:00 p.m.
TRD-9803169

Texas Polygraph Examiners Board
Thursday-Friday, March 19–20, 1998, 10:30 a.m. and 8:00 a.m. respectively
5805 North Lamar Boulevard, Academy Administration Commission Room, DPS Building C.
Austin

AGENDA:
1. Meeting called to order.
2. Roll Call
3. Reading and Adoption of Minutes of Previous Meeting
4. Discussion and Possible Action on the Houston Firefighters’ Relief and Retirement Fund Benefit Improvement Proposal
5. Discussion and Possible Action on Review of PRB Rules — Under §167, Article IX HB1
6. Discussion and Possible Action Authorizing the Executive Director to Designate Individuals to Approve Agency Expenditures pursuant to Chapter 2103, Texas Government Code nd 34 Texas Administrative Code §5.61
7. Committee Reports
   A. Actuarial — Chair Leonard Cargill
      (1) Compliance Update — (Ginger Smith)
      (2) Discussion and Possible Action on Central Texas Council of Governments, Decatur Fire, and Pharr Fire
   B. Administration — Chair Shad Rowe
   C. Legislative — Chair Shari Shivers
   D. Research — Chair Craig Goralski
1. Database Update (Kevin Deiters)
8. Discussion and Action on Reviewing Criteria For Actuarial Experience Studies
9. Update and Possible Action on PRB June Seminar
10. Set Date and Location for Next Board Meeting
11. Old Business
12. Announcements and Invitation for Audience Participation
13. Executive Director’s Report
14. Chairman’s Report
A. New Committee Assignments: The Chairman may make new committee assignments pursuant to TAC §603.50.
15. Adjournment

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463–1736.
Filed: February 27, 1998, 3:43 p.m.
TRD-9802958

OPEN MEETINGS  March 13, 1998   23 TexReg 2863
concern regarding rule 395.17. 9. Consideration of rule change to rule 395.17 proposed repeal of 22 Texas Administrative Code 395.17, Amendments to, or proposal of a new rule. 10. discussion, possible approval and vote on issues relating to Federally trained examiners. 11. Action taken to check polygraph examiners names to delinquencies in child support and student loans. 12. License renewal and application as it relates to EPPA insurance notice. 13. Discussion, clarification or possible approval and vote to expand, delete, or modify performance measure submitted to auditors. 14. Executive Session to administer Licensing Exam. 15. Executive Officers report. 16. Association reports. 17. Open Meeting to public inquiries. 18. Executive Session to discuss Executive Officers performance and support staff issues. 19. Adjournment.

Contact: Frank DiTucci, P.O. Box 4087, Austin, Texas 78773, (512) 424–2058.
Filed: March 4, 1998, 10:32 a.m.

Texas Board of Private Investigators and Private Security Agencies

Friday, March 13, 1998, 9:30 a.m.

Texas Parks and Wildlife, Commission Hearing Room, 4200 Smith School Road
Austin
Board

AGENDA:
I. Report from Administration Division Chief.
II. Report from the Investigation Division Chief.
III. Report from the Administrative Law Judge.
IV. Report from the License Division Chief.
V. Report from Executive Director.
VI. Discussion and Possible board Action Regarding Appointment of Committee to Review and Revise Current Board Rules.
VII. Discussion and Possible Board Action Regarding Auditor’s Semiannual Report to Legislative Audit Committee.
VIII. Discussion and Possible Board Action Regarding Request to Governor’s Office of Budget and Planning and Legislative Budget Board to Reinstatement Four Full Time Employee Positions.
IX. Discussion and Possible Board Action Regarding Preliminary Draft Report from KPMG Peat Marwick LLP.
X. Discussion and Possible Board Action Regarding Deferred Adjudication Policy.
XI. Executive Session to Consult with Attorney Concerning Pending or Contemplated Litigation, Pursuant to §551.071, Texas Government Code.
XII. Return to Open Session for Discussion and Possible Board Action After Consultation with Attorney Concerning Pending or Contemplated Litigation, Pursuant to §551.071, Texas Government Code.
XIII. Discussion and Possible Board Action Regarding Procedures and Deadline for Personnel Evaluation of Executive Director.

XIV. Review of Staff Recommendation and Board Action on Proposals for Decision, Requests for Rehearings, and Related Issues.

Contact: Jay Kimbrough, (512) 463–5545.
Filed: February 27, 1998, 2:52 p.m.

Public Utility Commission of Texas

Monday, March 9, 1998, 10:00 a.m.
1701 North Congress Avenue
Austin
Office of Policy Development

AGENDA:

A third prehearing conference will be held on the above date and time in Docket No. 18490 — Joint Application to Reduce Texas Utilities Electric Company Base Rates and Approval of Certain Accounting Procedures.

Contact: Stephen J. Davis 1701 North Congress Avenue, Austin, Texas 78711, (512) 936–7206.
Filed: February 26, 1998, 3:23 p.m.

Synchronous Interconnection Committee

Tuesday, March 10, 1998, 9:30 a.m.
William B. Travis Building, 1701 North Congress Avenue, Commissioner’s Hearing Room
Austin

AGENDA:

Project Number 14894: A meeting of the Synchronous Interconnection Committee (SIC) will be held to discuss the legal and regulatory implications of the interconnection of ERCOT to the Southwest Power Pool as it related 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, including the cost and benefit to effect the interconnection, an estimate of the time to construct the interconnecting facilities and the service territory of the utilities in which those facilities will be located.

Contact: Bret Slocum, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936–7265.
Filed: March 2, 1998, 8:07 a.m.

Texas Municipal Retirement System

Friday, March 27, 1998, 3:00 p.m.
Club Hotel by Double Tree, 1617 IH35 North
Austin
Board of Trustees, Regular Meeting

AGENDA:
To hear and approve Minutes of the December 5–6, 1997 meeting; review and approve Service Retirements, Disability Retirements; review and approve Supplemental Death Benefits payments; consider Extended Supplemental Benefits coverage; review and act on Financial Statements; adjourn until 8:30 a.m. March 28, 1998.

Contact: Gary W. Anderson, P.O. Box 149153, Austin, Texas 78714–9153, (512) 476–7577.

Filed: March 3, 1998, 3:53 p.m.

Teacher Retirement System of Texas

Tuesday, March 10, 1998, Noon
1000 Red River, Room 420E
Austin

Medical Board

AGENDA:
Discussion of 1) the files of members who are currently applying for disability retirement and 2) the files of disability retirees who are due a re-examination report.

For ADA assistance, contact John R. Mercer, (512) 397–6400 or TDD (512) 397–6444 or (800) 841–4497 at least two days prior to the meeting.

Contact: Don Cadenhead, 1000 Red River, Austin, Texas 78701–2698, (512) 397–6400.

Filed: February 28, 1998, 3:01 p.m.

Telecommunications Infrastructure Fund Board

Friday, March 13, 1998, 8:30 a.m.
1000 Red River, Fifth Floor Board Room
Austin

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 — Roger Benavides, Chair
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: March 3, 1998, 4:30 p.m.

OPEN MEETINGS March 13, 1998 23 TexReg 2865
**V. Adjourn Committee Meeting**  

**Contact:** Terry Rodriguez, 1000 Red River, Suite E208, Austin, Texas 78701, (512) 344–4305.  

**Filed:** March 3, 1998, 4:30 p.m.  

TRD-9803109

Friday, March 13, 1998, 10:30 a.m.  

1000 Red River, Fifth Floor Board Room  

**Austin**  

**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. Agency Working Group Updates  

• State Agencies Working Group — Sandy Kress, Board Member  
• Education Working Group — Gary Grogan, Director of Programs; Hal Guthrie, Board Member; Kay Karr, Board Member  
• Training Working Group — Gary Grogan, Director of Programs; Joe Randolph, Board Member  

IV. Board Committee Reports  

• Finance and Audit Committee — Roger Benavides, Chair  
• Libraries and Telemedicine Committee — John Collins, Chair  
• Curriculum, Training and Evaluation Committee — Joe Randolph, Chair  

V. Executive Director’s Report  

• Administration  
• Programs  

• Update — Dallas Community College  

VI. Chairman of the Board Report  

VII. Future Board Meeting Schedule  

VIII. Future Agenda Items  

IX. Adjourn Open Meeting  

The Board may go into Executive Session on any items if authorized by the Open Meetings Act, Government Code, Chapter 551.  

V. Adjourn Committee Meeting  

**Contact:** Terry Rodriguez, 1000 Red River, Suite E208, Austin, Texas 78701, (512) 344–4305.  

**Filed:** March 3, 1998, 4:30 p.m.  

TRD-9803110

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**Lubbock**  

**Board of Regents**  

**AGENDA:**  

8:30 a.m.; Call to Order; Open Session: The Board will convene into the Committee of the Whole and Meeting of the Board of Regents to Consider and act on: Changes in academic rank and granting of academic tenure; Naming of the Texas Tech Police Department Building; Naming of the New Health Sciences library building; Approval of fees to be assessed and charged to regularly enrolled and prospective students at the beginning of the Fall Semester; 1998 and vehicle registration fees for faculty, staff, and students for fiscal year 1999, except as noted: Authorization for the refinancing of certain outstanding Revenue Financing System bonds; Authorization for the Office of the Chancellor to approve and execute two contracts with the City of Lubbock for economic development and for support for the Institute of Environmental and Human Health, to revise the budget and source of funding for the renovation of buildings at Reese Center for the Institute of Environmental and Human Health, and to proceed with documents for the Texas Higher Education Coordinating Board for approval; Authorization for the Office of Chancellor to select an architect, to establish a project budget and to provide construction documentation for the new Red Raider Alley Pavilion; Approval to execute a contract between Texas Tech University Health Sciences Center and El Paso County Sheriff’s Office for the Enrollment Management; Closing Comments form the Chancellor; Adjourn.  

Note: A special called meeting via telephone conference call is necessary to take immediate action on the items set forth above prior to the next regularly scheduled meeting of the Board of Regents. Therefore, while a quorum or more of the members may be able to attend the meeting in person, in order to properly exercise its duty of governance of the University, the Board will meet by telephone conference call at the designated time and place.  

**Contact:** James L. Crowson, Box 42013, Lubbock, Texas 79409–2013, (806) 742–0012.  

**Filed:** March 4, 1998, 9:55 a.m.  

TRD-9803139

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**Texas Department of Transportation**  

**Monday, March 9, 1998, 9:30 a.m.**  

125 East 11th Street, First Floor, Dewitt C. Greer Building  

**Austin**  

**Board of Directors of the Texas Turnpike Authority Division**  

**AGENDA:**  

Convene. An outside counsel selection committee will meet and interview law firms for purposes of engaging outside counsel and discussion of retention of outside counsel. Consider and recommend selection of law firm. Adjourn.  

**Contact:** Diane Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463–8630.  

**Filed:** February 27, 1998, 8:15 a.m.  

TRD-9802911

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**Texas Tech University**  

**Thursday, March 12, 1998, 8:30 a.m.**  

Administration Building, Akron and Broadway Avenues  

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23 TexReg 2866  March 13, 1998  Texas Register
Omni Southpark Hotel, IH35 South at Ben White
Austin
State Executive Committee
AGENDA:
AA — Appeal of District 26 AAAAA Executive Committee’s Ruling that Ofelia Lopez is Ineligible at San Antonio Churchill High School due to Changing Schools for Athletic Purposes
BB — Allegation of Changing Schools for Athletic Purposes, Rolanda Wilson, Houston Madison High School
CC — Hearing Transferred from District 19 AAAA Executive Committee to Consider Penalty Greater than Private Reprimand for Davy David, Coach, and a Penalty to Cleveland High School
DD — Appeal of District 16 AAAAA Executive Committee’s Ruling that Melanie Thevenote is Ineligible at Klein High School due to Changing Schools for Athletic Purposes
EE — Hearing Transferred from District 32 AAAAA Executive Committee to Consider Suspending Coach Robert Partida, Brownsville Lopez High School, for Playing an Ineligible Student
FF — Appeal of District 9 AAAAA Executive Committee’s Ruling Gibrawn Lawhorn Ineligible
GG — Hearing Required Because Two Ejections in One School Year, coach John Darnell, Sulphur Bluff
HH — Appeal of Automatic Penalty for Being Ejected from Game for Various School Personnel
Contact: C. Ray Daniel, 23001 Lake Austin Boulevard, 78713, (512) 471–5883.
Filed: February 27, 1998, 1:28 p.m.
TRD-9802927

Thursday, March 5, 1998, Noon.
Thompson Conference Center, 26th and Red River, UT Campus
Austin
Waiver Review Board
EMERGENCY REVISED AGENDA:
AA. Request for a waiver of athletic eligibility for Foreign Exchange Students by Johanna Rosenkrantz representing East Central High School in San Antonio, Texas.
BB. Request for a waiver of athletic eligibility for Foreign Exchange Students by Stephanie Wandt representing East Central High School in San Antonio, Texas.
CC. Request for a waiver of the Parent Residence rule by Jillian Paige Wier representing Round Rock High School in Round Rock, Texas.
Contact: Sam Harper, 23001 Lake Austin Boulevard, 78713, (512) 471–5883.
Filed: March 2, 1998, 2:08 p.m.
TRD-9803043

The University of Texas System
Friday, March 6, 1998, 9:30 a.m.

Regents’ Room, 9th Floor, Ashbel Smith Hall, 102 West Seventh Street
Austin
Board of Regents
AGENDA:
The Board will convene in Open Session and immediately recess to Executive Session in accordance with Texas Government Code, Chapter 551, §§551.071 and 551.074, to consider the proposed settlement of medical liability litigation at The University of Texas Health Science Center at San Antonio and to interview and review the credentials of the finalist candidates for the presidency of The University of Texas at Tyler. The Board will then reconvene in Open Session and take formal action regarding the proposed settlement and the possible election and employment of a President for U.T. Tyler. It is estimated that the Board will reconvene in Open Session to take these formal actions at approximately 3:00 p.m.
Contact: Arthur H. Dilly, 201 West Seventh Street, Austin, Texas 78701–2981, (512) 499–4402.
Filed: March 2, 1998, 10:37 a.m.
TRD-9803023

Texas Water Development Board
Wednesday, March 11, 1998, 3:00 p.m.
1700 North Congress Avenue, Room 513–F
Austin
Finance Committee
AGENDA:
1. Consider approval of the minutes of the meeting of February 18, 1998.
2. Report on Board’s investment portfolio for the quarter ending February 28, 1998 as required by the Public Funds Investment Act.
3. Briefing and discussion on the development of the new DFUND II program.
4. Briefing and discussion on projected applications for the SRF Program for FY 1998.
5. Consider approving requests from the Lower Valley Water District (El Paso County) for a one year time extension in which to close the Phase III loans and for a change in scope of the Phase III project.
6. consider approving an additional $954,600 grant/loan to Hudspeth County Water Control and Improvement District One (Hudspeth County) increasing the commitment from $1,238,399 to $2,192,999 to finance construction of a sewage collection system and a wastewater treatment plant (Economically Distressed Areas Program, State Water Pollution Control Revolving Fund).
7. Briefing on present and future EDAP projects.
9. May consider items on the agenda of the March 12, 1998 Board meeting.
* Additional non-committee Board members may be present to deliberate but will not vote in the Committee meeting.
Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512), 463–7847.
Wednesday, March 11, 1998, 4:00 p.m.

Stephen F. Austin Building, Room 513–F, 1700 North Congress Avenue
Austin
Audit Committee
AGENDA:
1. Consider approval of the minutes of the meeting of February 18, 1998.
2. Briefing and discussion on: (a) the status of the agricultural water conservation assistance to Upper Pecos Soil and Water Conservation District No. 213; and (b) staff assessment of current and proposed procedures for the Agricultural Water Conservation Assistance Program.
3. Briefing and discussion on loan and delinquent audit monitoring activities of the Audit and Funds Management Division.
4. Briefing and discussion on the status of the Travel Advance Account reconciliation.
5. Briefing and discussion on Research and Planning Fund grants management.
7. May discuss items on the agenda of the March 12, 1998 Board meeting.

* Additional non-committee Board members may be present to deliberate but will not vote in the Committee meeting.

Finance Committee
Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512), 463–7847.

Friday, March 13, 1998, 10:00 a.m.

Renaissance Austin Hotel, 9721 Arboretum Boulevard
Austin
Board of Directors
AGENDA:
I. Call to Order and Reminder of the Anti-trust Statement
II. Approval of the Minutes from the following Board of Directors’ Meetings:
   • December 9, 1997
   • January 9, 1998
   • February 3, 1998
III. Resolution to include reports presented at the Annual Meeting of the Members by officers, committee chairmen, and staff in the minutes of the Board of Directors
IV. Report of the Chairman of the Board of Directors
V. Approval of Acts by the Directors and Officers
VI. Election of Officers for 1998
VII. Executive Session
VIII. Consideration of issues created by the audit of the Internal Revenue Service that may require action, if any, of the Board of Directors.
IX. Consideration of issues as respects to personnel matters that may require action, if any, of the Board of Directors.
X. Adjourn

Contact: Charles F. McCullough, 2028 East Ben White, Suite 200, Austin, Texas 78741, (512) 444–9612.

Texas Workers’ Compensation Commission
Thursday, March 5, 1998, 9:00 a.m.
AGENDA:
1. Call to Order
2. Approval of the Minutes for the Public Meeting of February 5, 1998
3. Executive Session
4. Action on Matters Considered in Executive Session
5. Discussion and Possible Action on Revision to Commissioner Policy and Procedures
6. Discussion and Possible Action on Proposal of Amendments to Rule: Rule 133.206
7. Discussion and Possible Action on Report Regarding Claims Service Rules Task Force
8. Discussion and Possible Action on Issues Relating to Commission Activities
9. Confirmation of Future Public Meeting Dates
10. Adjournment

Contact: Bob Marquette, 4000 South IH35, Austin, Texas 78704, (512) 440–3552.
Filed: February 27, 1998, 2:40 p.m.
TRD-9802947
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Thursday, March 5, 1998, 9:00 a.m.
4000 South IH35, Room 910–911, Southfield Building
Austin

Public Meeting

REVISED AGENDA:
Addendum to Meeting of March 5, 1998 — (Changes in Executive Session Portion)
1. Call to Order
2. Approval of the Minutes for the Public Meeting of February 5, 1998
3. Executive Session
4. Action on Matters Considered in Executive Session
5. Discussion and Possible Action on Revision to Commissioner Policy and Procedures
6. Discussion and Possible Action on Proposal of Amendments to Rule: Rule 133.206
7. Discussion and Possible Action on Report Regarding Claims Service Rules Task Force
8. Discussion and Possible Action on Issues Relating to Commission Activities
9. Confirmation of Future Public Meeting Dates
10. Adjournment

Contact: Bob Marquette, 4000 South IH35, Austin, Texas 78704, (512) 440–3552.
Filed: February 27, 1998, 2:40 p.m.
TRD-9802987
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Texas Workforce Commission
Tuesday, March 10, 1998, 9:00 a.m.
Room 644, TWC Building, 101 East 15th Street
Austin

AGENDA:
Session A
Approval of Prior meeting notes; Public comment; Discussion, consideration and possible action: (1) on Acceptance of Donations of Child Care Matching Funds; (2) on adoption of Incentives and Sanction Rules (40 TAC §800.101 et.seq) and related matters; (3) on adoption of Payday Rules (40 TAC, Chapter 821) and related matters; (4) for development of rule relating to Chapter 809 Child Care for People Diverted from TANF; an Advisory Committee pursuant to Senate Bill 1490; and Work and Family Clearinghouse Distribution of Child Care Appropriations to School Districts pursuant to Senate Bill 503; (5) regarding potential and pending applications for certification and recommendations to the Governor of Local Workforce Development Boards for certification; (6) regarding recommendations to TCWEC and status of strategic and operations plans submitted by Local Workforce Development Boards; and (7) regarding approval of Local Workforce Board or Private Industry Council Nominees; Executive session pursuant to: Government Code §551.074 to discuss the duties and responsibilities of the executive staff and other personnel, Government Code §551.071 (1) concerning the pending or contemplated litigation of the Texas AFL-CIO v. TWC; TSEU/CWA Local 6184, AFL-CIO v. TWC; Barbara Woodard v. TEC; Midfirst Bank v. Reliance Health Care et al (enforcement of Oklahoma judgment); and Gene E. Merchant et al v. TWC, Government Code §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 the Administrative Procedures Act; Actions, if any, resulting from executive session; staff reports and discussion — update on activities relating to Unemployment insurance Division and related matters; Consideration and action on: (1) whether to assume continuing jurisdiction on Unemployment Compensation cases and reconsideration of Unemployment Compensation cases, if any; and (2) higher level appeals in Unemployment Compensation cases listed on Texas Workforce Commission Docket 10.

Session B
Staff report and discussion — update on activities relating to: Administration Division, Finance Division, Information Systems Division, Unemployment Insurance Division, Welfare Reform Division and Workforce Division; General discussion and staff report concerning the employment service and related functions at the Texas Workforce Commission; Discussion, consideration and possible action: (1) relating to House Bill 2777 and the development and implementation of a plan for the integration of services and functions relating to eligibility determination and service delivery by Health and Human Services Agencies and TWC; and (2) on adoption of rule regarding hearing procedures for Welfare-to-Work Programs (FS E&T and Choices); Child Care, Proprietary Schools, CIS, and Other Programs (HB 564), and related matters.
Regional Meetings

Meetings filed February 25, 1998

Brazos Higher Education Authority, Board of Directors, met at 2600 Washington Avenue, Waco, March 3, 1998 at Noon. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (214) 629–2204. TRD-9802809.

Brazos Higher Education Authority, Board of Directors, met at The Northwood Inn, 1609 College Drive, Waco, March 3, 1998 at 7:00 p.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (214) 753–0913. TRD-9802830.

Brazos Valley Council of Governments, Regional Advisory Committee on Aging, met at 1706 East 29th Street, Bryan, March 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-9802823.

Fisher County Appraisal District, Board of Directors, met at 100 West Concho Street, Fisher County Courthouse, Court Room, Roby, March 10, 8:00 a.m. Information may be obtained from Betty Mize, P.O. Box 516, Roby, Texas 79543, (915) 776–2733. TRD-9802805.

Local Government Investment Cooperative, Board of Directors, met at 1201 Elm Street, Suite 3500, Dallas, March 6, 1998, at 2:00 p.m. Information may be obtained from Patrick Shinkle, 1201 Elm Street, Suite 3500, Dallas, Texas 75270, (214) 672–6784. TRD-9802825.

East Texas Council of Governments, CEO Board of Directors, met at 1306 Houston Street, Kilgore, March 4, 1998 at 11:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984–8641. TRD-9802894.

Deep East Texas Local Workforce Development Board Planning/Budget Committee, met at 300 East Shepherd, Lufkin City Hall, Room 102, Lufkin, March 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-9802893.

East Texas Council of Governments, CEO Board of Directors, met at 1306 Houston Street, Kilgore, March 4, 1998 at 11:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984–8641. TRD-9802891.

Edwards Aquifer Authority, Permits Committee, met at 1615 North St. Mary’s Street, San Antonio, March 3, 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-9802838.

Edwards Aquifer Authority, Executive Committee, met at 1615 North St. Mary’s Street, San Antonio, March 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-9802836.

Edwards Aquifer Authority, Finance Committee, met at 1615 North St. Mary’s Street, San Antonio, March 3, 1998 at 2:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary’s Street, San Antonio, Texas 78212, (210) 222–2204. TRD-9802837.

Edwards Aquifer Authority, Administrative Committee, met at 1615 North St. Mary’s Street, San Antonio, March 3, 1998 at 3:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary’s Street, San Antonio, Texas 78212, (210) 222–2204. TRD-9802839.

Edwards Aquifer Authority, South Central Texas Water Advisory Committee, will meet at Retama Park Raceway-Turf and Field Club, 1 Retama Parkway, Selma, March 17, 1998 at 10:00 a.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary’s Street, San Antonio, Texas 78212, (210) 222–2204. TRD-9802907.

Gillespie Central Appraisal District, Board of Directors, met at Gillespie County Courthouse, District Courtroom, 101 W. Main Street, Fredericksburg, March 2, 1998 at 8:00 a.m. Information may be obtained from Wendy J. Garza, P.O. Box 429, Fredericksburg, Texas 78624, (830) 997–9807. TRD-9802908.

Hood County Appraisal District, Board of Directors, met at 1902 West Pearl Street, Granbury, March 2, 1998 at 7:00 p.m. Information may be obtained from Harold Chesnut, P.O. Box 819, Granbury, Texas 76048, (817) 573–2471. TRD-9802841.

Houston-Galveston Area Council Area Emissions Reductions Credit Organization (AERC0) will meet at 3555 Timmons Lane, Conference Room B, Second Floor, Houston, March 27, 1998 at 9:30 a.m. Information may be obtained from H-GAC, 3555 Timmons Lane, Suite 500, Houston, Texas 77027, (713) 627–3200. TRD-9802853.

Kendall Appraisal District, Workshop, met at 121 South Main Street, Boerne, March 6, 1998 at 2:00 p.m. Information may be obtained from Helen Tamayo, P.O. Box 788, Boerne, Texas 78006, (210) 249–8012, fax: (210) 249–3975. TRD-9802847.

Kendall Appraisal District, Workshop, met at 121 South Main Street, Boerne, March 10, 1998 at 2:00 p.m. Information may be obtained from Helen Tamayo, P.O. Box 788, Boerne, Texas 78006, (210) 249–8012, fax: (210) 249–3975. TRD-9802848.

Kendall Appraisal District, Board of Directors Special meeting, met at 121 South Main Street, Boerne, March 11, 1998 at 6:00 p.m. Information may be obtained from Helen Tamayo, P.O. Box 788, Boerne, Texas 78006, (210) 249–8012, fax: (210) 249–3975. TRD-9802849.

Middle Rio Grande Development Council, Workforce Development Board Executive Committee, met at 649 Webster Street, Deluna Center, Eagle Pass, March 2, 1998 at 4:30 p.m. Information may be obtained from Leodoro Martinez, Jr., P.O. Box 1199, Carrizo Springs, Texas 78834, (432) 876–1200. TRD-9802886.

Parmer County Appraisal District, Board of Directors, met at 305 Third Street, Bovina, March 12, 1998 at 7:00 p.m. Information may be obtained from Ronald E. Proctor, P.O. Box 56, Bovina, Texas 79009, (806) 238–1405. TRD-9802864.

Rockwall County Central Appraisal District, Appraisal Review Board, met at 106 North San Jacinto, Rockwall, March 3, 1998, at 8:30 a.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, (972) 771–2034. TRD-9802842.

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, March 6, 1998 at 1:30 p.m. Information may be obtained from Janet A. Kennison, 603 Navarro, Suite 904, San Antonio, Texas 78204, (210) 227–8651. TRD-9802859.

San Antonio-Bexar County Metropolitan Planning Organization, Transportation Improvement Program Subcommittee, met at International Conference Center of the Convention Center Complex, Corner of South Alamo and East Market, San Antonio, March 9, 1998 at 1:30 p.m. Information may be obtained from Janet A. Kennison, 603 Navarro, Suite 904, San Antonio, Texas 78204, (210) 227–8651. TRD-9802846.

Shackelford Water Supply Corporation, Director’s Meeting, met at Highway 180, Fort Griffin Restaurant, Albany, March 4, 1998 at Noon. Information may be obtained from Gaynell Perkins, Box 11, Albany, Texas 76430, (903) 345–6868 or (915) 762–2575. TRD-9802870.

Tarrant Appraisal District, Appraisal Review Board, will meet at 2329 Gravel Road, Fort Worth, March 3, 1998 at 8:30 a.m. Information may be obtained from Linda G. Smith, 2329 Gravel Road, Fort Worth, Texas 76118–6984, (817) 284–8884. TRD-9802868.

Tarrant Appraisal District, Appraisal Review Board, will meet at 2329 Gravel Road, Fort Worth, March 19, 1998 at 8:00 a.m. Information may be obtained from Linda G. Smith, 2329 Gravel Road, Fort Worth, Texas 76118–6984, (817) 284–8884. TRD-9802867.

Tarrant Appraisal District, Appraisal Review Board, will meet at 2329 Gravel Road, Fort Worth, March 24, 1998 at 8:30 a.m. Information may be obtained from Linda G. Smith, 2329 Gravel Road, Fort Worth, Texas 76118–6984, (817) 284–8884. TRD-9802869.

Texas Association of Regional Councils, Board of Directors, met at Radisson Hotel on Town Lake, 111 E. Cesar Chavez Street, Austin, March 6, 1998 at 9:00 a.m. Information may be obtained from Katherine Cannon or Jim Ray, 1305 San Antonio Street, Austin, Texas 78701, (512) 478–1049 or fax: (512) 478–1049. TRD-9802872.

Texas Panhandle Mental Health Authority, Board of Trustees, TPMHA, met at 1500 South Taylor Street, Amarillo, March 5, 1998 at 10:00 a.m. Information may be obtained from Shirley Hollis, P.O. Box 3250, Amarillo, Texas 79116–3250, (806) 349–5680, fax: (806) 337–1035. TRD-9802887.

Tyler County Appraisal District, Board of Directors, met at 806 West Bluff, Woodville, March 10, 1998 at 10:00 a.m. Information may be obtained from Eddie Chalmers, P.O. Drawer 9, Woodville, Texas 75979, (409) 283–3763. TRD-9802832.

Meetings filed February 27, 1998

Barton Springs/Edwards Aquifer Conservation District, Board of Directors, Work Session/Retreat, met at 2510 Onion Creek Parkway, Austin, March 3, 1998 at 8:30 a.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282–8441, fax: (512) 282–7016. TRD-9802910.

Bell County Tax Appraisal District, Board of Directors, met at 411 East Central Avenue, Belton, March 17, 1998 at 7:00 p.m. Information may be obtained from Carl Moore, P.O. Box 390, Belton, Texas 76513, (254) 939–5841. TRD-9802926.

Bosque County Central Appraisal District, Board of Directors, met at 202 South Highway Six, Meridian, March 5, 1998 at 6:30 p.m. Information may be obtained from Janice Henry, P.O. Box 393, Meridian, Texas 76665–0393, (254) 435–2304. TRD-9802943.

Dallas Area Rapid Transit, President’s Luncheon, met at 1401 Pacific Avenue, Executive Conference Room A, Second Floor, March 3, 1998 at 11:30 a.m. Information may be obtained from Sophia Rosales, DART, P.O. Box 660163, Dallas, Texas 75266–0163, (214) 749–3264. TRD-9802948.

Johnson County Central Appraisal District, Appraisal Review Board, met at 109 North Main Street, Cleburne, March 4 and 6, 1998, at 9:00 a.m. Information may be obtained from Don Gilmore, 109 North Main, Cleburne, Texas 76031, (817) 645–3986. TRD-9802977.

Johnson County Rural Water Supply Corporation, Annual Membership Meeting, was held at Corporation Office, 2849 Highway 171 South, Cleburne, March 3, 1998 at 7:00 p.m. Information may be obtained from Dianna Jones, P.O. Box 509, Cleburne, Texas 76033, (817) 645–6646. TRD-9802929.

Johnson County Rural Water Supply Corporation, Special Board meeting, was held at Corporation Office, 2849 Highway 171 South, Cleburne, March 3, 1998 at 8:30 p.m. Information may be obtained from Dianna Jones, P.O. Box 509, Cleburne, Texas 76033, (817) 645–6646. TRD-9802946.

Riceland Regional Mental Health Authority, Board of Trustees, met at 400 Avenue F, Bay City, March 5, 1998 at 9:00 a.m. Information may be obtained from Marjorie Dornak, P.O. Box 869, Wharton, Texas 77488, (409) 532–3096. TRD-9802913.

Rusk County Appraisal District, Board of Directors, met at 107 North Van Buren Street, Henderson, March 5, 1998 at 1:30 p.m. Information may be obtained from Terry W. Decker, P.O. Box 7, Henderson, Texas 75653–0007, (903) 657–3578. TRD-9802961.

Stephens County Rural WSC, met at 206 FM 2099, Breckenridge, March 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-9802915.

Texas Red River Boundary Commission, will meet at Wilbarger County Airport Terminal, 12557 Airport Drive, Vernon, March 13, 1998, at 10:00 a.m. Information may be obtained from Bob Moreland, 1700 North Congress Avenue, Room 626, Austin, Texas 78701, (512) 305–8592. TRD-9802960.

Meetings filed March 2, 1998

Angelina and Neches River Authority, ANRA Board of Directors, met at 210 Lufkin Avenue, Lufkin, ANRA Board Meeting Room, March 9, 1998 at 10:00 a.m. Information may be obtained from Thomas D. Burr, P.O. Box 387, Lufkin, Texas 75901 (409) 632–7795. TRD-9803040.

Ark-Tex Council of Governments (ATCOG), North East Texas Water Planning Area “D”, will meet at Cass county Courthouse Annex, Highway 59, Daingerfield, March 16, 1998 at 6:30 p.m. Information may be obtained from Sandie Brown, P.O. Box 660163, Dallas, Texas 75266–0163, (214) 749–3264. TRD-9802948.
Blanco County Appraisal District, 1998 Board of Directors, met at 200 North Avenue G, Johnson City, March 10, 1998 at Noon. Information may be obtained from Hollis Boatwright, P.O. Box 338, Johnson City, Texas 78636, (830) 868–4013. TRD-9803033.

Garza Central Appraisal District, Board of Directors, met at 124 East Main, Post, March 10, 1998 at 2:00 p.m. Information may be obtained from Billie Y. Windham, P.O. Drawer F, Post, Texas 79536, (806) 495–3518. TRD-9802988.

Lake Livingston Water Supply and Sewer Service Corporation, Board of Directors, met at 622 South Washington, Livingston, March 15, 1998 at 10:00 a.m. Information may be obtained from M.D. Simmons, P.O. Box 1149, Livingston, Texas 77351, (904) 327–3107, fax: (409) 327–8959. TRD-9803024.

Nolan County Central Appraisal District, Board of Directors, met at Nolan County Courthouse, Third Floor, 100 East Third, Sweetwater, March 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-9803032.

Northeast Texas Municipal Water District, Board of Directors, met at Highway 250 South, Hughes Springs, March 9, 1998 at 10:00 a.m. Information may be obtained from Wilt Sears, Jr., P.O. Box 955, Hughes Springs, Texas 75656, (903) 639–7538. TRD-9803042.

Upper Rio Grande Workforce Development Board, met at 5919 Brook Hollow, El Paso, March 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-9803052.

Meetings filed March 3, 1998

Ark-Tex Council of Governments, North East Water Planning Area “D”, will meet with revised agenda at Morris County Courthouse Annex, Highway 59, Daingerfield, March 16, 1998 at 6:30 p.m. Information may be obtained from Sandie Brown, P.O. Box 5307, Texarkana, Texas 75505, (903) 832–8636, fax: (903) 832–3441. TRD-9803064.

Bexar-Medina-Atascosa Counties Water Control and Improvement District 1, Board of Directors, met at 226 Highway 132, Natalia, March 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-9803065.

Callahan County Appraisal District, Board of Directors, will meet at 130A West 4th Street, Baird, Monday, March 16, 1998 at 7:00 p.m. Information may be obtained from Jane Ringhoffer, P.O. Box 806, Baird, Texas 79504, (915) 854–1165, fax (915) 854–1413. TRD-9803061.

Capital Area Planning Council, Executive Committee, met at 2520 IH35 South, Suite 100, Austin, March 11, 1998 at 10:00 a.m. Information may be obtained from Betty Voights, 2512 South IH35, Suite 220, Austin, Texas 78704, (512) 443–7653, TRD-9803112.

Colorado County Appraisal District, Board of Directors, met at 400 Spring, Grand Jury Room, Columbus, March 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-9803114

Edwards Aquifer Authority, Legal Committee met at 1615 North St. Mary’s Street, San Antonio, March 10, 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-9803115.

Permitian Basin Regional Planning Commission, Local Workforce Development Board, met at 2910 LaForce Boulevard, Midland, March 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-9803096.

Permian Basin Regional Planning Commission, Board of Directors, met at 2910 LaForce Boulevard, Midland, March 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-9803097.

Red Bluff Water Power Control District, Board of Directors, met at 111 West Second Street, Pecos, at 1:00 p.m. Information may be obtained from Jim Ed Miller, 111 West Second Street, Pecos, Texas 79772, (915) 445–2037. TRD-9803060.

South Texas Development Council, Board of Directors, met at Commissioners Courtroom, Courthouse Annex, Zapata, March 12, 1998 at 11:00 a.m. Information may be obtained from Julie Saldana, P.O. Box 2187, Laredo, Texas 78044–2187, (956) 722–3995. TRD-9803103.

STED Corporation, Board of Trustees, met at Commissioners Courtroom, Courthouse Annex, Zapata, March 12, 1998, at 10:30 a.m. Information may be obtained from Robert Mendiola, P.O. Box 2187, Laredo, Texas 78044–2187, (956) 722–3995. TRD-9803104.

Tri—County Special Utility District (SUD), Board of Directors, met at Highway 7 East, Marlin, March 9, 1998 at 7:00 p.m. Information may be obtained from Patsy Boother, P.O. Box 976, Marlin, Texas 76661, (254) 803–3553. TRD-9803070.

Uvalde County Appraisal District, Appraisal Review Board, met at 209 North High Street, Uvalde, March 10, 1998 at 9:00 a.m. Information may be obtained from Alida E. Lopez, 209 North High Street, Uvalde, Texas 78801, (930) 278–1106, Extension 16. TRD-9803091.

Meetings filed March 4, 1998

Bi-County Water Supply Corporation met at Arch Davis Road, FM 2254, Pittsburg, March 10, 1998 at 7:00 p.m. Information may be obtained from Janell Larson, P.O. Box 848, Pittsburg, Texas 76568, (903) 856–5840. TRD-9803142.

Brazos Valley Council of Governments, Board of Directors, met at 1706 East 29th Street, Bryan, March 11, 1998 at 1:30 p.m. Information may be obtained from Nelda Thompson, P.O. Drawer 4128, Bryan, Texas 77805–4128, (409) 775–4244, Extension 102. TRD-9803160.

Dallas Housing Authority, Board of Commissioners, met at Melrose Hotel, 3015 Oaklawn, Dallas, March 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-9803122.

Education Service Center, Region VII, Board of Directors, will meet at 440 Highway 79 South, Henderson, March 19, 1998 at Noon. Information may be obtained from Eddie J. Little, 818 East Main Street, Kilgore, Texas 75662, (903) 984–3071. TRD-9803158.

Edwards Aquifer Authority, Finance Committee, met at 1615 North St. Mary’s Street, San Antonio, March 10, 1998 at 5:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 North St. Mary’s Street, San Antonio, Texas 78212, (210) 222–2204. TRD-9803117.

Eraah County Appraisal District, Board of Directors, met at 1390 Harbin Drive, Stephenville, March 10, 1998 at 8:00 a.m. Information may be obtained form Nicole Boyd, 1390 Harbin Drive, Stephenville, Texas 76401, (254) 965–5434. TRD-9803121.
Grand Parkway Association, Board of Directors, met at 4544 Post Oak Place, Suite 222, Houston, March 12, 1998 at 8:30 a.m. Information may be obtained from L. Diane Schenke, 4544 Post Oak Place, Suite 222, Houston, Texas 77027, (713) 965–0871. TRD-9803146.
In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.
Coastal Coordination Council

Notice and Opportunity

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 February 23, 1998, through March 2, 1998:

FEDERAL AGENCY ACTIONS:

Applicant: Gulf of Mexico Fisheries Management Council; Location: Offshore federal waters, Gulf of Mexico; Project Number: 98-0089-F1; Description of Proposed Action: The applicant proposes an amendment to the Reef Fish Fishery Management Plan for the 1998 Red Snapper Total Allowable Catch and the Recreational Bag Limit, pursuant to §407(d) of the Magnuson-Stevens Fishery Conservation and Management Act.

Applicant: Stolthaven Houston, Inc.; Location: On the left descending bank of the Houston Ship Channel, about 1.5 nautical miles east of the Beltway 8 Bridge, southeast of the intersection of Sheldon Road and Jacintoport Boulevard, in Houston, Harris County, Texas; Project Number: 98-0090-F1; Description of Proposed Action: The applicant proposes to construct a new marine terminal to facilitate ship and barge operations at their facility. The project will include construction on 85 acres of a 100-acre site located between the ship channel and Jacintoport Boulevard. The work entails the dredging and excavation of a new slip; approximately 300 feet wide by 1,300 feet long, to a maximum depth of 45 feet below mean low tide. A berthing facility, including a 70-foot by 120-foot dock, four mooring dolphins and four breasting dolphins will be constructed. Approximately 890,000 cubic yards of material will be mechanically dredged, and approximately 20 acres of wetlands will be filled; Type of Application: U.S.C.O.E. permit application #21149 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: City of Houston; Location: From the treatment plant into Hunting Bayou; thence to the Houston Ship Channel/Buffalo Bayou Tidal in Segment Number 1007 of the San Jacinto River Basin; Project Number: 98-0093-F1; Description of Proposed Action: The applicant requests reissuance of its National Pollutant Discharge Elimination System permit for a five-year term; Type of Application: Environmental Protection Agency NPDES permit # TX0063029 under the Clean Water Act (33 U.S.C.A. §1251).

Applicant: City of Houston; Location: From the treatment plant into Keeans Bayou; thence to Brays Bayou; thence to the Houston Ship Channel in Segment Number 1007 of the San Jacinto River Basin; Project Number: 98-0094-F1; Description of Proposed Action: The applicant requests reissuance of its National Pollutant Discharge Elimination System permit for a five-year term; Type of Application: Environmental Protection Agency NPDES permit # TX0098191 under the Clean Water Act (33 U.S.C.A. §1251).

Applicant: Molten Metal Technologies, Inc.; Location: From the plant site in the City of Bay City, Matagorda County, Texas; to the Port of Bay City turning basin (Colorado River Tidal) in Waterbody Segment Code Number 1401 of the Colorado River Basin; Project Number: 98-00-F1; Description of Proposed Action: The applicant requests a National Pollutant Discharge Elimination System permit for a five-year term; Type of Application: Environmental Protection Agency NPDES permit # TX0084875 under the Clean Water Act (33 U.S.C.A. §1251).

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 Janet Fatheree, Council Secretary, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495.

IN ADDITION March 13, 1998 23 TexReg 2875
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 March 9, 1998-March 15, 1998 is 18% for Consumer 1

1 Credit for personal, family or household use.

Agricultural/Commercial 2/credit thru $250,000.

The weekly ceiling as prescribed by Article 1D.003 and 1D.009 for the period of March 9, 1998-March 15, 1998 is 18% for Commercial over $250,000.

2 Credit for business, commercial, investment or other similar purpose.

TRD-9803054
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 3, 1998

State Finance Commission

Request for Proposal

Notice of Request for Proposals: Pursuant to the Government Code, Chapter 2254, Subchapter B, the Finance Commission of Texas (finance commission) announces its Request for Proposals (RFP) for hiring a consultant to assist the finance commission in conducting the first phase of research on (1) the availability, quality and prices of financial services, including lending and depository services, offered to agricultural businesses, small businesses, and individual consumers in this state; and (2) the practices of business entities in this state that provide financial services to agricultural businesses, small businesses, and individual consumers in this state. This study is authorized and mandated by the Finance Code, §11.305.

The finance commission has determined that because of the broad mandate of the statute, the authorized research should be conducted in phases. This portion of the study will require in-depth field research, demographic data profiling and statistical analysis in at least nine targeted Texas communities. The purpose of this phase of the study is to analyze the availability, quality and pricing of consumer depository and cash services offered by banks, savings and loans, savings banks, credit unions, brokerage companies and other financial services providers in Texas. A written assessment of the results of the research analyses should answer such questions as whether there is a correlation between the availability, quality, and pricing of depository and cash services and geographic and demographic factors, such as socioeconomic class or race.

Contact: Parties interested in submitting a proposal should obtain a complete copy of the RFP from the web site of the department of banking at http://www.banking.state.tx.us/exec/rfp98.html or by contacting Catherine A. Ghiglieri, Banking Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, (512) 475-1300, during business hours.

Closing Date: Proposals must be received by the commissioner at the above-referenced address no later than 5:00 p.m. on April 10, 1998. Proposals received after this time and date will not be considered.

Award Procedure: All proposals will be subject to evaluation by the finance commission based on the evaluation criteria set forth in the RFP. A proposer may be asked to clarify its proposal, and qualified proposers may be required to make oral presentations to the finance commission in Austin on April 23 and April 24, 1998. The finance commission will select the proposal which best meets the RFP criteria but could reject all proposals. If all other considerations are equal, the finance commission will, pursuant to Government Code, §2254.027, give preference to the proposer whose principal place of business is in the State of Texas or who will manage the consulting contract wholly from an office in the state.

The finance commission reserves the right to accept or reject any or all proposals submitted. The finance commission is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits the finance commission to pay for any costs incurred prior to the execution of a contract.

TRD-9803147
Everette D. Jobe
Certifying Official
State Finance Commission
Filed: March 4, 1998

Texas Health and Human Services Commission

Children’s Health Insurance Program Public Hearing

The Texas Health and Human Services Commission, the Texas Department of Human Services, the Texas Department of Health and Mental Health and Mental Retardation will conduct a public hearing to receive public comment on the draft state plan providing for the Medicaid coverage of older teenagers pursuant to Title XXI of the Social Security Act.

Information gathered in this hearing process will be considered in finalizing the Title XXI state plan which will constitute Phase I of the state’s Children’s Health Insurance Program (CHIP). Final policy decisions on a second phase of the Children’s Health Insurance Program will be made by the Legislature and Governor.

The hearing will be held on March 17, 1998 beginning at 2:00 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 Jody Williams (512) 424-6536 by March 16, 1998, so that appropriate arrangements can be made.

TRD-9803123
Steve Aragon
Executive Deputy Commissioner
Texas Health and Human Services Commission

23 TexReg 2876  March 13, 1998  Texas Register
Texas Department of Health

Notice of Intent to Revoke Certificates of Registration

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Precha Suvunrunsri, M.D., Killeen, R16775; North Texas Medical Surgical, P.A., Denton, R19905; Bay Area Rehabilitation Center, Corpus Christi, R21467; Southwest Physicians Management Services, San Antonio, R21696; Mobile Med, Incorporated, Houston, R22746; Ronald E. Dye, D.D.S., Denton, R15159; Heraeus Surgical, Milpitas, California, Z00856; Accuray, Incorporated, Sunnyvale, California, R22050; Affordable Chiropractic, Sulphur Springs, R22755; Southwest Radiology, Dallas, R21403; Aldine Bender Chiropractic Clinic, Houston, R19080; Yandell Pet Clinic, Garland, R12537; Family Foot Doctor, Houston, R22839; Smithers Transportation Test Center, Pecos, Z00309.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days of the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

IN ADDITION March 13, 1998 23 TexReg 2877
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Texas Department of Health
Filed: February 26, 1998

IN ADDITION March 13, 1998 23 TexReg 2879
Texas Department of Housing and Community Affairs

Request for Proposal

Request for Proposals to Provide Capacity Building to Nonprofit Housing Development Organizations.

The Texas Department of Housing and Community Affairs’ (TDHCA) Housing Trust Fund is accepting proposals to provide training to nonprofit and community housing development organizations in the state of Texas. The purpose of the training will be to assist these organizations in developing their capacity to provide safe, decent and sanitary housing for low, very low, and extremely low income individuals and families, and persons with special needs. Proposals will be considered for providing training on a statewide or regional basis.

Successful candidates will provide training services under contract with TDHCA. Training may be scheduled through June 30, 1999. Training topics may include, but are not limited to, the following:

- CHDO Training;
- Real Estate/Project Development;
- Construction Management;
- Energy Efficiency and Alternative Building Methods;
- Property Management
- Architectural Barrier Removal/Universal Design.

Proposals must be received at TDHCA by 5:00 p.m. on May 1, 1998. Fax proposals will not be accepted.

The Housing Trust Fund will seek to select a diverse group of proposals that will serve nonprofit housing development organizations throughout the state. Proposals will be selected based on criteria outlined in the proposal package.

Awards will be made as grants. The Department’s Board reserves the right to change the award amount, or to award less than the requested amount.

All interested parties are encouraged to participate in the program. For more information or to request a proposal package, please contact the Housing Trust Fund office at (512) 475-1458, or e-mail jcormier@tdhca.state.tx.us. Please direct your proposal to:

Texas Department of Housing and Community Affairs
Housing Trust Fund
Attn.: Janna Cormier
P.O. Box 13941
Austin, Texas 78711-3941

Physical Address
507 Sabine, Suite 800

TRD-9803161
Larry Paul Manley
Executive Director
Texas Department of Housing and Community Affairs
Filed: March 4, 1998

Housing Trust Fund Notice of Funding Availability

The Texas Department of Housing and Community Affairs, through its Housing Trust Fund, is pleased to announce that it will make available approximately $2,300,000 in loan funds to finance, acquire, rehabilitate, and develop safe, decent and affordable housing for low, very low, and extremely low income persons and families, and individuals with special needs.

The Housing Trust Fund was designed to provide gap funding to ensure that projects have the final amount of funding necessary for the completion of a project. The maximum award amount is $500,000. Mixed income projects are encouraged, providing that a portion of the units are targeted towards families at or below 80% of area median income.

Eligible applicants include local units of government, nonprofit organizations, public housing authorities, and community housing development organizations (CHDOs).

Applications meeting threshold criteria will be evaluated and scored within the three categories of leveraging, housing need, and program design. Applications will then be selected based on program scoring criteria, with consideration given to geographic distribution, applicant’s past history with the Department, and community impact. An applicant’s high score is used to evaluate the project, but does not, in and of itself, guarantee that an award will follow. The Department will also look at credit underwriting and the developer’s experience. The Housing Trust Fund will seek to select a diverse group of single family and multifamily projects that will serve various populations throughout the state. The Department’s Board reserves the right to change the award amount, and to award less than the requested amount.

Applications may be submitted until 5:00 pm, May 15, 1998. FAXED APPLICATIONS WILL NOT BE ACCEPTED.

All interested parties are encouraged to participate in this program. Applications will be available on March 13, 1998. For additional information, or to request an application package, please call the Housing Trust Fund Office at (512) 475-1458, or e-mail your request to cgotierrez@tdhca.state.tx.us. Please direct your applications to:

Texas Department of Housing and Community Affairs
Housing Trust Fund - Attn: Keith Hoffpauir
Post Office Box 13941
Austin, Texas 78711-3941

Physical Address
507 Sabine, Suite 800

TRD-9803170
Larry Paul Manley
Executive Director
Texas Department of Housing and Community Affairs
Filed: March 4, 1998

Notice of Administrative Hearing

Monday, March 16, 1998, 1:00 p.m.
State Office of Administrative Hearing, Stephen F. Austin Building, 1700 North Congress Avenue, 11th Floor, Suite 1100
Austin, Texas
AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of Texas Department of Housing and Community Affairs vs. Kathy L. Wood dba Wells Mobile Home Service to hear alleged violations of the Act, §§ 7(d) and 17(b) and Rules §§ 80.125(c) regarding obtaining, maintaining or possessing a valid installer’s license. SOAH 332-98-0386. Department MHD1997002031D.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

TRD-9803163
Larry Paul Manley
Executive Director
Texas Department of Housing and Community Affairs
Filed: March 4, 1998

Notice of Public Hearing

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MULTIFAMILY HOUSING REVENUE BONDS (VOLENTE 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 5:30 p.m. on Monday, March 30, 1998, with respect to an issue of multifamily residential rental project revenue bonds (the "Bonds") to be issued in one or more series in the aggregate principal amount not to exceed $10,934,000, by the Texas Department of Housing and Community Affairs (the "Issuer") and the proceeds of which will be loaned to Volente I, Ltd. (the "Borrower"), to finance the construction of one multifamily housing project (the "Project") described as follows: 208 unit multifamily residential rental development to be constructed on a tract of land just West of Farm to Market Road 620, North, along the Northside of Farm to Market Road 2769 (also know as Volente Road), Cedar Park, Travis and Williamson Counties, Texas. The site contains approximately 13.3 acres and has approximately 541 feet of frontage along Farm to Market Road 2769. The Project will be owned and operated by Volente I, Ltd.. The Project will be managed by Lincoln Property Management.

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 above-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 a 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-9802917
Larry Paul Manley

IN ADDITION March 13, 1998 23 TexReg 2881
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MULTIFAMILY HOUSING REVENUE BONDS (VOLENTE 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 5:30 p.m. on Friday, March 20, 1998, with respect to an issue of multifamily residential rental project revenue bonds (the "Bonds") to be issued in one or more series in the aggregate principal amount not to exceed $10,934,000, by the Texas Department of Housing and Community Affairs (the "Issuer") and the proceeds of which will be loaned to Volente I, Ltd. (the "Borrower"), to finance the construction of one multifamily housing project (the "Project") described as follows: 208 unit multifamily residential rental development to be constructed on a tract of land just West of Farm to Market Road 620, North, along the Northside of Farm to Market Road 2769 (also known as Volente Road), Cedar Park, Travis and Williamson Counties, Texas. The site contains approximately 13.3 acres and has approximately 541 feet of frontage along Farm to Market Road 2769. The Project will be owned and operated by Volente I, Ltd. The Project will be managed by Lincoln Property Management.

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.

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-9802916
Larry Paul Manley
Executive Director
Texas Department of Housing and Community Affairs
Filed: March 4, 1998

Request for Proposals

The Texas Department of Housing and Community Affairs (TDHCA) is issuing this Request for Proposals (RFP) for inspection services. The services may include a wide range of inspections for projects involving rehabilitation and/or new construction of single family and multi-family housing during the construction phase and upon completion. Assistance may also be required in conducting inspection of Housing Quality Standards, Accessibility Standards for Disabled Persons and any other standards required by the Department.

The pool of approved firms will be the source from which the Department and TDHCA program applicants and recipients may choose to contract for Required Services. The Department and/or program applicants or recipients will contract directly with the pre-approved service provider of their choice as established by TDHCA program guidelines. Organizations which may require these services would include, but not be limited to Units of State and Local Government, Public Housing Agencies, State Certified Community Housing Development Organizations (CHDO’s), Non-Profit Organizations, and For Profit Organizations.

The inspection firm may be required to perform one or more of the following inspections:

a. Civil
b. Structural
c. Building Layout
d. Foundation
e. Framing
f. Insulation
g. Electrical, Mechanical, Plumbing Rough-in
h. Drywall
i. Electrical, Mechanical, Plumbing Final
j. Building Final
k. Individual property conditions inspection of a minimum of 35% of the units of every building to ensure a fair & reasonable sampling.
l. Local building code inspection (1994 Uniform Building Code to be used in the absence of local building codes).
m. Other inspections as may be required, such as environmental, asbestos, & lead based paint
n. Housing Quality Inspections (minimum standards provided by TDHCA)

The scope of services will typically follow the process of (1) data collection, (2) analysis, (3) data organization and identification or problems, (4) review and assessment of data and recommendation, (5) statement of probable cost, (6) development of reports or contract documents.

General Information. TDHCA reserves the right to accept or reject any, or all, proposals submitted. The information contained in this proposal request is intended to serve only as a general description of the services desired by TDHCA. In the event TDHCA selects a firm to provide the services described, TDHCA will base its choice on demonstrated competence and qualifications and the reasonableness of the fee for services. This request does not commit TDHCA to pay for any costs incurred prior to execution of a contract and is subject to availability of funds. Issuance of this proposal in no way obligates TDHCA to contract for inspection services or to pay any costs incurred in the preparation of a response.

Proposals must be received at TDHCA headquarters no later than 4:30 p.m. on April 06, 1998. Please contact Yvonne Flores with the Department’s Low Income Housing Tax Credit Program at 512-475-3340 to request an RFP packet or for more information.

TRD-9803162
Larry Paul Manley
Executive Director
Texas Department of Housing and Community Affairs
Texas Department of Human Services

Availability of Title XX Social Service Block Grant Report

The Texas Department of Human Services has published a report describing the actual expenditures of Title XX Social Services Block Grant funds for fiscal year 1997. Free copies of the report are available to the public.

Contact Person: To obtain a copy of this report, write Eric M. Bost, Commissioner, Texas Department of Human Services, W-619, P.O. Box 149030, Austin, Texas 78714-9030.

TRD-9803087
Glenn Scott
Agency Liaison
Texas Department of Human Services
Filed: March 3, 1998

Request for Proposal – CLASS Case Management Services Austin Area

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 March 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: 112 individuals in the Austin area (Travis/Hays/Bastrop/Williamson/Blanco/Caldwell counties).

Closing Date and Time: Proposals must be received by the department by 5:00 p.m. on Friday, May 8, 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, 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, March 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, April 10, 1998.

Historically underutilized businesses, public or private profit, with demonstrated knowledge, competence and qualifications in performing these services are encouraged to apply.

TRD-9803088
Glenn Scott
Agency Liaison
Texas Department of Human Services
Filed: March 3, 1998

Texas Register Publication Date: This announcement should appear in the Texas Register on March 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: 112 individuals in the Austin area (Travis/Hays/Bastrop/Williamson/Blanco/Caldwell Counties).

Closing Date and Time: Proposals must be received by the department by 5:00 p.m. on Friday, May 8, 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, 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, March 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, April 10, 1998.

Historically underutilized businesses, public or private profit, with demonstrated knowledge, competence and qualifications in performing these services are encouraged to apply.

TRD-9803089
Glenn Scott
Agency Liaison
Texas Department of Human Services
Filed: March 3, 1998

Texas Department of Insurance

Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by SAFECO Insurance Companies on behalf of First National Insurance Company of America proposing to use rates outside the flexibility band promulgated by the Commissioner of Insurance pursuant to Texas Insurance Code Annotated, Article 5.101, §3(g). They are proposing to use various flex percentages of +36% above the benchmark for bodily injury, +40% above the benchmark for personal injury protection, +50% above the benchmark for medical payments, +45% above the benchmark for comprehensive and collision; +30% above the benchmark for property damage; and +20% above the benchmark for uninsured motorists by coverage, for all classifications and territories for private passenger automobile insurance.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761. This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to Article 5.101, §3(h), is made with the Chief Actuary, Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-9802930
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: February 27, 1998

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by SAFECO Insurance Companies on behalf of First National Insurance Company of America proposing to use rates outside the flexibility band promulgated by the Commissioner of Insurance pursuant to Texas Insurance Code Annotated, Article 5.101, §3(g). They are proposing to use various flex percentages of +36% above the benchmark for bodily injury, +40% above the benchmark for personal injury protection, +50% above the benchmark for medical payments, +45% above the benchmark for comprehensive and collision; +30% above the benchmark for property damage; and +20% above the benchmark for uninsured/underinsured motorists by coverage, for all classifications and territories for private passenger automobile insurance. They are also requesting various flex percentages ranging from +15% to +20% above the benchmark for other coverages written under commercial automobile insurance for all classes and territories.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761. This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to Article 5.101, §3(h), is made with the Chief Actuary, Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-9802931
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: February 27, 1998

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Preferred Risk Financial, Inc. on behalf of Preferred Risk Lloyds Insurance Company proposing to use rates outside the flexibility band promulgated by the Commissioner of Insurance pursuant to Texas Insurance Code Annotated, Article 5.101, §3(g). They are proposing to use a rate of +35% above the benchmark for bodily injury, personal injury protection, medical payments, and comprehensive; +40% above the benchmark for property damage, collision, towing & labor, rental reimbursement, and auto death indemnity; and +30% above the benchmark for uninsured motorists for private passenger automobile insurance.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761. This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to Article 5.101, §3(h), is made with the Chief Actuary, Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-9802932
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: February 27, 1998

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by American Alternative Insurance Corporation proposing to use rates outside the flexibility band promulgated by the Commissioner of Insurance pursuant to Texas Insurance Code Annotated, Article 5.101, §3(g). They are proposing to use rates for their VFIS Emergency Service Organization Program that are -50% below the benchmark for Fire Departments; -30% below the benchmark for Ambulance, by coverage for commercial automobile insurance; and -15% below the benchmark for all other classifications for all coverages and territories for commercial automobile insurance.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761. This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to Article 5.101, §3(h), is made with the Chief Actuary, Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.
Texas Department of Insurance
Filed: February 27, 1998

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Metropolitan Property and Casualty Insurance Company proposing to use rates outside the flexibility band promulgated by the Commissioner of Insurance pursuant to Texas Insurance Code Annotated, Article 5.101, §3(g). They are proposing to use various rates ranging from +20% to +85% above the benchmark for bodily injury; +5.0% to +30% above the benchmark for property damage; +45% to +90% above the benchmark for medical payments; +10% to +55% above the benchmark for personal injury protection; +35% to +85% above the benchmark for collision; +30% above the benchmark for uninsured motorists; and +5.0% to 30% for comprehensive; by coverage and territory for all classifications for private passenger automobile insurance.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to Article 5.101, §3(h), is made with the Chief Actuary, Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-9802936
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: February 27, 1998

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by American Bankers Insurance Group on behalf of American Bankers Insurance Company of Florida proposing to use rates outside the flexibility band promulgated by the Commissioner of Insurance pursuant to Texas Insurance Code Annotated, Article 5.101, §3(g). They are proposing to use various rates ranging from -44.7% to -95.6% below the benchmark for antique auto; -95.6% below the benchmark to +14.6% above the benchmark for other collectibles; and -43.7% to -93.3% below the benchmark for antique motorcycles; by coverage and vehicle type for all territories for private passenger automobile insurance.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to Article 5.101, §3(h), is made with the Chief Actuary, Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-9802937
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: February 27, 1998

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by the Kemper Insurance Company proposing to use a rating manual relative to classifications and territories different than that promulgated by the Commissioner of Insurance pursuant to Texas Insurance Code Annotated, Article 5.101, §3(l). They are proposing a commercial automobile subclassification, and a 15% credit on the liability and physical damage rates for family owned funeral homes that meet specific criteria on policies issued by members of the Chubb Group, to include: Chubb Indemnity Company; Federal Insurance Company; Great Northern Insurance Company; Pacific Indemnity Company; Texas Pacific Indemnity Company; and Vigilant Insurance Company.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to Article 5.101, §3(h), is made with the Associate Commissioner for Regulation & Safety, Rose Ann Reeser, at the Texas Department of Insurance, MC 107-2A, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-9802934
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: February 27, 1998

The Commissioner of Insurance, or his designee, will consider approval of a rating manual request submitted by the Chubb Group of Companies proposing to use a rating manual relative to classifications and territories different than that promulgated by the Commissioner of Insurance pursuant to Texas Insurance Code Annotated, Article 5.101, §3(l). They are proposing a commercial automobile subclassification, and a 15% credit on the liability and physical damage rates for family owned funeral homes that meet specific criteria on policies issued by members of the Chubb Group, to include: Chubb Indemnity Company; Federal Insurance Company; Great Northern Insurance Company; Pacific Indemnity Company; Texas Pacific Indemnity Company; and Vigilant Insurance Company.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.
Companies on behalf of Lumbermens Mutual Casualty Company proposing to use rates outside the flexibility band promulgated by the Commissioner of Insurance pursuant to Texas Insurance Code Annotated, Article 5.101, §3(g). They are proposing a rate of +40% above the benchmark for all coverages, classifications and territories for private passenger automobile insurance.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to Article 5.101, §3(h), is made with the Chief Actuary, Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-9802938
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: February 27, 1998

Notice
Docket Number 2303 is being reset for April 16, 1998 at 9:00 a.m. in Room 102 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

This matter which was submitted by the staff of the Texas Department of Insurance recommended approval of several items including: new forms for the Texas Automobile Rental Liability Policy and Texas Automobile Rental Liability Excess Policy; Proposed amendments to Rule 134, Leasing or Rental Concerns, in the Policy Rule Section VII of the Texas Automobile Rules and Rating Manual; proposed New Rule 141, Rental Car Companies, in the Policy Rule Section VII of the Manual; and proposed New Rule 141, Rental Car Companies on behalf of Lumbermens Mutual Casualty Company, proposed health benefit plan(s). In accordance with §109.033 of the Texas Health & Safety Code, as added by House Bill 3, 75th Legislature, the initial Board of Directors of Healthy Kids proposed health benefit plan(s). In accordance with §109.033 of the Texas Health & Safety Code, the Texas Department of Insurance will hold a public hearing under Section VII of the rating rules portion of the Manual.

This docket was previously published in the Texas Register on September 12, 1997, Exempt Filings (22 TexReg 9263) and December 19, 1997, (22 TexReg 12614).

TRD-9803166
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: March 4, 1998

Notice of Public Hearing
The Commissioner of Insurance will hold a public hearing under Docket No. 2346 on March 25, 1998 at 9:00 a.m., in Room 100 of the William P. Hobby Building, 333 Guadalupe Street, Austin, Texas, to consider the Texas Healthy Kids Corporation’s (“Healthy Kids”) proposed health benefit plan(s). In accordance with §109.033 and §109.061 of the Texas Health & Safety Code, as added by House Bill 3, 75th Legislature, the initial Board of Directors of Healthy Kids (“Board”) must submit the health benefit plan(s) to the Commissioner for approval. After such approval, the Board may implement the health benefit plan(s). Texas Health and Safety Code, §§109.033, 109.061. The Commissioner will accept public comment on the proposed health plan(s) at the hearing.

Copies of the full text of the proposed health plan(s) are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. To request copies of the health benefit plan(s), please contact Angie Arizpe at (512) 322-4147. To request information about the proposed health benefit plan(s), please contact the Texas Healthy Kids Corporation at (512) 305-7404.

This agency hereby certifies that the proposed health benefit plan(s) submitted by Healthy Kids and its Board will be reviewed by legal counsel and found to be within the agency’s authority to adopt, prior to the adoption by the Commissioner.

TRD-9803167
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: March 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 incorporation in Texas of FHPA of the Southwest, L.L.C., (doing business under the assumed name of FHPA of the Southwest), a domestic third party administrator. The home office is Dallas, Texas.

Application for admission to Texas of Synertech Health System Solutions, Inc., a foreign third party administrator. The home office is Harrisburg, Pennsylvania.

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-9802876
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: February 26, 1998

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 The TPA, Inc., (doing business under the assumed name of The Texas TPA, Inc.), 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-9803067
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: February 27, 1998

Texas Natural Resource Conservation Commission
Enforcement Orders
An agreed order was entered regarding SADRU N. DIN, Docket Number 96-0555-PST-E; SOAH Docket Number 582-97-0255 (Fa-
An agreed order was entered regarding DOYLE BROOKS DBA ABC SANDBLASTING, Docket Number 97-0079-G, Permit Number 20178) on February 12, 1998 assessing $10,000 in administrative penalties with $2,000 deferred.

An agreed order was entered regarding GILBERT GARCIA DBA TEAM BBS AUTOWORKS, Docket Number 97-0021-AIR-E (Account Number CP-0163) on February 12, 1998 assessing $9,000 in administrative penalties.

An agreed order was entered regarding MCKINNEY GRAIN COMPANY, Docket Number 97-0002-AIR-E (Account Number CP-0163) on February 12, 1998 assessing $9,000 in administrative penalties.

An agreed order was entered regarding ETHICON, INCORPORATED, Docket Number 97-0643-AIR-E (Account Number CD-0045-U) on February 12, 1998 assessing $3,375 in administrative penalties with $675 deferred.

An agreed order was entered regarding AMFELS, INCORPORATED, Docket Number 97-0515-AIR-E (Account Number CD-0045-U) on February 12, 1998 assessing $3,375 in administrative penalties with $675 deferred.

An agreed order was entered regarding DELTA METALCRAFT, INCORPORATED, Docket Number 96-0602-AIR-E (Account Number TA-2055-D) on February 12, 1998 assessing $500 in administrative penalties with $100 deferred.

An agreed order was entered regarding TEAM BBS AUTOWORKS, Docket Number 96-1682-AIR-E (Account Number GB-0597-W) on February 12, 1998 assessing $500 in administrative penalties.

An agreed order was entered regarding ADVANCED AROMATICS, L.P., Docket Number 97-0340-AIR-E (Account Number HG-9664-M) on February 12, 1998 assessing $3,750 in administrative penalties with $750 deferred.

An agreed order was entered regarding HOUSTON LIGHTING AND POWER COMPANY, Docket Number 97-0721-AIR-E (Account Number LI-0027-L) on February 12, 1998 assessing $3,750 in administrative penalties with $750 deferred.

An agreed order was entered regarding DRECO, INCORPORATED, Docket Number 97-0575-AIR-E (Account Number HG-9664-M) on February 12, 1998 assessing $500 in administrative penalties with $100 deferred.

An agreed order was entered regarding CONROE CREOSOTING COMPANY, Docket Number 96-1504-AIR-E; SOAH Docket Number 582-97-0260 (Account Number MQ-0005-N) on February 19, 1998 assessing $14,000 in administrative penalties.

An agreed order was entered regarding DELTA METALCRAFT, INCORPORATED, Docket Number 96-1405-AIR-E; SOAH Docket Number 582-97-0186 (Account Number MQ-0008-N) on February 12, 1998 assessing $500 in administrative penalties.

An agreed order was entered regarding AMFELS, INCORPORATED, Docket Number 96-0674-AIR-E; SOAH Docket Number 582-97-0156 (Account Number MQ-0010-N) on February 12, 1998 assessing $500 in administrative penalties.

An agreed order was entered regarding ADVANCED AROMATICS, L.P., Docket Number 97-0340-AIR-E; SOAH Docket Number 582-97-0260 (Account Number MQ-0005-N) on February 19, 1998 assessing $14,000 in administrative penalties.

An agreed order was entered regarding TEAM BBS AUTOWORKS, Docket Number 96-1682-AIR-E (Account Number GB-0597-W) on February 12, 1998 assessing $500 in administrative penalties.

An agreed order was entered regarding ADVANCED AROMATICS, L.P., Docket Number 97-0340-AIR-E; SOAH Docket Number 582-97-0260 (Account Number MQ-0005-N) on February 19, 1998 assessing $14,000 in administrative penalties.

An agreed order was entered regarding CONROE CREOSOTING COMPANY, Docket Number 96-1504-AIR-E; SOAH Docket Number 582-97-0260 (Account Number MQ-0005-N) on February 19, 1998 assessing $14,000 in administrative penalties.

An agreed order was entered regarding TEAM BBS AUTOWORKS, Docket Number 96-1682-AIR-E (Account Number GB-0597-W) on February 12, 1998 assessing $500 in administrative penalties.

An agreed order was entered regarding ADVANCED AROMATICS, L.P., Docket Number 97-0340-AIR-E; SOAH Docket Number 582-97-0260 (Account Number MQ-0005-N) on February 19, 1998 assessing $14,000 in administrative penalties.

An agreed order was entered regarding ADVANCED AROMATICS, L.P., Docket Number 97-0340-AIR-E; SOAH Docket Number 582-97-0260 (Account Number MQ-0005-N) on February 19, 1998 assessing $14,000 in administrative penalties.
Information concerning any aspect of this order may be obtained by contacting Greg Warnink, Staff Attorney at (512)239-0612 or 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 NEWARK, CITY OF, Docket Number. 97-0332-MWD-E (Permit Number 11626-001) on February 12, 1998 assessing $11,840 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, 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 SEA LION TECHNOLOGY, INCORPORATED, Docket Number 97-0295-IWD-E (Permit Number 03479) on February 12, 1998 assessing $2,640 in administrative penalties with $528 deferred.

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 CHEVRON U.S.A., INCORPORATED, Docket Number. 97-0717-IWD-E (Registration Number DR-91163) on February 12, 1998 assessing $2,760 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 DIAMOND SHAMROCK REFINING AND MARKETING CO., Docket Number 97-0737-IWD-E (Registration Number L-93684) on February 12, 1998 assessing $1,380 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 CLAYTON, WILLIAMS AND SHERWOOD, INCORPORATED, Docket Number 97-0778-MWD-E (Permit Number. 13043-001) on February 12, 1998 assessing $3,320 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 HARRIS COUNTY MUNICIPAL UTILITY DISTRICT 182, Docket Number 97-0736-MWD-E (Permit Number. 12273-001) on February 12, 1998 assessing $9,020 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 CITY OF SULPHUR SPRINGS, Docket Number 97-0858-MWD-E (Permit Number 10372-001) on February 12, 1998 assessing $1,200 in administrative penalties with $240 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512)239-
An agreed order was entered regarding BELLEWOO WATER SUPPLY CORPORATION, Docket Number 97-0710-PWS-E (PWS Number 1011945, CCN Number 12476) on February 12, 1998 assessing $630 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Adele Noel, Enforcement Coordinator at (512)239-1045, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RICHARD MICHELETTI AND PALO DURO SERVICE CO., Docket Number 97-1914-PWS-E (PWS Number 2490028, CCN Number 12200) on February 12, 1998 assessing $6,640 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Terry Thompson, Enforcement Coordinator at (512)239-6095, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FIVE LAND, INCORPORATED, Docket Number 97-0711-PWS-E (PWS Number 0930045, CCN Number 12502) on February 12, 1998 assessing $630 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Adele Noel, Enforcement Coordinator at (512)239-1045, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BILL TAVANEER DOING BUSINESS AS FERGUSON ENTERPRISE, Docket Number 97-0709-PWS-E (PWS Number 1012430) on February 12, 1998 assessing $630 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Adele Noel, Enforcement Coordinator at (512)239-1045, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MEHBOOB ALI MOMIN DOING BUSINESS AS KMS KWIK STOP NUMBER 2, Docket Number 97-0302-PWS-E (PWS Number 0790177, Enforcement ID Number 11643) on February 12, 1998 assessing $930 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Booker Harrison, Staff Attorney at (512)239-4133 or 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 ZTT MINERALS, INCORPORATED, Docket Number 97-0620-PWS-E (HW Permit Number HW-50360, SWR Number 41707, EPA ID Number TXD987995941) on February 12, 1998 assessing $10,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Connie Wong, Staff Attorney at (512)239-3400 or Connie Wong, Enforcement Coordinator at (512)239-2567, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DRESSER INDUSTRIES, INCORPORATED, Docket Number 97-0403-MLM-E (SWR Number 30619, PWS Owner ID Number 49754) on February 12, 1998 assessing $69,040 in administrative penalties with $13,808 deferred.

Information concerning any aspect of this order may be obtained by contacting Adele Noel, Enforcement Coordinator at (512)239-1045, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-9802795
Eugenia K. Brumm, Ph.D.
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: February 25, 1998

Notice Of Application
For The Period of February 23, 1998 to February 27, 1998

THE CITY OF MORTON for Proposed Permit Number MSW2268 to authorize a Type IV-AE municipal solid waste management facility. The proposed site covers approximately 36.1 acres and is estimated to receive one ton of municipal solid waste per day. The total disposal capacity of the landfill will be approximately 80,000 cubic yards. The permittee will be authorized to dispose of brush; construction-demolition waste; and/or rubbish that are free of household wastes and putrescible wastes; and Class III industrial solid waste. The site will be authorized to operate the facility from 8:00 a.m. to 5:00 p.m. on Fridays. The proposed waste management facility is located 1,000 feet east of 8th Street, 3121 feet north of FM 1780, approximately one-fourth mile northeast of the City of Morton in Cochran County, Texas.

If you wish to request a public hearing, you must submit your request in writing. You must state (1) your name, mailing address and daytime phone number; (2) the application number, TNRCC docket number or other recognizable reference to the application; (3) the statement I/we request an evidentiary public hearing; (4) a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; and (5) a
Requests for a public hearing or questions concerning procedures should be submitted in writing to the Chief Clerk’s Office, Park 35 TNRCC Complex, Building F, Room 1101, Texas Natural Resource Conservation Commission, Mail Code 105, P.O. Box 13087, Austin, Texas 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

TRD-9803133
Eugenia K. Brumm, Ph.D.
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: March 4, 1998

Attached are Notices of Applications for waste disposal/discharge permits issued during the period of February 13, 1998 through February 20, 1998.

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of the notice.

To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; (5) the location of your property relative to the applicant’s operations; and (6) your proposed adjustments to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, type of application/new permit, amendment, or renewal and permit number.

TOWN OF BAYSIDE, P.O. Box 194, Bayside, Texas 78340-0194, the Bayside Water Reclamation Facility will be located between Autry Road and Vega Road approximately 1.1 miles southwest of the intersection of 3rd Street and State Route 136 in Refugio County, Texas, new permit, Permit Number 13892-001.

BEECHWOOD WATER SUPPLY CORPORATION, H.C. 52, Box 763, Hemphill, Texas 75948, the Beechwood Water Sewer Plant Wastewater Treatment Facilities, the plant site is located on the west shoreline of Toledo Bend Reservoir, approximately five miles east of the intersection of State Highway 87 and Farm-to-Market Road 3315 in Sabine County, Texas, renewal, Permit Number 11423-001.

BEN WHEELER WATER SUPPLY CORPORATION, P.O. Box 104, Ben Wheeler, Texas 75754, the Plant Number 3/Water Well Number 4 Water Treatment Facilities, the plant site is located approximately 400 feet north of the intersection of County Road 4517 and Farm-to-Market Road 1995 and approximately 1.9 miles southwest of the intersection of Interstate Highway 20 and Farm-to-Market Road 314 in Van Zandt County, Texas, new permit, Permit Number 13905-001.

COMMUNITY ESTATES, INC., P.O. Box 633000, Nacogdoches, Texas 75961, the wastewater treatment facility will be located on Farm-to-Market Road 2259, approximately 2.5 miles northwest of the intersection of Farm-to-Market Road 226 and Farm-to-Market Road 2259 and 3.2 miles south-southwest of the intersection of Farm-to-Market Road 226 and State Highway 21 in Nacogdoches County, Texas, new permit, Permit Number 13903-001.

COVINGTON CITY OF, P.O. Box 86, Covington, Texas 77663, the wastewater treatment facilities, the plant site is located approximately 800 feet south and 250 west of the intersection of Weir Avenue and State Highway 171 in Hill County, Texas, renewal, Permit Number 12279-001.

FLATONIA CITY OF, P.O. Box 375, Flatonia, Texas 78941-0375, the wastewater treatment plant is located at 341 East I-10 Frontage Road approximately 500 feet north of Interstate Highway 10 and 1.300 feet east of State Highway 95 on the north side of the City of Flatonia in Fayette County, Texas, major amendment, Permit Number 10101-001.

HERMOSA OFFICE PARK P.U.D. OWNERS ASSOCIATION, INC., 11910 Greenville Avenue, Suite 500, Dallas, Texas 75243-9331, the wastewater treatment facility is located approximately 550 feet south of Lake Austin and approximately 200 feet west of the southbound land of Loop 360 (Capital of Texas Hwy) in Travis County, Texas, new permit, Permit Number 13938-001.

LIBERTY-DANVILLE FRESH WATER SUPPLY DISTRICT Number 2, 105 McKinnon Drive, Kilgore, Texas 75662, the wastewater treatment plant site is located approximately four miles northeast of the City of Kilgore, approximately 1.1 miles east of the intersection of Interstate Highway 20 and U.S. Highway 259 in Gregg County, Texas, renewal, Permit Number 11833-001.

MONT BELVIEU CITY OF, P.O. Box 1048, Mont Belvieu, Texas 77580, the Cotton Bayou Wastewater Treatment Facilities, the plant site is located approximately 1.4 miles north of the Interstate Highway 10 and 0.6 mile east of Eagle Drive on the east side of Mont Belvieu in Chambers County, Texas, renewal, Permit Number 11030-001.

PROTESTANT EPISCOPAL CHURCH COUNCIL OF THE DIOCESE OF TEXAS, Route 1 Box 426, Navasota, Texas 77868, the Camp Allen Wastewater Treatment Facilities are located approximately 1,500 feet east of Farm-to-Market Road 362 and approximately 2,000 feet north of the Weller-Grimes county line in Grimes County, Texas, renewal, Permit Number 11462-001.

RHOME CITY OF, P.O. Box 228, Rhome, Texas 76078, the wastewater treatment plant site is located on Quail Ridge approximately 750 feet west and 1600 feet north of the intersection of the west bound lands of State Highway 114 and the Burlington Northern Railroad in Wise County, Texas, renewal, Permit Number 10701-001.

ROBINSON CITY OF, 111 West Lyndale, Robinson, Texas 76706, the South Plant Wastewater Treatment Facilities are located adjacent to Crow Creek, approximately 2,000 feet southwest of the intersection of Old Robinson Road and U.S. Highway 77 in the City of Robinson in McLennan County, Texas, renewal, Permit Number 10780-003.

SOUTHWEST SHIPYARD, L.P., 18310 Market Street, Channelview, Texas 77530, a facility that cleans, repairs and steams barges, the plant site is located at 18310 Market Street Road, Harris County, Texas, new permit, Permit Number 02605.

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of the notice. To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; (5) the location of your property relative to the applicant’s operations; and (6) your proposed adjustments to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TN RCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, type of application—new permit, amendment, or renewal and permit number.

AMERADA HESS CORPORATION, P.O. Box 52, Galena Park, Texas 77547, a petroleum products bulk storage terminal, the plant site is located at 15001 Moore Road in the community of Channelview, Harris County, Texas, renewal, Permit Number 02568.

BAILEY CITY OF, P.O. Box 215, Bailey, Texas 75413, the wastewater treatment plant is located approximately 900 feet west of Farm-to-Market Road 816 and 3,000 feet southwest of the intersection of Farm-to-Market Road 816 and State Highway 11 in Fannin County, Texas, renewal, Permit Number 13584-001.

CENTERVILLE CITY OF, P.O. Box 279, Centerville, Texas 75833, the wastewater treatment plant is located immediately south of State Highway 7 and approximately 1,700 feet east of U.S. Highway 75 in the City of Centerville in Leon County, Texas, renewal, Permit Number 10147-01.

HERMOSA OFFICE PARK P.U.D. OWNERS ASSOCIATION, INC., 11910 Greenville Avenue, Suite 500, Dallas, Texas 75243-9351, the wastewater treatment facility is located approximately 550 feet south of Lake Austin and approximately 200 feet west of the southbound lane of Loop 360 (Capital of Texas Hwy) in Travis County, Texas, new, Permit Number 13938-01.

HOUSTON INDUSTRIES INCORPORATED, P.O. Box 1700, Houston, Texas 77251, the Limestone Steam Electric Station is located adjacent to and west of Farm-to-Market Road 39, approximately 2.5 miles southeast of the City of Farrar, Limestone County, Texas, renewal, Permit Number 02430.

HOUSTON SOLVENTS AND CHEMICALS COMPANY, INC., P.O. Box 41065, Houston, Texas 77241-1065, a bulk storage terminal for petroleum products and chemicals, the plant site is located at 11235 FM 529, approximately 0.5 miles southwest of the intersection of U.S. Highway 290 and FM 529 near the City of Jersey Village, Harris County, Texas, renewal, Permit Number 02449.

IBP, INC., 1810 North Meyer Street, Sealy, Texas 77474, a beef slaughterhouse, meat packing, and hide curing plant, the plant site is located on Highway 36, approximately one-quarter mile north of the intersection of FM 2187 and Highway 36, approximately 1.25 miles north of the City of Sealy, Austin County, Texas, renewal, Permit Number 02824.

KELLY LANE UTILITY COMPANY, 205 East 43rd Street, Austin, Texas 78751, the Kelly Lane Wastewater Treatment Facilities, the plant site is located approximately 2,500 feet east of Farm-to-Market Road 685, and approximately 1,600 feet north of Kelly Lane in Travis County, Texas, renewal, Permit Number 13219-001.

LA GLORIA OIL AND GAS COMPANY, P.O. Box 840, Tyler, Texas 75710, a petroleum refinery, the plant site is located at 1702 East Commerce Street, approximately 0.6 miles west of the intersection of East Commerce Street and State Loop 323 in the City of Tyler, Smith County, Texas, renewal, Permit Number 01590.

LIVINGSTON CITY OF, 200 West Church Street, Livingston, Texas 77351, the wastewater treatment plant site is located approximately 3,200 feet north of the intersection of U.S. Highway 59 and State Highway Loop 90, approximately one mile southeast of the intersection of U.S. Highway 190 and U.S. Highway 59 in Polk County, Texas, renewal, Permit Number 10208-001.

NORTH TEXAS MUNICIPAL WATER DISTRICT, P.O. Box 2408, Wylie, Texas 75098, the Floyd Branch Regional Wastewater Treatment Facilities are located approximately 2,310 feet southeast of the intersection of Spring Valley Road and State Highway 75 in the City of Richardson in Dallas County, Texas, renewal, Permit Number 10257-001.

PAT INGRAM, 211 Windmill Road North, Weatherford, Texas 76086, the Windmill Mobile Home Park Wastewater Treatment Plant, the plant site is located approximately 1.2 miles north-east of the intersection of Interstate Highway 20 and Loop 312 in Parker County, Texas, new, Permit Number 13895-001.

PHELPS DODGE REFINING CORPORATION, P.O. Box 20001, El Paso, Texas 79998, the copper refinery plant site is located at 6999 North Loop Road, approximately 900 feet east of the intersection of Trowbridge Drive and North Loop Road in the City of El Paso, El Paso County, Texas, major amendment, Permit Number 00461.
The TNRCC will consider any written comments received and the public comment period closes, which in this case is April 11, 1998. Proposed orders and the opportunity to comment is published in the TNRCC pursuant to the Texas Water Code, §7.075, this notice of the respect to Agreed Orders entered into by the executive director of the entity fails to request a hearing on the matter within 20 days.

The Texas Natural Resource Conservation Commission (TNRCC or the entity) Staff is providing an opportunity for written public comment and/or the comment procedure at the listed phone numbers; however, comments on the Default Orders should be submitted 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 April 11, 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 Orders and/or the comment procedure at the listed phone numbers; however, comments on the Default Orders should be submitted to the TNRCC in writing.

(1) COMPANY: John Allen Harris doing business as Spring Lake Mobile Home Park; DOCKET NUMBER: 96-1710-PWS-E and 97-0062-MWD; ACCOUNT NUMBER: 2120028; LOCATION: Tyler, Smith County, Texas; TYPE OF FACILITY: public water system and wastewater treatment plant; RULES VIOLATED: 30 TAC §290.106 and the Texas Health and Safety Code, §341.033(d) by failing to submit water samples for bacteriological analysis for nine monthly sampling periods; 30 TAC §319.7(d), Texas Water Code, §26.121, and TNRCC Permit Number 13712-001 by failing to submit monthly effluent reports; 30 TAC §325.2, Texas Water Code, §26.0301, and TNRCC Permit Number 13712-001 by failing to employ a wastewater treatment plant operator holding a valid certificate of competency; and Texas Water Code, §26.121 and TNRCC Permit Number 13712-001 by allowing the daily average total suspended solids values to substantially exceed the permit limit; PENALTY: $9,330; STAFF ATTORNEY: Booker Harrison, Litigation Support Division, MC 175, (512) 239-4113; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: Kees Vanderlei; DOCKET NUMBER: 97-0114-AGR-E; ACCOUNT NUMBER: 03158; LOCATION: Stephenville, Erath County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: TNRCC Permit Number 03158 Special Provision Number 19 by failing to maintain required storm water capacity in the waste storage pond and failing to have permanent pond markers installed; TNRCC Permit Number 03158, Paragraph IV by milking more than the permitted number of 550 head at the Facility; TNRCC Permit Number 03158, Special Provision Number 9 by failing to prevent discharge by inadequately maintaining the Facility’s berms, pond dams, and other waterways; TNRCC Permit Number 03158, Special Provision Number 12 by failing to maintain and provide adequate waste and wastewater disposal records; PENALTY: $18,160; STAFF ATTORNEY: Tracy Harrison, Litigation Support Division, MC 175, (512) 239-1736; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(3) COMPANY: Leslie Skalsky; DOCKET NUMBER: 97-0258-MSW-E; ACCOUNT NUMBER: 7025; LOCATION: New Ulm, Colorado County, Texas; TYPE OF FACILITY: property; RULES VIOLATED: 30 TAC §330.889 by failing to meet the requirement that tires used for beneficial use be staked or tied down to a permanent natural or man-made object with a one-inch diameter hole drilled into each tire at its lowest point to provided drainage and prevent
the breeding of vectors; 30 TAC §330.889(e) by failing to meet the requirement that all tires in excess of those actually required for an erosion control project be removed from the site; 30 TAC §335.4 and Texas Water Code, §26.121 by causing, suffering, allowing, or permitting the authorized discharge of municipal waste into or adjacent to water in the state without obtaining specific authorization for such a discharge from the commission; PENALTY: $960; STAFF ATTORNEY: Barbara Lazard, Litigation Support Division, MC 175, (512) 239-0674; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4)COMPANY: Richard D. Davis, LLP; DOCKET NUMBER: 96-0361-PST-E; FACILITY NUMBER: 49895; LOCATION: Waller, Waller County, Texas; TYPE OF FACILITY: underground and above ground storage tanks; RULES VIOLATED: 30 TAC §334.6(b)(2) by failing to provide the executive director with written notice at least 30 days prior to removal of a underground storage tank; 30 TAC §334.7(a)(1) by failing to register a underground storage tank in existence after September 1, 1987; 30 TAC §334.55(a)(3) by failing to have underground storage tanks removed by qualified personnel; 30 TAC §334.55(a)(6) by failing to submit a release determination report for the removal of a underground storage tank system; 30 TAC §334.55(b)(1) by failing to properly empty, clean, and purge a underground storage tank of vapors prior to removal; 30 TAC §334.55(b)(4)(A) by failing to transport a tank from the removal site within 24 hours of removal; 30 TAC §334.55(b)(4)(C) by failing to ensure that the on-site storage of removed tanks for more than 24 hours is in a locked, secured fenced, or similarly restricted area; 30 TAC §334.55(b)(4)(D) by failing to legibly and permanently label (in letters at least two inches high) a removed tank no later than 24 hours after removal with the name of the former contents, a flammability warning, and a warning that the tank is unsuitable for storage of drinking water; 30 TAC §334.(b)(4)(E) by failing to maintain the residual vapor levels in a removed tank of the underground storage Facility at a non-explosive and non-ignitable level; 30 TAC §334.6(b)(2) by failing to pay outstanding underground storage tank fees; PENALTY: $1,400; STAFF ATTORNEY: Walter Ehresman, Litigation Support Division, MC 175, (512) 239-0573; REGIONAL OFFICE: 4650 50th Street, Suite 600, Lubbock, Texas 79414-3509, (806) 796-7092.

(2)COMPANY: John Font and Body; DOCKET NUMBER: 97-0755-AIR-E; ACCOUNT NUMBER: TA-2966-W; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: automotive paint and body shop; RULE VIOLATED: 30 TAC §116.110(a), Agreed Order Number 96-1174-AIR-E, Section IV, Paragraph 2(f), and the Texas Health and Safety Code, §382.085(b) and §382.0518(a) by failing to obtain a permit or satisfy the conditions for an exemption prior to constructing and operating a new facility which may emit air contaminants into the air; 30 TAC §115.422(1)(A), Agreed Order Number 96-1174-AIR-E, Section IV, Paragraph 2(a), and the Texas Clean Air Act, §382.085(b) by failing to maintain records of the quantity and type of each coating and solvent consumed during the specified averaging period and in sufficient detail to calculate the applicable weighted average of volatile organic compound for all coatings; 30 TAC §382.085(b)(7), Agreed Order Number 96-1174-AIR-E, Section IV, Paragraph 2(d), and the Texas Clean Air Act, §382.085(b) by failing to maintain records for at least two years and make them available upon request by representatives of the TNRCC, United States Environmental Protection Agency, or local air pollution control agency; PENALTY: $750; STAFF ATTORNEY: Thomas Corwin, Litigation Support Division, MC 175, (512) 239-5915; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

IN ADDITION March 13, 1998 23 TexReg 2893
(4) COMPANY: Safe Tire Disposal; DOCKET NUMBER: 96-0058-MSW-E; ACCOUNT NUMBER: 44109, 79507, 44104, 79504, and 29565; LOCATION: Liberty and Ellis Counties, Texas; TYPE OF FACILITY: operates whole used or scrap tire transporting, processing, and storage facilities; RULES VIOLATED: 30 TAC §335.112(a) by failing to maintain a minimum separation of 20 feet between outside tire and tire shred piles; 30 TAC §335.112(a) by failing to have proper identification affixed on both sides and the rear of vehicles or trailers used to transport whole used or scrap tires or shredded tire pieces; 30 TAC §111.101 by causing unauthorized outdoor burning within the State of Texas; 30 TAC §101.4 and §382.085(a) and (b) by receiving reports from the area complaining of nuisance conditions; PENALTY: $930; STAFF ATTORNEY: Tracy Harrison, Litigation Support Division, MC 175, (512) 239-1864; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500 and 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(5) COMPANY: Southern Waste Management Company, Southern Waste Management Co., Inc., Gal-Tex Investment Co., Inc., and John S. “Jack” Regan, Jr.; DOCKET NUMBER: 96-1669-IHW-E; ACCOUNT NUMBER: 40383; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: hazardous waste transport and transfer facility; RULES VIOLATED: 30 TAC §335.2 and §335.43, 40 Code of Federal Regulations (CFR) §270.1, and the August 20, 1986, Texas Water Commission Order, Provision Number 2, by storing and/or treating hazardous waste without a permit or authorization and by storing hazardous waste for longer than ten days; 30 TAC §335.112(a)(1) and 40 CFR §265.16 by failing to maintain documentation regarding job titles and job descriptions of employees involved in the management of hazardous waste, and the description of the type and amount of training for each position, and by failing to maintain a hazardous waste training program for these employees; 30 TAC §335.112(a)(2) and 40 CFR §265.35 by failing to maintain adequate aisle space in its storage building housing drums of hazardous waste, so as to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area in an emergency; 30 TAC §335.112(a)(3) and 40 CFR §265.52(d) by failing to include the names, addresses, and phone numbers of all persons qualified to act as emergency coordinators in the Facility’s contingency plan; 30 TAC §335.112(a)(8) and 40 CFR §265.171 by failing to transfer hazardous waste from containers that were not in good condition to containers that were in good condition and/or by failing to manage the waste in some other way that complied with the requirements of 40 CFR Part 265; 30 TAC §335.112(a)(8) and 40 CFR §265.173 by failing to keep containers holding hazardous wastes closed during storage; 30 TAC §335.112(a)(8) and 40 CFR §265.174 by failing to inspect areas where containers were stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors; the August 20, 1986, Texas Water Commission Order, Provision Number 3, by storing ignitable and reactive wastes within 50 feet of its property line; PENALTY: $197,960; STAFF ATTORNEY: Barbara Lazard, Litigation Support Division, MC 175, (512) 239-0674; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(6) COMPANY: T.C. Tubb, Dee Anderson, and Bill Davis dba Westgate Mobile Home Park; DOCKET NUMBER: 96-0679-PWS-E; ACCOUNT NUMBER: 1650047; LOCATION: Midland County, Texas; TYPE OF FACILITY: public drinking water system; RULES VIOLATED: 30 TAC §290.120(c)(5) and Texas Health and Safety Code, §341.031 by failing to submit water samples for the lead and copper analysis for the sampling periods of July 1994 through December 1994 and January 1995 through June 1995; 30 TAC §290.103(1) by exceeding the maximum contaminant level for nitrates; PENALTY: $930; STAFF ATTORNEY: Tracy Harrison, Litigation Support Division, MC 175, (512) 239-4113; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5421, (915) 570-1359.

TRD-9803057
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: March 3, 1998

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 April 12, 1998. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withdraw 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, the Texas Health and Safety Code (THSC), and/or 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 April 12, 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.

(2) COMPANY: Centerline Water Supply Corporation; DOCKET NUMBER: 97-1001-PWS-E; IDENTIFIER: Public Water Supply Number 0260012; LOCATION: Somerville, Burleson County, Texas; TYPE OF FACILITY: public drinking water; RULE VIOLATED: 30 TAC §290.44(c) and (d), by failing to provide the minimum water line size for the distribution system and by failing to provide the minimum pressure of 35 pounds per square inch at all points within the distribution system; 30 TAC §290.106(a), by failing to collect the bacteriological samples for the facility; and 30 TAC §291.76 and the Code, §5.235, by failing to pay the regulatory assessment fees; PENALTY: $1,075; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 788-9634.

(3) COMPANY: E. I. DuPont De Nemours and Company, Incorporated; DOCKET NUMBER: 97-0761-AIR-E; IDENTIFIER: Account Number EE-0008-P; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.20, 40 Code of Federal Regulations (CFR) §60.692-3(a)(1), and the Act, §382.085(b), by failing to route the vapor from skimm oil tank Number 4023 to a control device; 30 TAC §101.20, 40 CFR §60.692-5(e)(1), (3), and (5), and the Act, §385.005(b), by failing to maintain above background readings of less than 500 parts per million (ppm) on five components and by failing to have a flow indicator installed on the roof vent stream from the American Petroleum Institute Oil/Water Separator going to a control device and failing to apply for an alternate method of control; 30 TAC §101.20, 40 CFR §60.698(b)(1), and the Act, §382.085(b), by failing to submit initial startup certification that the equipment necessary to comply has been installed and that the required initial inspections or tests had been carried out in accordance with standards; and 30 TAC §101.20, 40 CFR §60.698(c), and the Act, §382.085(b), by failing to submit the initial report that summarizes components that were found leaking above the 500 ppm limit; PENALTY: $69,500; ENFORCEMENT COORDINATOR: Sabelyn Pussman, (512) 239-6061; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3509, (806) 796-7092.

(4) COMPANY: Frio Water, Incorporated; DOCKET NUMBER: 97-0558-PWS-E; IDENTIFIER: Public Water Supply Number 0590010; LOCATION: Hereford, Deaf Smith County, Texas; TYPE OF FACILITY: public drinking water; RULE VIOLATED: 30 TAC §290.120(c)(5) and the THSC §341.031, by failing to submit water samples from the facility for lead and copper analysis; and 30 TAC §291.76 and the Code, §13.451, by failing to pay the regulatory assessment fee; PENALTY: $630; ENFORCEMENT COORDINATOR: Sabelyn Pussman, (512) 239-6061; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4953, (806) 353-9251.

(5) COMPANY: Flomot Water Supply Corporation; DOCKET NUMBER: 97-0228-PWS-E; IDENTIFIER: Public Water Supply Number 1730003; LOCATION: Flomot, Motley County, Texas; TYPE OF FACILITY: public drinking water; RULE VIOLATED: 30 TAC §290.41(c)(3)(N) and §290.41(e)(3)(E), by failing to provide a flow measuring device on the well to measure both the raw water supplied to the plant and the treated water leaving the plant; 30 TAC §290.43(e), by failing to enclose the water storage tanks and press-ure maintenance facilities with an intruder-resistant fence; 30 TAC §290.46(e), by failing to place the facility under the direct supervision of a certified water works operator; 30 TAC §290.46(f)(1)(A), by failing to operate chlorination facilities so as to maintain a minimum free chlorine residual of two milligrams per liter throughout the entire distribution system; 30 TAC §290.46(f)(2), by failing to provide a chlorine test kit which uses the diethyl-p-phenylenedia mine method; 30 TAC §290.46(m), (n), and (w), by failing to properly maintain the water system by improving the general appearance of all plant facilities, by failing to develop a map of the distribution system, and by failing to post a legible community water system sign; 30 TAC §290.106(a)(1), by failing to prepare a written sample siting plan for the collection of routine bacteriological samples; 30 TAC §290.106(a), by failing to collect and submit for analysis to a Texas Department of Health bacteriological laboratory at least one sample of water; 30 TAC §290.41(c)(3)(K) and (O), by failing to provide the well with a screened casing vent and by failing to protect the well with an intruder-resistant fence or ventilated well house; 30 TAC §290.43(c)(3), by failing to seal the wellhead; 30 TAC §290.103(8), by failing to notify the customers on a quarterly basis and in writing that the nitrate concentration of the water exceeds the maximum contaminant level of ten milligrams per liter; 30 TAC §290.120(c)(5) and the THSC §341.031, by failing to submit water samples from the facility for lead and copper analysis; and 30 TAC §291.76 and the Code, §13.451, by failing to pay the regulatory assessment fee; PENALTY: $11,823; ENFORCEMENT COORDINATOR: Sabelyn Pussman, (512) 239-6061; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3509, (806) 796-7092.

(6) COMPANY: Frio Water, Incorporated; DOCKET NUMBER: 97-0708-PWS-E; IDENTIFIER: Public Water Supply Number 0590010; LOCATION: Hereford, Deaf Smith County, Texas; TYPE OF FACILITY: public drinking water; RULE VIOLATED: 30 TAC §290.120(c)(5) and the THSC §341.031, for failing to submit water samples from said public water system for copper and lead analysis; and 30 TAC §291.76 and the Code, §5.235, for failing to pay the regulatory assessment fees; PENALTY: $630; ENFORCEMENT COORDINATOR: Sabelyn Pussman, (512) 239-6061; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4953, (806) 353-9251.

(7) COMPANY: The Hunter Ministries City of Light; DOCKET NUMBER: 97-0558-PWS-E; IDENTIFIER: Public Water Supply Number 1700425; LOCATION: Kingswood, Montgomery County, Texas; TYPE OF FACILITY: public drinking water system; RULE VIOLATED: 30 TAC §290.120(c)(5) and the THSC §341.031, by failing to submit a water sample for lead and copper analysis; 30 TAC §290.51 and the THSC §341.041, by failing to pay the public health service fees; and 30 TAC §291.76 and the Code, §5.235, by failing to pay the regulatory assessment fees; PENALTY: $630; ENFORCEMENT COORDINATOR: Tom Napier, (512) 239-6063; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Howell Butler dba Playcation Estates; DOCKET NUMBER: 96-1559-PWS-E; IDENTIFIER: Public Water Supply Number 2020065; LOCATION: near Karnack, Sabine County, Texas; TYPE OF FACILITY: public drinking water; RULE VIOLATED: 30 TAC §290.46(e), by failing to assure that the water system is at all times under direct supervision of a competent water works
Texas Natural Resource Conservation Commission
Filed: March 3, 1998

Notice Of Receipt Of Application And Declaration Of Administrative Completeness For Municipal Solid Waste Management Facility
For The Period of February 23, 1998 to February 27, 1998

APPLICATION BY BFI WASTE SYSTEMS OF NORTH AMERICA, INC., Proposed Permit Amendment Number MSW1410-C, to authorize an amendment for horizontal expansion of an existing Type I Municipal Solid Waste Landfill for the disposal of municipal solid waste. The facility will cover approximately 929.662 acres of land and is to receive approximately 4,626 tons of solid waste per day. The proposed site is in Bexar County, Texas, east of San Antonio, just south of Interstate Highway 10 and just west of FM 1516.

If you wish to request a public hearing, you must submit your request in writing. You must state (1) your name, mailing address and daytime phone number; (2) the application number, TNRCC docket number or other recognizable reference to the application; (3) the statement I/we request an evidentiary public hearing; (4) a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; and (5) a description of the location of your property relative to the applicant’s operations.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the Chief Clerk’s Office, P.O. Box 13087, Austin, Texas 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Eugenia K. Brumm, Ph.D.
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: March 4, 1998

Provisionally-Issued Temporary Permits
Listed below are permits issued during the period of February 25, 1998

Application Number TA-7921 by Trace Geophysical for diversion of 4 acre-feet in a 6-month period for mining (3D) seismic use. Water may be diverted from 5 Diversion Points, in the San Antonio River Basin, east of Kenedy, Karnes County, Texas.

Application Number TA-7923 by Water Partners for diversion of ten acre-feet in a 1-year period for mining (oil & gas well drilling) use. Water may be diverted from anywhere in the Rio Grande Watershed in Webb and Zapata Counties, Texas.

Application Number TA-7924 by Nueces County Dept. Of Public Works for diversion of one acre-foot in a 1-year period for industrial (roadway construction) beneficial purpose. Water may be diverted from 6 diversion points in the Nueces River Basin and the Nueces-Rio Grande Coastal Basin in Nueces County, Texas.
Application Number TA-7925 by Big Creek Construction for diversion of five acre-feet in a 1-year period for industrial (roadway construction) use. Water may be diverted from Nelson Creek, Trinity River Basin, approximately 8.5 miles northwest of Huntsville, Walker County, Texas at the crossing of I.H. 45 and Nelson Creek.

Application Number TA-7926 by H B Zachry Company for diversion of nine acre-feet in a 1-year period for industrial (roadway construction) use. Water may be diverted from San Diego Creek, Nueces-Rio Grande Coastal Basin, approximately 1 mile northwest of Alice, Jim Wells County, Texas at the crossing of U.S. Hwy 281 and San Diego Creek.

Application Number TA-7927 by Copano Pipeline/Upper Gulf Coast, L.P. for diversion of one acre-foot in a 1-year period for industrial (hydrostatic testing) use. Water may be diverted from Harmon Creek and Nelson Creek, Trinity River Basin, approximately seven miles north of Huntsville, Walker County, Texas at the crossing of the pipeline easement and Harmon Creek and at the crossing of the pipeline easement and Nelson Creek.

The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permits listed above and who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be canceled without notice and hearing. No further diversions may be made pending a full hearing as provided in Section 295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711. Telephone (512) 239-4433. Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Water Rights Permitting Section, 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, Water Rights Permitting Section, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-3300.

TRD-9802794
Eugenia K. Brumm, Ph.D.,
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: February 25, 1998

Public Notice

The Texas Natural Resource Conservation Commission (TNRCC) announces the availability of its draft list of impaired state water bodies, and its proposed statewide schedule for protective or remedial action. The TNRCC specifically requests written comments regarding impaired water bodies in the following Texas river basins: Trinity River basin, San Jacinto River basin, Neches-Trinity Coastal basin, Trinity-San Jacinto Coastal basin, San Jacinto-Brazos Coastal basin.

Any information or comments received concerning all other areas of the state will be considered by the TNCC in the development of water quality monitoring plans to support future assessments.

The list of impaired water bodies is developed and promulgated pursuant to the requirements of “303(d) of the federal Clean Water Act (CWA). The list is used to select water bodies for which total maximum daily load (TMDL) analyses and management actions will be planned during the next ten years. A copy of the final draft list may be obtained, upon written or verbal request, from Louanne Jones, Texas Natural Resource Conservation Commission, Water Quality Division, MC-150, P.O. Box 13087, Austin, Texas 78711-3087, e-mail lojones@tnrcc.state.tx.us, or telephone number (512) 239-2310. The draft list and schedule are also available on the TNRCC’s internet site at http://www.tnrcc.state.tx.us/water/quality/data/wmt/ tmld.html.

Comments received could alter the selection of targeted segments or change segment priority levels. Local residents, interest groups, or other entities may have data documenting specific problems, programs, or conditions that are unknown to TNRCC but which should be considered to finalize the list. The draft list which is now available reflects changes to the initial draft list distributed in January 1998. These changes reflect the TNRCC’s response to a variety of comments received during the initial public comment period. Specific comments submitted in response to the January draft list need not be resubmitted.

Comments on the final draft 1998 CWA 303(d) List and the statewide schedule for corrective action shall be provided in written form and sent to Patrick Roques, Texas Natural Resource Conservation Commission, Water Quality Division, MC-150, P.O. Box 13087, Austin, Texas 78711-3087. For overnight mail packages, send to Patrick Roques, Texas Natural Resource Conservation Commission, Water Quality Division, 12100 Park 35 Circle, Building F, Austin, Texas 78753. Comments may also be faxed to Patrick Roques at (512) 239-4420, or e-mailed to proques@tnrcc.state.tx.us. Comments will be accepted for 31 days after publication of this notice. Information must be submitted in writing, telefax or by e-mail and cannot be accepted by phone.

TRD-9803135
Eugenia K. Brumm, Ph.D.
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: March 4, 1998

Texas Department of Protective and Regulatory Services

Request for Proposal-Independent Assessment and Assignment of Children Entering PRS Care in the Arlington Region

The Texas Department of Protective and Regulatory Services announces a request for proposal (RFP) for the independent assessment and assignment of children entering PRS care in the Arlington region.

Brief Description of Pilot: The Department wishes to purchase independent assessment services for all children entering PRS care in the Arlington region.

Eligible Bidders: Eligible bidders may be an individual, corporation, professional association or partnership. Services under any contract awarded as a result of this RFP may be provided directly or through subcontractor(s). Historically underutilized businesses, minority

IN ADDITION March 13, 1998 23 TexReg 2897
businesses, women’s enterprises, and small businesses are encouraged to respond.

Closing Date: Responses to the RFP will be accepted until May 1, 1998, 4:00 p.m., Central Daylight Standard Time. Responses submitted after that time will not be accepted.

Offerers’ Conference: An offerers’ conference to assist potential bidders in the bidding process will be held by PRS on March 27, 1998, at 10:00 a.m. - Noon, CST; at the Arlington Human Services Center, conference room A, 401 W. Sanford, Arlington, Texas.

Written Questions: Written questions regarding the RFP may be mailed to PRS until March 31, 1998, 4:00 p.m., Central Standard Time. Questions will not be accepted after this date. Written questions will be answered in writing by PRS no later than April 10, 1998.

Selection and Evaluation: Evaluation of the RFP responses by a team of representatives from PRS and other state agencies will begin on May 4, 1998. A contract will be awarded on June 1, 1998.

RFP Packets: On the release date, March 20, 1998, the RFP will be mailed only to those potential bidders who have requested that PRS send them a copy. To request that the Department send you a copy of the RFP on the release date, notify the contact person identified below.


Contact Person: Responses must be submitted to: Cindy Bourland, mail code E-620; Texas Department of Protective and Regulatory Services; mailing address: P. O. Box 149030; Austin, Texas 78714-9030; street address: 701 West 51st Street (Winters Bldg., Sixth Floor, East Tower, Section D); Austin, Texas 78751; phone: 512/438-4462; fax: 512/438-3394.

TRD-9803131
C. Ed Davis
Deputy Clerk
Texas Department of Insurance
Filed: March 4, 1998

Second Meeting Open

The staff of the Texas Department of Protective and Regulatory Services (PRS) will conduct a second meeting open to the public to receive input in the development of rules governing Chapter 42, Human Resources Code, 42.078, Administrative Penalties. This meeting is primarily for Licensed Residential Child-care Facilities and Child Placing Agencies. A meeting was held on February 24, 1998, for Day Care providers. Day care providers are welcomed to attend this second meeting and are encouraged to give comment if they have not already.

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 public comment. The meeting will be held on Monday, March 23, 1998, in the Board Room on the first floor of the East Tower of the John H. Winters Center, 701 West 51st Street, Austin, Texas 78757. The meeting will begin at 1:30 p.m. and close at 4:30 p.m.

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 31, 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 March 20, 1998, so that appropriate arrangements can be made.

TRD-9803090
C. Ed Davis
Deputy Commissioner for Legal Services
Texas Department of Protective and Regulatory Services
Filed: March 3, 1998

Public Utility Commission of Texas

Notice of Application

NOTICE OF APPLICATION FOR DESIGNATION AS ELIGIBLE TELECOMMUNICATIONS PROVIDERS TO RECEIVE FUNDS FROM THE TEXAS UNIVERSAL SERVICE FUND FILED BY 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 filing with the Public Utility Commission of Texas, as of March 2, 1998, pursuant to P.U.C. Substantive Rule §23.147(f)(1), 59 applications for designation as an eligible telecommunications provider to receive funds from the Texas universal service Fund filed by local exchange carriers that are certificate of operating authority (COA) holders seeking support under the Texas High Cost Universal Service Plan (THCUSP), and local exchange carriers that are COA 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 Public Utility Commission 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 Public Utility Commission Substantive Rule §23.134, relating to the Small and Rural Incumbent Local Exchange Carrier (ILEC) Universal Service Plan, Pursuant to Public Utility Commission Substantive Rule §23.147. Project Number 18768.

The Application: Designation as an eligible telecommunications provider qualifies the designee to apply for state universal service funds under Public Utility Commission Substantive Rule §23.133, relating to the Texas High Cost Universal Service Plan (THCUSP), and $23.134, relating to the Small and Rural Incumbent Local Exchange Carrier (ILEC) Universal Service Plan.

The following telecommunications carriers have filed in this project, or about March 2, 1998, applications for designation as an eligible telecommunications provider: Alenco Communications, Inc.; Big Bend Telephone Company, Inc.; Blossom Telephone Company, Inc.; Border to Border Communications, Inc.; Brazoria Telephone Company; Brazos Telecommunications, Inc.; Brazos Telephone Cooperative, Inc.; Cameron Telephone Company; Cap Rock Telephone Cooperative, Inc.; Central Texas Telephone Cooperative, Inc.; Cen-
on or about March 2, 1998, applications for designation as an eligible telecommunications carriers that are certificate of convenience and necessity (CCN) holders seeking support under the Texas High Cost Universal Service Fund filed by local exchange operating authority (SPCOA) granted in SPCOA Certificate Number 60010. Applicant intends to change its name only

The Application: In Docket Number 18863, Garland Power and Light requests an amendment to its certificated service area boundary (service area exception) within Dallas County, Docket Number 18863 before the Public Utility Commission of Texas.

The Application: In Docket Number 18863, Garland Power and Light requests an amendment to its certificated service area boundary (service area exception) within Dallas County, Docket Number 18863 before the Public Utility Commission of Texas. Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission’s Office of Customer Protection at (512) 936-7120 within 15 days of this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. Interested persons wishing to provide commission staff with written comments or recommendations concerning the applications shall file the requisite number of copies with the commission filing clerk. The deadline for comment is April 2, 1998. All correspondence should refer to Project Number 18768.

TRD-9803145
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 4, 1998

Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on February 20, 1998, to amend a certificate of convenience and necessity pursuant to §§14.001, 32.001, 36.001, 37.051, and 37.054, 37.056, 37.057, and 37.058 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998) (PURA). A summary of the application follows.

Docket Title and Number: Application of Garland Power and Light to Amend Certificated Service Area Boundaries (Service Area Exception) within Dallas County, Docket Number 18863 before the Public Utility Commission of Texas.

The Application: In Docket Number 18863, Garland Power and Light requests an amendment to its certificated service area boundary (service area exception) with Texas Utilities Electric Company in order to provide three-phase electric service to the St. Gregorius Church being constructed in Garland, Texas, Dallas County.

The following telecommunications carriers have filed in this project, on or about March 2, 1998, applications for designation as an eligible telecommunications provider: Central Telephone Company of Texas, doing business as Sprint; GTE Southwest Incorporated; Southwestern Bell Telephone Company; and United Telephone Company of Texas, Inc., doing business as Sprint.

Persons with questions or comments about this project should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or telephone the commission’s Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. Interested persons wishing to provide commission staff with written comments or recommendations concerning the applications shall file the requisite number of copies with the commission filing clerk. The deadline for comment is April 2, 1998. All correspondence should refer to Project Number 18768.

TRD-9803145
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 4, 1998

Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on February 20, 1998, to amend a certificate of convenience and necessity pursuant to §§14.001, 32.001, 36.001, 37.051, and 37.054, 37.056, 37.057, and 37.058 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998) (PURA). A summary of the application follows.

Docket Title and Number: Application of Garland Power and Light to Amend Certificated Service Area Boundaries (Service Area Exception) within Dallas County, Docket Number 18863 before the Public Utility Commission of Texas.

The Application: In Docket Number 18863, Garland Power and Light requests an amendment to its certificated service area boundary (service area exception) within Dallas County, Docket Number 18863 before the Public Utility Commission of Texas.

The Application: In Docket Number 18863, Garland Power and Light requests an amendment to its certificated service area boundary (service area exception) within Dallas County, Docket Number 18863 before the Public Utility Commission of Texas.

The Application: In Docket Number 18863, Garland Power and Light requests an amendment to its certificated service area boundary (service area exception) within Dallas County, Docket Number 18863 before the Public Utility Commission of Texas.

TRD-9803145
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 4, 1998

Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on February 20, 1998, to amend a certificate of convenience and necessity pursuant to §§14.001, 32.001, 36.001, 37.051, and 37.054, 37.056, 37.057, and 37.058 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998) (PURA). A summary of the application follows.

Docket Title and Number: Application of Garland Power and Light to Amend Certificated Service Area Boundaries (Service Area Exception) within Dallas County, Docket Number 18863 before the Public Utility Commission of Texas.

The Application: In Docket Number 18863, Garland Power and Light requests an amendment to its certificated service area boundary (service area exception) within Dallas County, Docket Number 18863 before the Public Utility Commission of Texas.

The Application: In Docket Number 18863, Garland Power and Light requests an amendment to its certificated service area boundary (service area exception) within Dallas County, Docket Number 18863 before the Public Utility Commission of Texas.
from USA eXchange LLC, doing business as Omniprox Communications Group to Omniprox Communications Group, LLC.

The Application: Application of USA eXchange LLC, doing business as Omniprox Communications Group for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 18883.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than March 18, 1998. You may contact the PUC Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 18883.

TRD-9802890
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 3, 1998

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on February 27, 1998, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154-54.159 of the Public Utility Regulatory Act (PUA). A summary of the application follows.

Docket Title and Number: Application of Alternative Telephone Connections, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 18897 before the Public utility Commission of Texas.

Applicant intends to provide resold local exchange telephone services and general exchange services within the proposed service area.

Applicant’s proposed service area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission’s Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9803101
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 3, 1998

Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for a 5 station addition to the existing PLEXAR-Custom service for Abilene ISD in Abilene, Texas.

Tariff Title and Number: Application of Southwestern Bell Telephone Company for a 5 Station Addition to the Existing PLEXAR-Custom Service for Abilene ISD in Abilene, Texas Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 18866.

The Application: Southwestern Bell Telephone Company is requesting approval for a 5 station addition to the existing PLEXAR-Custom service for Abilene ISD in Abilene, Texas. The designated exchange for this service is the Abilene exchange, and the geographic market for this specific PLEXAR-Custom service is the Abilene 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-9802889
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 26, 1998

Notice of Second Workshop on Interconnection Rule

The Staff of the Public Utility Commission of Texas plans to hold a second workshop in Project Number 18758, to review commission Substantive Rule §23.97, relating to Interconnection, on March 25, 1998, 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 North Congress Avenue, Austin, Texas 78701. Discussion at the workshop will address parties’ written comments on the topics discussed at the March 2, 1998 workshop.

Persons who plan to attend the March 25 workshop should register with Sandra Hamlett at (512) 936-7239. If there are any questions, contact Nelson Parish at (512) 936-7257 or Meena Thomas at (512) 936-7344.

TRD-9803102
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 3, 1998

Public Notice of Interconnection Agreement

On February 24, 1998, United Telephone Company of Texas, Inc. doing business as Sprint, Central Telephone Company of Texas doing business as Sprint (collectively, Sprint) and NHS Communications Group, 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) (PUA). The joint application has been designated Docket Number 18874. 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 18874. 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 April 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 Public Utility Commission 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 18874.

TRD-9802978
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 27, 1998

On February 25, 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 §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) (PURPA). The joint application has been designated Docket Number 18881. The joint application and the underlying interconnection agreement are available for public inspection at the commission’s offices in Austin, Texas.

Pursuant to Public Utility Commission 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 18881. 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 27, 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 Public Utility Commission 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 18881.

TRD-9802980
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 27, 1998

On February 24, 1998, United Telephone Company of Texas, Inc., doing business as Sprint, Central Telephone Company of Texas doing business as Sprint (collectively, Sprint) and Winstar Wireless of Texas, 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 18875. 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 18875. 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 April 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 Public Utility Commission 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 18875.

TRD-9802979
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 27, 1998

On February 25, 1998, Go-Tel Incorporated 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 18884. 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 18884. 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 April 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 Public Utility Commission 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 18884.

TRD-9802981
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 27, 1998

On February 25, 1998, First Telecommunications Network 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 18885. 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 18885. 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 April 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 Public Utility Commission 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 18885.

TRD-9802982
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 27, 1998

On February 26, 1998, Conxus Network, 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 18888. 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 18888.
Descriptions of Provisions. The Research and Oversight Council will provide a random sample of injured workers who had a work-related injury in 1996, stratified by the injured worker’s impairment rating and the size of the employer. It should be noted that past experience has shown that approximately 15 to 20% of injured workers’ phone numbers may be missing and/or out of service. Thus, a methodology for locating these injured workers should be included in the proposal.

For the purposes of this request for proposals, the firm or institution administering the survey must agree to: 1) safeguard the confidential information given to them by the Research and Oversight Council for the purposes of this survey; and 2) safeguard the confidential information collected by the vendor in conjunction with this project. The confidential information given to the vendor by the Research and Oversight Council is governed by the confidentiality requirements of Chapter 402 of the Texas Labor Code.

The Research and Oversight Council will also provide a pre-tested survey instrument consisting of approximately 45-50 questions which will be used in the administration of the survey described in this proposal. No single respondent to this survey, however, will have to answer all 45-50 of those questions.

Specification for Deliverables. The Research and Oversight Council will have review and approval authority over all deliverables. All information generated will become the property of the Research and Oversight Council. To protect the state’s interest, all deliverables as well as databases, become the property of the Research and Oversight Council. The proposal submitted must demonstrate that the applicant is capable of performing, and willing to provide, all deliverables.

Project deliverables, at a minimum, will include:

a) Data generated from the completed surveys delivered on computer disk;
b) Response frequencies on all questionnaire items;
c) A brief (maximum of five pages) technical report detailing the methodology used and any major problems encountered in the administration of the survey. This might include any caveats or other relevant observations about the reliability of the data gathered from the survey.

All project deliverables are due on or before the end of the contract period.

Proposal Requirements. Respondents must submit a typewritten proposal on 8 1/2 by 11 inch plain white paper. All proposals and their accompanying attachments become the property of the Research and Oversight Council upon submission. Materials submitted will not be returned. Only attachments essential to the proposal should be submitted. To be considered, the following items must be included in the proposal:

a) an identification page listing the full legal name, the mailing and street address if different, title, and telephone number for the representative authorized to sign the contract and the same for the contact person;
b) a summary (maximum of seven pages) describing how the contractor proposes to provide the services described and requested in the previous sections of this proposal request entitled "Description of Services" and "Specification of Deliverables," including who will be responsible for carrying out each part of the project, the proposed approach (describing the methodology, activities and/or procedures to be used in administering the survey, including a brief description of any survey administration software used, automatic dialing capacity, number of interviewing stations, number of interviewers, survey lab
hours, bilingual capacity, and interviewer training guidelines, if any), and the general timelines within which the proposed project will be accomplished;

c) a detailed budget of all costs;
d) a description of the services, if any, that the contractor may require from the Research and Oversight Council and other state agencies;
e) the names of key staff to be used in this contract, their function and a complete resume; and
f) references, including client contact information from similar contracts and copies of similar work products, if available, that demonstrate experience and knowledge with project management and data collection.

Closing Date. The written proposal must be received by the Research and Oversight Council by 2:00 p.m. on March 27, 1998. Send proposals to June Karp, Executive Director, Research and Oversight Council on Workers’ Compensation, 105 West Riverside Drive, Suite 100, Austin, Texas 78704. Proposals can be sent facsimile to (512) 469-7481. Hand-delivered proposals will be accepted daily between 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays, and holidays at the same address. Proposals received after the deadline will not be eligible for consideration. Proposers may be requested to make oral presentations of their proposals at their own expense.

Terms and Amount. The following terms and conditions must be accepted by all respondents. The Research and Oversight Council reserves the right to reject any and all proposals, or portions of proposals, and to cancel this request for proposal if it is deemed in the best interest of the Research and Oversight Council. All information generated is the exclusive property of the Research and Oversight Council. At the conclusion of the project, an itemized expenditure report is due.

The Research and Oversight Council reserves the right to negotiate with one or more respondents. The Research and Oversight Council reserves the right to reasonably modify and reschedule proposed activities throughout the life of the contract.

Issuance of this request for proposal creates no obligation to award a contract or to pay any costs incurred in the preparation of a proposal. It is anticipated that the contract period will be from April 6, 1998 through April 27, 1998. The amount award will be commensurate with services provided.

Evaluation and Selection. The proposal demonstrating the highest quality of proposed services deliverable within the established time frame offering the greatest expertise and qualifications at the most cost-effective price, will be awarded the contract.

Contact Point. Any questions regarding this request for proposals should be directed to Amy Lee, Research Specialist, at (512) 469-7811.

TRD-9803156
June L. Karp
Executive Director
Research and Oversight Council on Workers’ Compensation
Filed: March 4, 1998

Southwest Texas State University
Extension of Consultant Contract

Southwest Texas State University announces that it has amended a contractual agreement on February 18, 1998 on behalf of Dini Partners, Inc. of Houston, Texas to perform consulting services for SWT. The sole purpose of this amendment is to extend the termination date for the contract to August 31, 1998. The original contract amount of $35,000 has not been revised by this amendment.

Consistent with Government Code, Chapter 2254, the consultant proposal request for these services had been included in the August 5, 1997 issue of the Texas Register. Dini Partners, Inc. complete name and business address is: The Dini Partners, 2727 Allen Parkway, #700, Houston, Texas 77019.

TRD-9803113
William A. Nance
Vice President for Finance and Support Services
Southwest Texas State University
Filed: March 3, 1998

Texas Department of Transportation
Notice of Invitation

Notice of Invitation: The Airport Sponsors listed below, through their agent, the Texas Department of Transportation (TxDOT) intend to engage aviation engineering consultants pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT will solicit and receive proposals for professional services as described in the project scopes for the projects listed below:

Airport Sponsor: City of Mesquite TxDOT CSJ Number 9842MESQT; Project Scope: Airport Master Plan; Estimated total project cost: $100,000; Project Manager: Bruce Ehly.

The Proposal Shall Include:

1. Firm name, address, phone number and person to contact regarding the proposal.
2. Proposed project management structure identifying key personnel and subconsultants (if any).
3. Qualifications and recent experience of the firm, key personnel and subconsultants relative to the performance of similar services for FAA or TxDOT Aviation projects.
4. Proposed project schedule, including major tasks and target completion dates.
5. Technical approach - a detailed discussion of the tasks or steps to accomplish the project.
6. List of in-state references including the name, address and phone number of the person most closely associated with the firm’s prior project performance.
7. Statement regarding an Affirmative Action Program.
8. Certification that all franchise taxes are paid or that consultant is not subject to franchise taxes.
9. Certification of Child Support payments as now required by Senate Bill 84, 73rd Legislature. Forms are available by calling TxDOT, Grant Management, at (512) 416-4520 or 1-800-68-PILOT; or on the Internet at http://www.dot.state.tx.us.

Interested consultants should submit four copies of brief proposals, consisting of the minimum number of pages sufficient to provide necessary information for each individual project to Mailing address: Tx-
Texas Department of Transportation

Notice of Invitation: The Materials and Tests Division of the Texas Department of Transportation (TxDOT) intends to enter into 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 or subprovider identified on the team, or a written evidence of compliance with the assigned HUB goal through the prime provider's project manager and key personnel proposed for the team; team capabilities; special project related experience; and in writing material specifications.

2. Project Requirements (Team Capability Experience): Minimum requirements - Prime provider must have one Professional Engineer (P.E.) with a minimum of three years experience in testing and evaluating geogrids, and the P.E. must explain and demonstrate applicable experience. Provider must have the proper equipment to test and evaluate geogrids, to include a constant-rate-of-extension tensile machine. Preferred requirements - The team’s project manager must explain and demonstrate experience in the evaluation of geogrids and in writing material specifications.

3. Special (Similar) Project Experience of Project Manager and Team Members: Minimum requirements - Must identify specific information detailing successful completion of at least one similar project. Preferred requirements - Identifies specific information detailing successful completion of multiple similar projects.

4. Evidence of Compliance with Assigned HUB Goal: A provider receives 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 (512) 302-2397, or by hand delivery, to TxDOT, Materials and Tests Division, Attention: Claudia Kern, 125 East 11th Street. Austin, Texas 78701. Letters of interest will be received until 5:00 p.m. on Friday, March 27, 1998.

Letter of Interest Requirements: The letter of interest is limited in length to eight pages plus one page per reference, (8 1/2 x 11 inch size, 12 point font, single-sided, with no attachments or appendices), and must include the contract number 49-8XXP0006; 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; certification that the proposed team individuals are currently employed by either the prime provider or a subprovider; certification that the proposed team individuals meet the minimum qualification requirements; 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 (not applicable); 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 Claudia Kern, at (512) 465-7742, fax (512) 302-2397, or E-mail ckern@mailgw.dot.state.tx.us.

Contract Number 49-8XXP0006: The required non-listed work code (N.L.1.) to be performed shall consist of testing and evaluating geogrids as well as develop a non-proprietary specification for rigid and flexible geogrids. The services required are non-listed work type categories, and therefore, do not require precertification.

Historically Underutilized Business (HUB) Goal:

The goal for HUB participation in the work to be performed under this contract is zero percent of the contract amount.

Long List Criteria: TxDOT will consider the following criteria in its review of all interested providers:

1. Past Performance References: Minimum requirements - The team must provide at least two written references from other entities for which similar type of work was conducted. Preferred requirements - The team must provide three satisfactory written references from other entities for which similar type of work was conducted.

2. Project Requirements (Team Capability Experience): Minimum requirements - Prime provider must have one Professional Engineer (P.E.) with a minimum of three years experience in testing and evaluating geogrids, and the P.E. must explain and demonstrate applicable experience. Provider must have the proper equipment to test and evaluate geogrids, to include a constant-rate-of-extension tensile machine. Preferred requirements - The team’s project manager must explain and demonstrate experience in the evaluation of geogrids and in writing material specifications.

3. Special (Similar) Project Experience of Project Manager and Team Members: Minimum requirements - Must identify specific information detailing successful completion of at least one similar project. Preferred requirements - Identifies specific information detailing successful completion of multiple similar projects.

4. Evidence of Compliance with Assigned HUB Goal: A provider receives 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 (512) 302-2397, or by hand delivery, to TxDOT, Materials and Tests Division, Attention: Claudia Kern, 125 East 11th Street. Austin, Texas 78701. Letters of interest will be received until 5:00 p.m. on Friday, March 27, 1998.

Letter of Interest Requirements: The letter of interest is limited in length to eight pages plus one page per reference, (8 1/2 x 11 inch size, 12 point font, single-sided, with no attachments or appendices), and must include the contract number 49-8XXP0006; 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; certification that the proposed team individuals are currently employed by either the prime provider or a subprovider; certification that the proposed team individuals meet the minimum qualification requirements; 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 (not applicable); 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 Claudia Kern, at (512) 465-7742, fax (512) 302-2397, or E-mail ckern@mailgw.dot.state.tx.us.
employ a team member who has current knowledge in controller programming and timing implementation.

Signalization (8.3.1): Minimum requirements: employ a team member with demonstrated experience in 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 who will sign and seal the work to be performed on the contract.

Contract Number 21-845P5024 - The pre-certification work categories and the percent of work per category are: 7.1.1-Traffic Engineering Studies (32%), 7.3.1-Traffic Signal Timing (10%), 8.3.1-Signalization (30%), 10.2.1-Basic Hydraulic Design (05%), 14.3.1-Transportation Foundation Studies (05%), 15.1.1-Survey (06%), 15.1.2-Parcel Maps (04%), 15.1.3-Legal Descriptions (04%), and 15.1.4-Right of Way Maps (04%). The work to be performed shall consist of the preparation of plans, specifications and estimate (PSE) documents for various proposed signalized intersections and/or prepare traffic study reports.

Historically Underutilized Business (HUB) Goal: The goal for HUB participation for the work to be performed under this contract is 10% of the contract amount.

Long List Criteria: TxDOT will consider the following criteria in its review of all interested providers.

1. Past Performance Scores: Must provide names and phone numbers of two (six preferred) separate references for which the prime prepared P.S. and E.and reports similar to the major work tasks (7.1.1-Traffic Engineering Studies and 8.3.1-Signalization).

2. Project Requirements (Team Capability and Experience): Traffic Engineering Studies (7.1.1); Traffic Signal Timing (7.3.1) Signalization (8.3.1); Basic Hydraulic Design (10.2.1); Transportation Foundation Studies (14.3.1). Minimum requirements: employ one professional engineer with two years (four years preferred) experience in performing work in all these categories.

Surveys (15.1.1); Parcel Maps (15.1.2); Legal description (15.1.3); Right of Way Maps (15.1.4). Minimum requirements: employ one registered professional land surveyor and two technicians each with two years (four years preferred) experience in performing work in these categories.

3. Special (Similar) Project Related Experience of Project Manager and Team Members: Project Manager must be a professional engineer who can demonstrate the concerns taken into consideration in designing traffic signals and performing and documenting traffic engineering studies, having completed six similar projects.

Traffic Engineering Studies (7.1.1): Minimum requirements: employ a team member with demonstrated experience in having performed and documented two (four preferred) projects in urban and rural settings which involved the following: classified traffic counts, signal warrants, capacity and level of service analysis, intersection analysis, signing and pavement marking designs and layouts, and knowledge in speed studies.

Traffic Signal Timing (7.3.1): Minimum requirements: employ a team member with demonstrated experience in having performed and documented four (eight preferred) projects which involved the following: data collection, intersection analysis, computerized timing programs and timing implementation.

Signalization (8.3.1): Minimum requirements: employ a team member with demonstrated experience in having designed and prepared plans and specifications for six traffic signalization projects. Preferred requirements: in addition to the minimum requirements, employ a team member who has current knowledge in controller equipment (hard and software) and familiar with available software for various systems. List one innovative design that you would consider if a highly congested two-way street with four lanes and two-way street with two lanes intersection existed and additional right of way is prohibited.

Basic Hydraulic Design (10.2.1): Minimum requirements: employ a team member with demonstrated experience in storm sewer design and analysis for two (four preferred) roadway projects.

Transportation Foundation Studies (14.3.1): Minimum requirements: employ a team member with demonstrated experience in having performed, designed and documented two (four preferred) projects involving signalize pole foundations.

Survey (15.1.1): Minimum requirements: employ team members with demonstrated experience in having performed two (four preferred) ground surveys.

Parcel Maps (15.1.2): Minimum requirements: employ team members with demonstrated experience in having prepared two (four preferred) roadway maps with two (four preferred) parcel takings.

Legal Description (15.1.3): Minimum requirements: employ team members with demonstrated experience in having prepared two (four preferred) land surveys.

Right of Way Maps (15.1.4): Minimum requirements: employ team members with demonstrated experience in having prepared two (four preferred) roadway maps with two (four preferred) parcel takings.

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.

Letter of Interest Requirements: The letter of interest is limited in length to five 8 1/2 x 11 pages (10 or 12 point font size, single sided with no appendices or attachments), and must include the contract number 21-845P5024; 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 precertification; and other pertinent information addressed in the notice.

Deadline: A letter of interest notifying TxDOT of the provider’s intent to submit a proposal will be accepted by fax at (956) 702-6110, by hand delivery or mail to TxDOT Pharr District; 600 West Expressway; Pharr, Texas 78577, Attention: Homer Gutierrez. Letters of interest will be received until 5:00 p.m., Friday, March 27, 1998.

Agency Contact: Requests for additional information regarding this notice of invitation should be addressed to Homer L. Gutierrez, P.E., at (956) 702-6158 or fax (956) 702-6110.

TRD-9803153
Bob Jackson
Acting General Counsel
Texas Department of Transportation
Filed: March 4, 1998

IN ADDITION March 13, 1998 23 TexReg 2907
Notice of Invitation: The Notice of Invitation for the El Paso District of the Texas Department of Transportation published in the February 20, 1998, issue of the Texas Register (23 TexReg 1737) is hereby canceled and replaced by the following notice.

The El Paso District of the Texas Department of Transportation (TxDOT) intends to enter into a contract with four 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 categories, 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. 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 who will sign and/or seal the work to be performed on the contract.

RFP 24-RFP5001 - for partial or complete P.S. and E. The work categories and the percent of work per category are: 4.1.1 Minor Roadway Design (20%); 4.2.1 Major Roadway Design (25%); 5.1.1 Minor Bridge Design (6.0%); 5.2.1 Major Bridge Design (4.0%); 8.1.1 Signing, Pavement Marking and Channelization (10%); 8.2.1 Illumination (1.0%); 10.1.1 Hydrologic Studies (10%); 10.2.1 Basic Hydraulic Design (10%); 15.2.1 Design Survey (7.0%); 15.3.1 Aerial Mapping (2.0%); 15.4.1 Horizontal and Vertical Control for Aerial Mapping (2.0%); 17.1.1 Functional and Aesthetically Pleasing Outdoor Spaces (1.0%); 17.2.1 Planting and Irrigation (1.0%). The work to be performed shall consist of the preparation of plans, specifications, and estimate (P.S. and E.) documents to construct miscellaneous work, bridge replacement, new bridge construction, urban and rural rehabilitation projects, rural rehabilitation and widening projects, and construction of new farm to market road. All environmental and public involvement concerns. Schematic development, ROW map development and pavement design will be handled by TxDOT. The District Consultant Selection Team has determined a range of scores for providers that are considered equally qualified to perform the work to be not less than 750 points out of 900 maximum.

The goal for Historically Underutilized Business (HUB) participation in the work to be performed under this contract, is a minimum of 30% of the contract amount.

Long List Criteria: TxDOT will consider the following criteria in its review of all interested providers based on the above mentioned work to be performed.

1. Past Performance Scores: Minimum requirements - The team must provide two separate satisfactory written references (in any combination) for preparing PS and E with similar major work tasks of the following project classifications: new ramp/roadway construction, new farm to market road, bridge replacement, upgrading of a non-freeway facility, and new location non freeway facility.

Preferred requirements - The team must provide four satisfactory written references as outlined in the minimum requirements.

2. Project Requirements (Team Capability Experience): Minor Roadway Design (4.1.1): Minimum requirements - Project team must have worked on three minor roadway design projects within the past five years.

Preferred requirements - In addition to the minimum requirements, the project team must explain and adequately demonstrate their experience in applying AASHTO’s "A Policy on Geometric Design of Highways and Streets" design criteria on five minor roadway design projects.

Major Roadway Design (4.2.1): Minimum requirements - Project team must have worked on three major roadway design projects within the past five years. Preferred requirements - In addition to the minimum requirements, the project team must explain and adequately demonstrate their experience in applying AASHTO’s "A Policy on Geometric Design of Highways and Streets" design criteria on five major roadway design projects.

Minor Bridge Design (5.1.1): Minimum requirements - The project team must include one professional engineer with five years experience in bridge design and must have worked on three minor bridge design projects within the past five years. Preferred requirements - In addition to the minimum requirements, the nominated engineer must explain and adequately demonstrate his/her experience in applying AASHTO’s "Standard Specifications for Highway Bridges" on five minor bridge design projects within the past five years.

Major Bridge Design (5.2.1): Minimum requirements - The project team must include one professional engineer with five years experience in major bridge design and must have worked on three major bridge design projects within the past five years.

Preferred requirements - In addition to the minimum requirements, the nominated engineer must explain and adequately demonstrate his/her experience in applying AASHTO’s "Standard Specifications for Highway Bridges" on five major bridge design projects within the past five years.

Signaling, Pavement Marking and Channelization (8.1.1): Minimum requirements - The project team must include one professional engineer with five years experience in design and preparation of plans for signing, pavement markings, and channelization for three minor roadway designs within the past five years. Preferred requirements - In addition to the minimum requirements, the nominated engineer must explain and adequately demonstrate his/her experience applying design guidance developed in the National Manual on Uniform Traffic Control Devices for five major roadway designs within the past five years.

Illumination (8.2.1): Minimum requirements - The project team must include one professional engineer with five years experience in design and production of illumination plans meeting IESNA and AASHTO guidelines. Preferred requirements - In addition to the minimum requirements, the nominated engineer must explain and adequately demonstrate his/her experience applying design guidance developed by AASHTO for determining and locating safety lighting, and for locating and sizing continuous lighting systems.

Signalization (8.3.1): Minimum requirements - The project team must include one professional engineer with five years experience in design and production of signal plans meeting AASHTO guidelines. Preferred requirements - In addition to the minimum requirements, the nominated engineer must explain and adequately demonstrate his/her experience applying design guidance developed by AASHTO for determining and locating signals.

Hydrologic Studies (10.1.1): Minimum requirements - The project team must include one professional engineer with five years experience in preparing hydrologic studies; and a minimum of five years as a professional engineer in analysis of complex watersheds. Preferred requirements - In addition to the minimum requirements, the nominated engineer must explain and adequately demonstrate his/her
experience developing hydrologic data for both urban and rural arid to semi-arid watersheds. The watershed data will be used to analyze culvert and bridge structural design.

Basic Hydraulic Design (10.2.1): Minimum requirements - The project team must include one professional engineer with five years experience in preparing hydraulic designs; and a minimum of five years as a professional engineer in hydrologic analysis, hydraulic design, and storm sewer design. Preferred requirements - In addition to the minimum requirements, the nominated engineer must explain and adequately demonstrate his/her experience in preparing hydraulic data analysis.

Design Survey (15.2.1): Minimum requirements - The project team must include one registered professional land surveyor with a minimum of five years experience in preparing horizontal/vertical control, construction surveys, and miscellaneous data collection, who has sufficient staff to undertake the requirements associated with this type of work; and who has available the proper equipment to perform the work. Preferred requirements - In addition to the minimum requirements, the nominee surveyor must explain and adequately demonstrate his/her experience in GPS data collection, SDMS and CAICE software, preparing horizontal/vertical control using digital terrain models and topographic files.

Aerial Mapping (15.3.1): Minimum requirements - The project team must include one registered professional land surveyor with a minimum of five years experience in preparing horizontal/vertical control for determining horizontal panel layouts, who has sufficient staff to undertake the requirements associated with this type of work; and who has available the proper equipment to perform the work. Preferred requirements - In addition to the minimum requirements, the nominate surveyor must explain and adequately demonstrate his/her experience in GPS data collection, and SDMS and CAICE software.

Horizontal and Vertical Control for Aerial Mapping (15.4.1): Minimum requirements - The project team must include one registered professional land surveyor with a minimum of five years experience in preparing horizontal/vertical control for determining horizontal panel layouts, who has sufficient staff to undertake the requirements associated with this type of work; and who has available the proper equipment to perform the work. Preferred requirements - In addition to the minimum requirements, the nominate surveyor must explain and adequately demonstrate his/her experience in GPS data collection, and SDMS and CAICE software.

Functional and Aesthetically Pleasing Outdoor Spaces (17.1.1): Minimum requirements - The project team must include one landscape architect with a minimum of three years experience in preparing aesthetic landscape designs for roadway projects. Preferred requirements - In addition to the minimum requirements, the nominated landscape architect must explain and adequately demonstrate his/her experience in preparing aesthetic landscape designs, for roadway projects and structures (retaining walls and bridges).

Planting and Irrigation (17.2.1): Minimum requirements - The project team must include one landscape architect with a minimum of three years experience in preparing planting and irrigation plans for roadway projects. Preferred requirements - In addition to the minimum requirements, the nominated landscape architect must explain and adequately demonstrate his/her experience in preparing planting and irrigation details for roadway projects.

3. Special Project Related Experience of Project Manager and Team Members

Minor Roadway Design (4.1.1). Major Roadway Design (4.2.1): Minimum requirements - Project Manager must be and have been a Registered P.E. for not less than five years and must have worked on three similar type projects in the past five years. The Team must have at least a combination of two members to include design technicians or graduate engineers and must have worked on three minor roadway design projects in the past five years. The Team must have at least one Professional Engineer registered for not less than three years who must have worked on not less than three minor roadway designs projects in the past three years. Preferred requirements are - Project Manager must be a Registered P.E. for not less than five years and must have worked on five major roadway projects in the past five years. The Team must have at least a combination of three members to include design technicians or graduate engineers and must have worked on five major roadway design projects in the past five years. The Team must have at least one Professional Engineer registered for not less than five years who must have worked on not less than five major roadway design projects in the past five years.

"Special (Similar) Project Related Experience” for the following categories are not applicable for these contracts: Functional and Aesthetically Pleasing Outdoor Spaces (17.1.1) and Planting and Irrigation (17.2.1).

4. Evidence of compliance with Assigned DBE/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 915-774-4278, or by hand delivery to TxDOT, El Paso District, Attention: Mark Longenbaugh, P. E., 212 North Clark, El Paso, Texas or by mail to P.O. Box 10278, El Paso, Texas 79994-0278. Letters of interest will be received until 5:00 p.m., Mountain Standard time, on Friday, March 27, 1998.

Letter of Interest Requirements: The letter of interest is limited to five 8 1/2 x 11 pages (10 or 12 point font size, single sided with no attachments or appendices), and must include RFP 24-8RFP5001; an organizational chart containing names, addresses,
forecasts, transfer an existing highway to the authority, if:

- after a review of the regional tollway authority's traffic and revenue commission in 43 TAC §27.43, and specify that the commission may, for the approval of the transfer have been adopted by rule of the
-ment Program, to expand, improve, or extend the highway shall be
- in the current three-year Statewide Transportation Improve-
- tions, and estimates, acquisition of necessary right of way, and actual
- dollar amount expended by the department for the original construc-
- the traveling public that exceed that cost. The cost includes the total
- unless the commission finds that the transfer will result in substantial
- to reimburse the commission for the cost of the transferred highway,
- state highway system. The cited section also requires the authority
- accomplish necessary expansion, improvements, or extensions to the
- to a turnpike project is the most feasible and economic means to
- jurisdiction to a turnpike project is the most feasible and economic means to
- be known as the Western Extension of the President George Bush Turnpike (State Highway 190).

Transportation Code, §366.035 authorizes the transfer of a segment of the state highway system to the authority for such purposes subject to a prior public hearing by the commission and approval of the Governor, and further subject to a finding by the commission that
- the conversion of an existing segment of the free state highway system to a turnpike project is the most feasible and economic means to accomplish necessary expansion, improvements, or extensions to the state highway system. The cited section also requires the authority to reimburse the commission for the cost of the transferred highway, unless the commission finds that the transfer will result in substantial net benefits to the state, the Texas Department of Transportation, and the traveling public that exceed that cost. The cost includes the total dollar amount expended by the department for the original construc-
- tion of the transferred highway, including all costs associated with the preliminary engineering and design engineering for plans, specifications, and estimates, acquisition of necessary right of way, and actual construction of the highway and all necessary appurtenant facilities. Costs anticipated to be expended by the department, as evidenced by inclusion in the current three-year Statewide Transportation Improve-
- ment Program, to expand, improve, or extend the highway shall be deducted from the costs to be reimbursed to the commission.

As required by Transportation Code, §366.035, criteria and guidelines for the approval of the transfer have been adopted by rule of the commission in 43 TAC §27.43, and specify that the commission may, after a review of the regional tollway authority’s traffic and revenue forecasts, transfer an existing highway to the authority, if:

- the authority agrees, through binding written commitment, to accept the highway for maintenance and operation in a safe and efficient manner while protecting and preserving the state’s investment in the facility;
- the transfer will not adversely affect regional mobility;
- construction of the necessary expansion, improvement or exten-
- can be accomplished efficiently, expeditiously, and with a mini-
- mum public investment;
- the department will have design review and approval for all projects undertaken on the facility;
- the authority agrees to complete a study of the social, economic, and environmental impacts of all projects, consistent with the spirit and intent of the National Environmental Policy Act, Title 42, United State Code, §4321 et seq., Title 23, United States Code, §109(h), and shall provide for public involvement and meet all other requirements of 43 TAC §§2.40-2.51 (relating to Environmental Review and Public Involvement for Transportation Projects); and
- the authority agrees that the department will not accept the facility back into the state highway system unless it is found to be in an acceptable state of repair and maintenance and meets all current design standards used by the department.

Meties and bounds description and maps and drawings showing the proposed portion of State Highway 161 to be transferred and other information concerning the proposed transfer are on file and available for public inspection and copying by contacting Stan Hall, P.E., District Advance Project Development Engineer, Dallas District Office, 9700 East R. L. Thornton, Dallas, Texas 75221, (214) 320-6100, or Robert L. Wilson, P.E., Director, Design Division, 118 Riverside Drive, Austin, Texas, (512) 416-2576.

All interested citizens are invited to attend this public hearing, which will be conducted in accordance with the procedures specified in 43 TAC §1.5. Speakers will be recognized in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any person with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time and repetitive comment. Groups, organizations, or associations are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer.

Persons with disabilities who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Kerry Neely, community relations manager, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8954 at least two work days prior to the hearing so that appropriate arrangements can be made.

Written comments may be submitted within ten days after the public hearing to Charles W. Heald, P.E., Executive Director, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for submitting all comments is 9:00 a.m. on Thursday, April 9, 1998.
The Texas Department of Transportation (TxDOT) has recently commissioned the HNTB Corporation to conduct a corridor study of Interstate Highway 35 from Laredo, Texas to Duluth, Minnesota. This study will investigate what improvements are necessary to ensure efficient movement of goods and people in the future.

A series of public informational meetings will solicit input and exchange information from private and public groups, associations, and individuals. These meetings will all be structured informally with TxDOT personnel available to assist with information. The first of the meetings held in Texas will be on March 31, 1998 at the City of Irving, City Hall Council Chambers, 825 West Irving Boulevard. The meeting will begin at 4:00 p.m. The second meeting will be on April 1, 1998, in Austin at the Joe C. Thompson Center, Dean Keeton Street (26th Street) and Red River Street. This meeting will begin at 6:00 p.m. The final Texas meeting will be in Laredo. This meeting will be held at the TxDOT District office at 1817 Bob Bullock Loop, Laredo, Texas from 6:00 p.m to 8:00 p.m. All the meetings will be of the same format and will present an overview of the entire project.

Specific areas of concern can be addressed at any of the meetings. All comments will be taken into consideration prior to the next series of meetings tentatively scheduled for late fall.

Persons interested in attending the meetings who have special accommodation needs are encouraged to call Eloise Lundgren at TxDOT’s Public Information Office at (512) 305-9137, at least two days prior to the meeting. Since these meetings will be conducted in English, any request for language interpreters or other special communication needs should be made two days prior to the meeting. TxDOT will make every reasonable effort to accommodate these needs.

All interested citizens are invited to attend and express their views. Verbal and written comments relative to the proposed project may be presented at the meetings. Written comments may also be submitted to Alvin R. Luedecke, Jr., P.E., P.O. Box 149217, Austin, Texas 78717-9217. Comments should be submitted within two weeks after the meeting to receive proper consideration in the planning process.
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