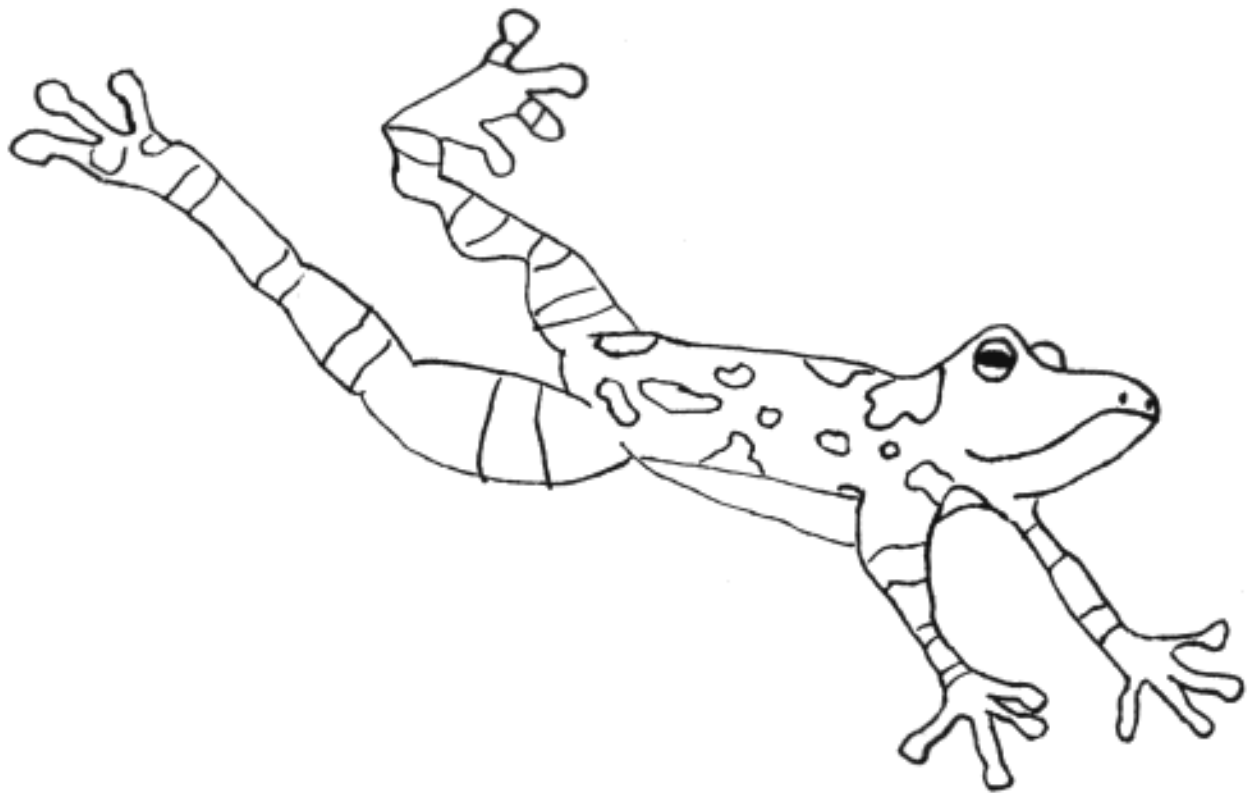


TEXAS REGISTER

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Artist: Brook Cruse

7th Grade

Halthom Middle School

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GOVERNOR

Office of the Governor

Appointments made by the Governor.....3965

ATTORNEY GENERAL

Request for Opinions.....3967

PROPOSED RULES

Office of the Attorney General

Sexual Assault Prevention and Crisis Services

1 TAC §§62.11-62.19.....3969

Health and Human Services Commission

Coordinated Planning and Delivery of Health and Human Services

1 TAC §351.13 3973

Texas Department of Agriculture

Pesticides

4 TAC §7.22..... 3974

Public Utility Commission of Texas

Practice and Procedure

16 TAC §22.246..... 3975

Texas Lottery Commission

Administration of the State Lottery Act

16 TAC §401.369..... 3977

Texas Education Agency

Curriculum

19 TAC §§75.1001–75.1003, 75.1010..... 3978

Adaptions for Special Populations

19 TAC §89.1001 3980

19 TAC §§89.1011, 89.1015, 89.1020, 89.1025, 89.1030, 89.1035, 89.1040, 89.1045, 89.1050, 89.1055, 89.1060, 89.1065, 89.1075, 89.1085, 89.1115 3981

19 TAC §§89.1095, 89.1105 3984

19 TAC §89.1125 3984

19 TAC §89.1131 3985

19 TAC §89.1141 3986

19 TAC §§89.1155, 89.1160, 89.1165, 89.1170, 89.1175, 89.1180, 89.1181, 89.1185–89.1190 3986

19 TAC §89.1190..... 3989

State Board of Dental Examiners

Dental Board Procedures

22 TAC §107.200..... 3990

Texas Board of Professional Engineers

Practice and Procedure

22 TAC §131.18..... 3991

22 TAC §131.52..... 3991

22 TAC §131.101 3992

22 TAC §131.114, §131.116..... 3992

22 TAC §131.155..... 3993

Texas Board of Physical Therapy Examiners

License Renewal

22 TAC §341.8 3994

Texas Department of Health

Purchased Health Services

25 TAC §29.6..... 3995

25 TAC §29.502..... 3996

Texas Natural Resource Conservation Commission

Public Notice

30 TAC §§39.303, 39.305, 39.307, 39.309, 39.313 3997

Control of Air Pollution From Motor Vehicles

30 TAC §§114.1, 114.3..... 4002

30 TAC §§114.150, 114.151, 114.153–114.157..... 4005

30 TAC §114.152..... 4009

30 TAC §§114.201, 114.202..... 4009

30 TAC §114.260..... 4011

Consolidated Permits

30 TAC §305.54..... 4015

Radioactive Substance Rules [Radiation Rules]

30 TAC §336.1, §336.2..... 4021

30 TAC §§336.101, 336.102, 336.107..... 4027

30 TAC §336.104, §336.108..... 4028

30 TAC §§336.201, 336.203, 336.209, 336.211, 336.213 4028

30 TAC §336.217 4031

30 TAC §§336.304, 336.331, 336.332, 336.334, 336.341, 336.348, 336.352, 336.356 4031

30 TAC §336.357, §336.366 4033

30 TAC §§336.501-336.503, 336.512-336.515, 336.517, 336.519 4033

30 TAC §336.514 4038

30 TAC §§336.601-336.606, 336.613-336.629, 336.636..... 4038

30 TAC §§336.601, 336.603, 336.605, 336.607, 336.609, 336.611, 336.613 4039

30 TAC §336.701, §336.702 4042

30 TAC §§336.802-336.807 4043

Texas Department of Public Safety
Breath Alcohol Testing Regulations
37 TAC §§19.1–19.5, 19.7.....4046

Texas Juvenile Probation Commission
Case Management Standards
37 TAC §§346.1–346.5.....4051

WITHDRAWN RULES

Texas Department of Agriculture
Pesticides
4 TAC §7.21.....4053

Texas Department of Protective and Regulatory Services
Child Protective Services
40 TAC §700.110, §700.112.....4053

ADOPTED RULES

Office of the Attorney General
State Employees–Workers’ Compensation
1 TAC Chapter 51.....4055

Department of Information Resources
Planning and Management of Information Resources
Technologies
1 TAC §201.5.....4055

Texas Racing Commission
General Provisions
16 TAC §303.4.....4057
Licenses for Pari-mutuel Racing
16 TAC §305.244.....4057
16 TAC §305.301.....4057
Practice and Procedure
16 TAC §307.302.....4058
Operation of Racetracks
16 TAC §309.18.....4058
Disciplinary Action and Enforcement
16 TAC §323.2.....4058

Texas Department of Mental Health and Mental Retardation
Medicaid Programs
25 TAC §§409.373-409.375.....4059

Statewide Health Coordinating Council
Health Planning and Resource Development
25 TAC §§571.2, 571.4, 571.5.....4059

Texas Workers’ Compensation Commission
State Risk Management
28 TAC Chapter 170.....4059

State Office of Risk Management
28 TAC Chapters 251–252.....4060

Texas Department of Criminal Justice
Special Programs
37 TAC §159.9.....4060

Texas Department of Human Services
Intermediate Care Facilities for Persons with Mental
Retardation or a Related Condition
40 TAC §§90.2, 90.3.....4061
40 TAC §§90.11–90.14, 90.16, 90.17, 90.19, 90.20.....4062
40 TAC §90.42.....4062
40 TAC §§90.60, 90.61, 90.65, 90.66, 90.68.....4064
40 TAC §90.142.....4064
40 TAC §§90.191–90.192.....4065
40 TAC §90.193.....4065
40 TAC §§90.211–90.213, 90.217.....4065
40 TAC §§90.211, 90.212.....4069
40 TAC §§90.281–90.283, 90.287.....4069
40 TAC §§90.301–90.304.....4069
40 TAC §§90.321, 90.323–90.325.....4069
40 TAC §90.322.....4070

EXEMPT FILINGS
ADOPTED.....4071
ADOPTED.....4071
ADOPTED.....4072

RULE REVIEW

Proposed Rule Review
Texas Education Agency.....4073

TABLES AND GRAPHICS

Tables and Graphics
Tables and Graphics.....4075

OPEN MEETINGS

Texas State Board of Public Accountancy
Wednesday, April 22, 1998, 9:00 a.m.....4091
Thursday, April 23, 1998, 9:00 a.m.....4091

State Office of Administrative Hearings
Thursday, April 23, 1998, 1:30 p.m.....4092

Thursday, April 30, 1998, 10:00 a.m.....	4092	Thursday, April 16, 1998, 8:30 a.m.....	4096
Texas Commission on Alcohol and Drug Abuse		Thursday, April 16, 1998, 10:00 a.m., or upon adjournment of Legislative Committee.....	4097
Friday, April 24, 1998, 11:00 a.m.....	4092	Thursday, April 16, 1998, 1:15 p.m.....	4097
Tuesday, April 28, 1998, 11:00 a.m.....	4092	State Employee Charitable Campaign	
Texas Council on Alzheimer’s Disease and Related Disorders		Monday, April 20, 1998, 3:30 p.m.....	4097
Thursday, April 30, 1998, 9:30 a.m.....	4092	Wednesday, April 22, 1998, 1:30 p.m.....	4098
Advisory Board of Athletic Trainers		Wednesday, April 22, 1998, 3:30 p.m.....	4098
Friday, May 1, 1998, 9:30 a.m.....	4092	Thursday, April 23, 1998, 10:00 a.m.....	4098
The State Bar of Texas		Monday, May 4, 1998, 2:30 p.m.....	4098
Thursday-Friday, April 16–17, 1998, beginning at 4:00 p.m. April 16.....	4093	Thursday, May 21, 1998, 3:00 p.m.....	4098
Friday, April 17, 1998, 9:00 a.m.	4093	Employees Retirement System of Texas	
Texas Commission for the Blind		Thursday, April 16, 1998, 9:30 a.m.....	4098
Saturday, April 25, 1998, 10:00 a.m.....	4093	Wednesday, April 16, 1998, 9:00 a.m.....	4099
Saturday, May 2, 1998, 10:00 a.m.....	4094	Fire Fighters Pension Commission	
Texas Boll Weevil Eradication Foundation		Thursday-Friday, April 23–24, 1998, 9:00 a.m.....	4099
Tuesday, April 28, 1998, 9:00 a.m.....	4094	General Land Office	
Comptroller of Public Accounts		Tuesday, April 21, 1998, 10:00 a.m.....	4099
Friday, April 17, 1998, 9:30 a.m.....	4094	Tuesday, May 5, 1998, 7:00 p.m.....	4100
Friday, April 17, 1998, 3:00 p.m.....	4094	Texas Department of Health	
Texas Cosmetology Commission		Thursday, April 16, 1998, 10:30 a.m.....	4100
Monday, April 27, 1998, 10:00 a.m.....	4094	Thursday, April 16, 1998, 11:30 a.m.....	4100
Office of Court Administration		Thursday, April 16, 1998, 1:00 p.m.....	4100
Thursday, April 16, 1998, 9:00 a.m., (rescheduled from 8:00 a.m.).....	4095	Friday, April 17, 1998, 8:30 a.m.....	4100
Thursday, May 7, 1998, 11:00 a.m.....	4095	Friday, April 17, 1998, 9:30 a.m.....	4101
Texas Department of Criminal Justice		Friday, April 17, 1998, 10:30 a.m.....	4101
Monday, April 20, 1998, 9:00 a.m.....	4095	Friday, April 17, 1998, 1:00 p.m.....	4101
Texas Council on Purchasing from People with Disabilities		Monday, April 27, 1998, 9:30 a.m.....	4101
Monday, April 27, 1998, 10:00 a.m.....	4095	Monday, April 27, 1998, 11:00 a.m.....	4102
Interagency Council on Early Childhood Intervention		Texas Health Care Information Council	
Wednesday, April 22, 1998, 8:30 a.m.....	4096	Wednesday, April 22, 1998, 10:00 a.m.....	4102
Texas Department of Economic Development		Texas Health Insurance Risk Pool (“Health Pool”)	
Thursday, April 23, 1998, 10:00 a.m.....	4096	Wednesday, April 22, 1998, Audit Subcommittee — 9:00 a.m.; Board — 9:30 a.m.; Grievance Subcommittee (immediately following Board meeting)	4102
Texas Education Agency (TEA)		Texas Healthy Kids Corporation (“THKC”)	
Wednesday, April 29, 1998, 8:30 a.m.....	4096	Friday, April 17, 1998, 9:30 a.m.....	4102
State Board for Educator Certification		Texas Higher Education Coordinating Board	
Friday, April 17, 1998, 10:00 a.m.....	4096	Wednesday, April 22, 1998, 1:30 p.m.....	4102
Advisory Commission on State Emergency Communica- tions		Tuesday, May 5, 1998, 2:00 p.m.....	4103
		Texas Historical Commission	

Thursday, April 23, 1998, 1:00 p.m.	4103	Monday, April 20, 1998, 8:00 a.m.	4110
Thursday, April 23, 1998, 2:00 p.m.	4103	Monday, April 20, 1998, 9:30 a.m.	4110
Thursday, April 23, 1998, 2:00 p.m.	4103	Texas State Board of Examiners of Marriage and Family Therapists	
Thursday, April 23, 1998, 3:30 p.m.	4104	Sunday, April 19, 1998, 1:00 p.m.	4110
Friday, April 24, 1998, 7:30 a.m.	4104	Sunday, April 19, 1998, 2:00 p.m.	4110
Friday, April 24, 1998, 2:00 p.m.	4104	Sunday, April 19, 1998, 3:00 p.m.	4110
Texas State Affordable Housing Corporation		Monday, April 20, 1998, 8:30 a.m.	4111
Monday, April 20, 1998, Noon.	4104	Texas State Board of Medical Examiners	
Texas Department of Housing and Community Affairs		Wednesday, April 22, 1998, 12:30 p.m.	4111
Monday, April 20, 1998, 9:30 a.m.	4105	Texas Municipal Retirement System	
Monday, April 20, 1998, 10:00 a.m.	4105	Friday, April 24, 1998, 8:30 a.m.	4111
Texas Department of Human Services (TDHS)		Saturday, April 25, 1998, 8:30 a.m.	4111
Friday, April 17, 1998, 10:00 a.m.	4105	Texas Natural Resource Conservation Commission	
Tuesday, April 21, 1998, 9:00 a.m.	4106	Wednesday, April 22, 1998, 8:30 a.m., 9:30 a.m. and 1:00 p.m.	4112
Friday, May 1, 1998, 9:00 a.m.	4106	Wednesday, April 22, 1998, 9:30 a.m.	4112
State Independent Living Council		Tuesday, April 28, 1998, 1:30 p.m.	4112
Thursday, April 23, 1998, 9:00 a.m.	4106	Tuesday, April 28, 1998, 1:30 p.m.	4112
Thursday, April 23, 1998, 11:00 a.m.	4106	Tuesday, April 28, 1998, 3:00 p.m.	4112
Thursday, April 23, 1998, 9:00 a.m.	4106	Board of Nurse Examiners	
Thursday-Friday, April 23–24, 1998, 1:00 p.m., 8:00 a.m. respectively	4106	Tuesday, April 21, 1998, 9:00 a.m.	4113
Texas Department of Insurance (“TDI”)		Texas Department of Public Safety	
Wednesday, April 22, 1998, 9:30 a.m.	4107	Wednesday, April 22, 1998, 10:30 a.m.	4113
Friday, April 24, 1998, 9:30 a.m.	4107	Thursday, April 23, 1998, 3:00 p.m.	4113
Monday, April 27, 1998, 9:00 a.m.	4107	Public Utilities Commission	
Wednesday, April 29, 1998, 1:00 p.m.	4108	Tuesday, April 21, 1998, 9:30 a.m.	4113
Friday, May 1, 1998, 9:00 a.m.	4108	Wednesday-Friday, April 22–24, 1998, 9:30 a.m.	4114
Wednesday, May 6, 1998, 9:30 a.m.	4108	Railroad Commission of Texas	
Board of Law Examiners		Wednesday, April 22, 1998, 8:45 a.m.	4114
Saturday, April 18, 1998, 8:30 a.m.	4108	Wednesday, April 22, 1998, 9:00 a.m.	4114
Texas Department of Licensing and Regulation		Texas Rehabilitation Commission	
Tuesday, April 21, 1998, 9:00 a.m.	4108	Thursday, April 23, 1998, 9:00 a.m.	4114
Tuesday, April 21, 1998, 9:00 a.m.	4108	Friday, April 24, 1998, 9:00 a.m.	4114
Wednesday, April 22, 1998, 9:00 a.m.	4109	Wednesday, May 5, 1998, 9:00 a.m.	4114
Wednesday, April 22, 1998, 9:00 a.m.	4109	Tuesday, May 12, 1998, 4:00 p.m.	4115
Thursday, April 23, 1998, 9:00 a.m.	4109	Thursday, May 14, 1998, 9:00 a.m.	4115
Thursday, April 23, 1998, 9:00 a.m.	4109	Thursday, May 21, 1998, 5:30 p.m.	4115
Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association		Stephen F. Austin State University	
Thursday, April 16, 1998, 11:00 a.m.	4109	Monday, April 20, 1998, 11:30 a.m.	4116
Sunday, April 19, 1998, 6:00 p.m.	4109	Monday, April 20, 1998, 1:30 p.m.	4116

Tuesday, April 21, 1998, 9:00 a.m.....	4116	Health and Human Services Commission	
Tuesday, April 21, 1998, 9:00 p.m.....	4117	Notice of Public Hearing-Substitute Care Provider Standards....	4130
Texas State Technical College System		Public Notice.....	4130
Wednesday, April 15, 1998, 10:00 a.m.....	4117	Texas Department of Housing and Community Affairs	
Wednesday, April 15, 1998, 10:10 a.m.....	4117	Notice of Administrative Hearing	4130
University of Houston System		Notice of Administrative Hearing MHD19980000020D	4131
Thursday, April 16, 1998, 8:00 a.m.....	4118	Notice of Administrative Hearing MHD1997002092D.....	4131
The University of Texas System		Texas Department of Insurance	
Wednesday, April 22, 1998, 3:00 p.m.....	4118	Insurer Services.....	4131
Texas Water Development Board		Notice of Applications by Small Employer Carriers to be Risk-Assuming Carriers	4131
Thursday, April 16, 1998, 9:00 a.m.....	4118	Kleberg County	
Texas Water Resources Finance Authority		Request for Comments and Proposals from Parties Interested in Providing Additional Medicaid Beds in Kleberg County.....	4132
Thursday, April 16, 1998, 9:00 a.m.....	4118	Texas Lottery Commission	
Texas Workers' Compensation Commission		Request for Proposals-Lottery Security Audit.....	4132
Friday, April 17, 1998, 9:00 a.m.....	4118	Texas Department of Mental Health and Mental Retardation	
Regional Meetings		Announcement of State Plan Amendment.....	4132
IN ADDITION		Texas Natural Resource Conservation Commission	
Office of the Attorney General		Notice of Application for Amendment to Certificate and Adjudication pursuant to Texas Water Code, §11.122 requiring notice to Interjacent Appropriators	4132
Publication after Entering into Major Consulting Services Contract.....	4125	Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions.....	4133
Comptroller of Public Accounts		Notice of Public Hearing-(LEV Rules).....	4134
Notice of Consultant Contract Award	4125	Notice of Public Hearing (Transportation Conformity).....	4134
Office of Consumer Credit Commissioner		Provisionally-Issued Temporary Permits to Appropriate State Water Listed below are permits issued during the period of April 14, 1998	4135
Notices of Rate Ceilings	4126	Public Notice.....	4135
General Land Office		Nortex Regional Planning Commission	
Notice of Contract Award.....	4126	Request for Proposal.....	4136
General Services Commission		North Texas Tollway Authority	
Notice to Bidders for HVAC Renovation.....	4126	Advertisement for Construction (Road).....	4136
Notice of Bidders for Rebid Elevator Modifications at Criss Cole Rehabilitation Center.....	4127	Public Utility Commission of Texas	
Notice to Bidders-New Facilities for State Aircraft Pooling Board.....	4127	Notice of Application for Amendment to Service Provider Certificate of Operating Authority	4136
Golden Crescent Workforce Development Board		Notice of Application for Service Provider Certificate of Operating Authority	4137
Request for Proposals (RFP) & Request for Quotations (RFQ).....	4127	Public Notices of Interconnection Agreement	4137
Texas Department of Health		Central for Rural Health Initiatives	
Notice of Request for Proposals for Diabetes Awareness and Education in the Community Project	4128	Requests for Proposals.....	4138
Notice of Request for Proposals for Examination of Fitters and Dispensers of Hearing Instruments.....	4129		
Notice of Request for Proposals for Projects to Provide Abstinence Education	4129		
Notice of Revocation of Certificates of Registration	4130		

Texas A&M University System, Board of Regents	Notice of Public Hearing	4140		
Request for Proposal: Hearing Aid Discount Program.....	4139	Notice of State “Welfare to Work” Plan.....	4140	
Texas Department of Transportation	Notice of Invitation - Odessa District:	4139	Request for Proposals	4141
Texas Workforce Commission				

THE GOVERNOR

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Office of the Governor

Appointments made by the Governor

Appointments made March 20, 1998

To be appointed members of the STATE COMMITTEE OF EXAMINERS IN THE FITTING AND DISPENSING OF HEARING INSTRUMENTS: For a term to expire 12/31/01: Ursula Singleton, 702 East Walk the Plank, La Joya, Texas 78560, (filling the unexpired term of Dr. Max Chartrand of Gainesville); For terms to expire 12/31/03: Eve-Anne D. Wall, 5127 Fairway Drive, San Angelo, Texas 76904 (replacing Joycie Burns of Teague whose term expired); Michael L. Shobe, 2906 75th Street, Lubbock, Texas 79423, (replacing Thomas C. Lucenay of Waco whose term expired); John Westmoreland, 7718 Fairway, Waco, Texas 76712 (replacing Diane Shaffer of Beaumont whose term expired).

To be appointed as members of the PRIVATE SECTOR PRISON INDUSTRY OVERSIGHT AUTHORITY pursuant to House Bill No. 1301, 75th Legislature, Regular Session: For terms to expire 02/01/99: George Fedo, 1027 Covington, Wichita Falls, Texas 76305; Charles D. "Mickey" Harr, 2808 Good Shepherd, Brownwood, Texas 76801; Carl Casey Spencer, 1522 20th Street, Huntsville, Texas 77340: For terms to expire 02/01/01: Albert Gonzalez, 7010 Chipperton Drive, Dallas, Texas 75225; Kathy C. Flanagan, M.D., 2854 Holly Hall, Houston, Texas 77054; Raymond G. Henderson, 3200 El Toro Cove, Austin, Texas 78746: For terms to expire 02/01/03: Thomas Ann Hines, 601 West Parker Road, Suite 101, Plano, Texas 75023-7019; Kelly Renee Seigler, 7 Windermere Lane, Houston, Texas 77063; Steven L. Varga, 12530 Misty Creek, San Antonio, Texas 78232.

Appointments made March 26, 1998

To be appointed members of the TEXAS INFRASTRUCTURE FUND BOARD for terms to expire August 31, 2003: Roger J. Benavides, 17211 Fawn Circle Drive, San Antonio, Texas 78248 (reappointment); Kay F. Karr, 3220 Highpoint, El Paso, Texas 79904, (reappointment).

To be appointed members of the TEXAS GUARANTEED STUDENT LOAN CORPORATION BOARD OF DIRECTORS for a term to expire January 31, 2003: Albert Myres, 5118 Toho Drive, Houston, Texas. Mr. Myres will be filling the unexpired term of Alfred Jackson of Houston who resigned. .

To be appointed as presiding officer of the PRIVATE SECTOR PRISON INDUSTRY OVERSIGHT AUTHORITY, pursuant to House Bill, No. 1301, 75th Legislature, Regular Session for a term at the pleasure of the Governor.

Appointment made March 27, 1998

To be appointed as JUDGE OF THE 148TH JUDICIAL DISTRICT COURT, NUECES COUNTY, until the next General Election and until his successor shall be duly elected and qualified: Robert C. Pate, 241 Bayside, Corpus Christi, Texas 78411. Mr. Pate will be replacing Judge Hilda Tagle of Corpus Christi who resigned.

Appointments made April 2, 1998

To be appointed PRESIDING JUDGE OF THE SEVENTH ADMINISTRATIVE JUDICIAL REGION for a term to expire four years from date of qualification: The Honorable Dean Rucker, P.O. Box 50291, Midland, Texas 79710-0291: Judge Rucker will be replacing Judge Weldon Kirk of Sweetwater whose term expired.

To be appointed to the BOARD OF TRUSTEES OF THE TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM for terms to expire December 31, 2003: The Honorable Kathy Reeves, Midland County Tax Assessor-Collector, 200 West Wall Street, Midland, Texas 79701, (replacing David Flores of Georgetown whose term expired); The Honorable John Willy, county Judge, Brazoria County, 111 East Locust, Angleton, Texas 77515, (replacing Nelda Wells Spears of Austin whose term expired).

Appointments made April 7, 1998

To be appointed as members of the INTERAGENCY COUNCIL FOR GENETIC SERVICES for terms to expire September 1, 1999: Joseph D. Martinec, Route 2, Box 2578, Cedar Creek, Texas 78612 (reappointment); Helene G. Botsonis, 6710 Elmhurst Road, Amarillo, Texas 79106 (reappointment).

Appointments made April 15, 1998

To be appointed as INTERIM COMMISSIONER OF HEALTH AND HUMAN SERVICES for a term at the pleasure of the Governor: Marina S. Henderson, Executive Deputy Commissioner, Texas Health and Human Services Commission, P.O. Box 13247, Austin, Texas 78711-3247. Ms. Henderson will be replacing Dr. Michael D. McKinney of Houston who resigned.

To be appointed to the TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS for a term to expire February 1, 2003: Jeannie M Heller, 9218 Timberknoll, College Station, Texas 77843. Ms. Heller will be replacing Stephen Roberts of Midland who resigned.

Appointments made April 17, 1998

To be appointed to the DEPARTMENT OF INFORMATION RESOURCES BOARD OF DIRECTORS for terms to expire February 1, 2003: Carole S. Griesdorf, 4820 Ridgedale Drive, Plano, Texas 75024, (replacing Dan Burck of Austin whose term expired); Rolf

R. Haberecht, 10984 Crooked Creek Drive, Dallas, Texas 75229, (re-
placing Dorothy Wells of Austin whose term expired).

TRD-9804458



ATTORNEY GENERAL

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

Request for Opinions

RQ-1111. Request from Mr. Leonard Rauch, Chairman, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, concerning authority of Texas A&M University to contract with South Texas College of Law to operate the "Texas A&M University Law Center".

RQ-1112. Request from the Honorable Rodney Ellis, Chairman, Jurisprudence Committee, Texas Senate, P.O. Box 12068, Austin, Texas 78711-2068, concerning clarification of Attorney General Opinion DM-464 (1998): Time Payment Fee under §51.921, Government Code.

RQ-1113. Request from the Honorable Florence Shapiro, Chair, Interim Committee for Sex Offenders, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, concerning Registration of sex offenders.

RQ-1114. Request from the Honorable Ben W. "Bud" Childers, Fort Bend County Attorney, 301 Jackson, Suite 621 Richmond, Texas 77469-3108, concerning whether the City of Rosenberg may use certain bond proceeds for the construction of a new civic center - convention center.

RQ-1115. Request from the Honorable Ron Lewis, Chair, County Affairs Committee, Texas House of Representatives, P.O. Box 2910

Austin, Texas 78768-2910, concerning construction of §814.1041, Government Code, which provides for a "temporary service retirement option" for state employees.

RQ-1116. Request from Mr. Robert E. Bell, Jackson County District Attorney Courthouse, 115 West Main Street, Room 205 Edna, Texas 77957, concerning whether the Jackson County county-wide Drainage District has sole responsibility for drainage and similar matters within the City of Edna.

RQ-1117. Request from Mr. Dudley M. Thomas, Director, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0001, concerning construction of Senate Bill 370, Acts 1997, 75th Legislative, Chapter 1171, relating to the regulation of certain motor vehicles, truck tractors, road tractors, and tow trucks.

RQ-1118. Request from Mr. Sid L. Harle, Chair, Texas Court Reporters Certification Board, P.O. Box 13131, Austin, Texas 78711-3131, concerning whether the Court Reporters Certification Board has approval authority over registration of court reporting firms.

TRD-9805276

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 III. Office of the Attorney General

Chapter 62. Sexual Assault Prevention and Crisis Services

1 TAC §§62.11-62.19

The Office of the Attorney General proposes new §§62.11 - 62.19, concerning governing training certification for the sexual assault prevention and crises services program. The new rules define a process for certification application.

Rebecca Turner-Gonzales, Grants Program Fiscal Administrator for the Sexual Assault Prevention and Crisis Services Division, Office of the Attorney General, 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.

Ms. Turner-Gonzales 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 a statewide and uniform process of training volunteers assisting sexual assault survivors. There will be no effect on small business as a result of enforcing these sections. There is no cost to entities that are required to comply with these sections as proposed.

Comments on the proposal may be submitted to Jo Halligan, Director of Certification, Sexual Assault Prevention and Crisis Services Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711.

The new rules are proposed under Government Code, §420.004(b), which provides the Office of the Attorney General with the authority to promulgate these rules.

No other statute, code, or article are affected by these proposed new sections.

§62.11. Definitions.

The following words and terms when used in this chapter shall have the following meaning unless the content clearly indicates otherwise:

(1) Executive Director - the chief staff person responsible for the overall fiscal management, program development, staff supervision, and board liaison for a non-profit agency.

(2) Direct Services Coordinator - a staff person or volunteer designated by the executive director of the program who is responsible for supervising volunteers and coordination of their direct services delivery. A new position does not need to be created for this role. The position can be filled by either a staff person or a volunteer who has completed:

(A) Forty hours of approved training for direct service volunteers;

(B) Twenty hours of continuing education; and

(C) Fifty documented hours of direct client services.

(3) Direct services - services provided to victims of sexual assault and their family members and/or friends to assist in their recovery process. Services include:

(A) Crisis intervention (face-to-face, hotline);

(B) Accompaniment;

(C) Explanation of the criminal justice system;

(D) Explanation of the medical process;

(E) Explanation of Victims' Bill of Rights;

(F) Explanation of Victim Impact Statement; and

(G) Referral services.

(4) Continuing education - education acquired by volunteers who have completed the initial 40 hours of required training. Continuing education topics must enhance the skills of the volunteer or benefit a survivor. Continuing education is above and beyond the initial 40 hour training.

(5) Training certification requirements - a formal process documenting that a training program approved by the Office of the Attorney General (OAG) meets the training standards established by the OAG.

(6) On-the-job training - learning completed outside the traditional classroom environment and occurring within service

delivery sites. On-the-job training is supervised and approved by the direct services coordinator.

(7) Self-study - learning that occurs outside the traditional classroom environment that involves reading assigned materials, viewing assigned videos/films, or listening to assigned audio tapes. Reading 15 pages of standard letter-size pages, viewing one hour of video/film or listening to one hour of cassette tape meets one hour of classroom training.

(8) Direct Services Volunteer Advocate - a volunteer at least 18 years of age who has completed the initial 40 hour certified training and has been approved by the direct services coordinator to provide direct services to victims of sexual assault and their family members and/or friends.

(9) Hotline Advocate - a volunteer at least 18 years of age who has completed the initial 30 hour certified training and has been approved by the direct services coordinator to provide hotline services to victims of sexual assault and their family members and/or friends.

(10) Values Clarification - a process to assist in the identification of personal beliefs and behaviors.

§62.12. Program Requirements for Training Certification.

(a) Programs must have written volunteer advocate policies that include:

(1) Application process with references and interview process;

(2) Right of program to remove volunteer before or after initial training is completed and reasons to remove;

(3) Volunteer confidentiality statement;

(4) Ethical standards;

(5) Continuing education requirements;

(6) Volunteer grievance procedure; and

(7) Volunteer job descriptions.

(b) Hotline Volunteer Advocate's must receive 30 hours of training within a three month period. Hours must be delivered in either:

(1) All classroom hours ("CH"); or

(2) A combination ("COM") of hours:

(A) classroom (minimum of 18 hours);

(B) self-study and on-the-job training (minimum of 12 hours to be divided at the discretion of the Executive Director). The content of training must be taken from the forty hours listed below and at the discretion of the Direct Services Coordinator).

(c) Forty hours of training for Direct Services Volunteer Advocates must be delivered within a three month period. Forty hours must be delivered in either:

(1) All classroom hours ("CH"); or

(2) A combination ("COM") of:

(A) classroom (minimum of 28 hours);

(B) self-study (maximum of 4 hours); and

(C) on-the-job training hours (maximum of 8 hours).

(d) Training must include the following:

(1) Orientation. The orientation can be delivered in either "CH" or "COM". If "CH", a minimum of two hours must be delivered. If COM, a minimum of one hour must be classroom and a maximum of one hour must be on-the-job. Self-study hours are not allowed. Orientation to the program must include:

(A) Volunteer job description;

(B) Role of volunteer in the program;

(C) Structure and history of the program; and

(D) Historical perspectives of rape.

(2) Definitions/Facts. Definition/Facts for not less than two hours in the classroom, must include the following topics:

(A) Myths vs facts;

(B) Socialization issues;

(C) Confidentiality;

(D) Values clarification;

(E) Ethics; and

(F) Definition of sexual assault.

(3) Orientation to Sexual Assault Issues. The orientation to sexual assault issues can be delivered in either "CH" or "COM". If "CH", a minimum of five hours must be delivered. If "COM", a minimum of three classroom and a maximum of two hours self-study. Orientation to sexual assault issues must include:

(A) Survivor Profile: Child; Teen; and Adult;

(B) Offender Profile: Adult offender/adult victim; adult offender/child victim; and teen offender/adult or child victim.

(4) Advocacy. Advocacy instruction may be delivered in either "CH" or "COM". If "CH", a minimum of four hours must be delivered. If "COM", a minimum of two classroom hours and a maximum of two self-study hours. On-the-job hours are not allowed. Advocacy must include:

(A) Rape Trauma Syndrome;

(B) Identifying potential suicides; and

(C) Working with significant others.

(5) Crisis intervention. Crisis intervention instruction must be delivered through a minimum of four classroom hours. "COM" hours are not allowed. Crisis intervention instruction must include:

(A) Orientation to a crisis;

(B) Communication skills/active listening skills;

(C) Telephone counseling skills;

(D) Problem solving skills; and

(E) Appropriate and inappropriate responses.

(6) Types of Sexual Assault and Types of Special Populations. Types of Sexual Assault and Types of Special Populations instruction may be delivered in either "CH" or "COM". If "CH", a minimum of three hours. If "COM", a minimum of two classroom hours and a maximum of one self-study hour. On-the-job hours are not allowed.

(7) Medical. Medical information may be delivered in either "CH" or "COM". If "CH", a minimum of four hours. If "COM", a minimum of two classroom hours and a maximum of one

self-study hours and one on-the-job hour. Medical information must include:

- (A) Hospital and program procedures;
- (B) Emergency room protocol;
- (C) Pregnancy;
- (D) Sexually transmitted diseases;
- (E) Date rape drugs;
- (F) Birth control;
- (G) Abortion;
- (H) Basic anatomy;
- (I) Medical exam and collection of forensic evidence;
- (J) Medical resources; and
- (K) Role of a sexual assault nurse examiner (when

applicable).

(8) Criminal Justice. Criminal justice information may be delivered in either "CH" or "COM". If "CH", a minimum of six hours (three hours for law enforcement divided between the Police Department and Sheriff's Office; two hours for District Attorney's Office; and one hour for Crime Victims' Compensation). If "COM", a minimum of four classroom hours (one hour each for law enforcement, District Attorney's Office, and Crime Victim's Compensation), a minimum of one hour for self-study (law enforcement), and a minimum of one hour on-the-job for both law enforcement and District Attorney's Office. Criminal justice information must include:

- (A) Law enforcement procedures;
- (B) Applicable laws;
- (C) Victims' Bill of Rights;
- (D) Impact statements;
- (E) Overview of the criminal justice system; and
- (F) Legal resources and remedies.
- (G) Overview of Crime Victims' Compensation

(9) Volunteer Information. Volunteer information may be delivered in either "CH" or "COM". If "CH", a minimum of three classroom hours. If "COM", a minimum of two classroom hours and a maximum of one self-study hour. Volunteer information must include:

- (A) Secondary victimization;
- (B) Stress and burnout;
- (C) Self protection;
- (D) Survivor's/victim's spirituality;
- (E) Community resources for the volunteer;
- (F) Responsibility and limitations;
- (G) Local community attitudes; and
- (H) Client's needs vs own needs.

(10) Reporting and Documentation. Reporting and Documentation information may be delivered in either "CH" or "COM". If "CH", a minimum of two classroom hours. If "COM", a minimum of one classroom hour and a maximum of one self-study hour. Reporting & Documentation must include:

- (A) Program forms;
- (B) Program procedures;
- (C) Reporting child/elder abuse;
- (D) Use of program equipment;
- (E) Program specific information for survivors; and
- (F) Resources for sexual assault survivors.

(11) Role-playing. Role-playing instruction must be delivered through a minimum of five classroom hours. At least two role-plays must be hot-line situations, with one being a crank caller. "COM" is not allowed. Role-playing instruction must include at least one case example of each of the following:

- (A) Recent assault;
- (B) Past sexual assault or an adult or child;
- (C) Adult sexually assaulted as a child;
- (D) Crank call;
- (E) Stranger assault;
- (F) Acquaintance assault; and
- (G) Family member/friend of survivor.

§62.13. Test Requirements.

(a) Volunteers trained to deliver direct services and/or community education must take a final examination whether training was "CH" or "COM".

(b) The final examination must be approved by local program Executive Director.

(c) The final examination must track designed training.

(d) Volunteers delivering direct services and/or community education must pass the final examination with a score of seventy.

(e) One final examination re-test is allowed.

(f) Final examination must be retained in volunteer files.

§62.14. Trainers.

(a) Training must be delivered by:

(1) Staff with no less than one year's experience in the topic presented, unless the topic is crisis intervention, in which case two years of crisis intervention experience is required; and/or

(2) Volunteers with no less than 500 documented hours, which include 100 documented hours of direct services; and/or

(3) An expert in the field.

(b) Programs unable to secure trainers meeting the requirements in subsection (a) of this section may request in writing a waiver from the Director of Sexual Assault Prevention and Crisis Services Division, Office of the Attorney General.

§62.15. Continuing Education.

(a) After a program is certified and a volunteer completes training, the volunteer is required to complete a minimum of eight hours of continuing education per year.

(b) A copy of the volunteer sign-in sheet for any continuing education training delivered by a certified program must be kept on file and retained for a period of three years.

(c) Accepted continuing education training is training that meets the standards imposed by the OAG and is sponsored by the

OAG, Texas Association Against Sexual Assault (TAASA), National Coalition Against Sexual Assault (NCASA), institutions of higher education, a trainer who is recommended by the OAG or a local sexual assault program.

(d) A certificate of attendance that includes dates of attendance, hours accrued, name of sponsor and name of volunteer/staff must be kept in the volunteer's file.

§62.16. Program Application Process for Training Certification.

(a) Applications must be obtained from the Sexual Assault Prevention and Crisis Services Division of the OAG. Information to be submitted must include:

- (1) Completed checklist;
- (2) Application cover sheet;
- (3) Direct services supervisor form;
- (4) Direct services supervisor job description;
- (5) Direct services supervisor current resume;
- (6) Training agenda w/topics, trainers, times;
- (7) Training hours chart;
- (8) Trainer qualification form;
- (9) Copy of test;
- (10) Table of contents from volunteer training manual;
- (11) Volunteer policies;
- (12) Volunteer application form example;
- (13) Job description for hotline volunteers (if applicable);
- (14) Job description for accompaniment volunteers (if applicable); and
- (15) Job description for peer counseling volunteers (if applicable).

(b) Applications will be reviewed by the OAG for compliance to certification guidelines and rules. Site visits and/or phone interviews will be utilized to clarify application information. The OAG will notify, in writing, approval or disapproval of request for certification within 120 days of receipt. Program approved for certification will receive a written notice of their two-year certification (LAW).

(c) A program denied certification will receive written instructions or corrections and/or request for additional information to meet certification guidelines. The amended certification packet and/or additional information must be received within 45 days of notice for corrections. A program may resubmit the corrections one time annually.

§62.17. Appeals Process.

(a) A certification appeals committee is appointed by the Director, Sexual Assault Prevention and Crisis Services Division, Office of the Attorney General, and will be made up of two OAG staff members, one TAASA representative, and three sexual assault program advocates. The committee will meet as needed.

(b) In order to appeal denial of certification, a program must:

- (1) Put in writing reasons for requesting an appeal;
- (2) Describe any unusual circumstances surrounding the application; and
- (3) State a justification for appeal;

(c) The certification appeals committee must:

- (1) Hold a certification appeal hearing in Travis County, Texas;
- (2) Notify ten working days in advance the program denied certification of the certification appeal hearing;
- (3) Review the original application;
- (4) Review the appeal letter;
- (5) Request any additional information as needed;
- (6) Meet as a group to finalize the decision; and
- (7) Respond in writing within 60 days of receipt of appeal letter.

§62.18. Revocation and Appeals Process for Revocation of Certification.

(a) The revocation appeals committee and the certification appeals committee are the same committee. The revocation committee must receive written complaints and/or site visit reports documenting training certification policy violations.

(b) Training certification may be revoked for:

- (1) Changes in the training program content;
- (2) Falsification of volunteer training and continuing education records;
- (3) Falsification of trainer records;
- (4) Use of unqualified trainers; and
- (5) Non-compliance with volunteer policy requirements.

(c) In order to appeal revocation of certification, a program must :

- (1) Put in writing reasons for requesting appeal;
- (2) Describe any extenuating circumstances; and
- (3) State a justification for appeal;

(d) The revocation appeals committee must:

- (1) Hold a certification appeal hearing in Travis County, Texas;
- (2) Notify ten working days in advance the program who's certification has been revoked of the revocation appeal hearing;
- (3) Review information supporting the allegations against the programs;
- (4) Review the revocation appeal letter;
- (5) Request any additional information as needed;
- (6) Meet as a group to finalize the decision;
- (7) Respond in writing within 60 days of receipt of revocation appeal letter;

(e) The revocation appeals committee shall determine appeals and shall render decisions disposing of appeals by ordering one of the following in each appeal process:

- (1) Probation, consisting of a minimum period of 60 days or until all conditions are satisfied;
- (2) Revocation of certification; or
- (3) Granting the appeal.

§62.19. Restoration of Good Standing.

If a program is placed on probation, that program must meet the terms of probation within the time limits imposed by the appeals committee in order to regain the status of being in good standing. If certification is revoked, that program must resubmit a training application within the time limits imposed by the appeals committee.

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 April 13, 1998.

TRD-9805141

Sarah Shirley

Assistant Attorney General

Office of the Attorney General

Earliest possible date of adoption: May 24, 1998

For further information, please call: (512) 475-4499



Part XV. Health and Human Services Commission

Chapter 351. Coordinated Planning and Delivery of Health and Human Services

1 TAC §351.13

The Health and Human Services Commission proposes new §351.13, concerning substitute care provider outcome standards. This new rule affects substitute care providers who contract with the State to provide services to children under the care of the State. This new rule will clarify outcome domains, provide definitions of key terms, and describe the method of evaluating children's achievements while in substitute care and the implementation of this information by state health and human services agencies contracting for substitute care services.

Section 531.047 of the Texas Government Code requires the Health and Human Services Commission to establish rules requiring a provider of substitute care to implement result-oriented standards which the provider must achieve. Section 531.047 also requires a health and human services agency that purchases substitute care services to incorporate the result-oriented standards into each substitute care service provider contract. The inclusion of these measurable outcome standards in contracts will enhance accountability by clarifying expectations. As a result, the agencies should have quantifiable information that they may use or share with other agencies regarding the substitute care provider, including rates, contracts, outcomes, and client information.

Mr. Gary Bego, Associate Commissioner for Fiscal Policy, has determined that for each year during the first five-year period that the rule will be in effect, there will be no net fiscal implications for state or local government as a result of enforcing or administering §351.13.

Mr. Bego has also determined that for each year during the first five-year period the rule will be in effect, the public benefit anticipated as a result of adopting the proposed rule will be better quality care for children in substitute care and probable improvement of the children as a result of better care. There may be incidental costs to providers in complying with this new rule primarily from informing provider staff, clients, and clients'

families of the outcome-based measurement of progress toward achievement of an individualized treatment plan or service plan. Otherwise, there will be no costs to small businesses or persons complying with the rule as proposed.

A public hearing will be held at 2:00 p.m. on Monday, June 1, 1998, at the Texas Department of Human Services, 701 West 51st Street, Public Hearing Room (125), East Tower, Austin, Texas, to accept oral and written testimony concerning the proposal. Persons requiring an interpreter for the deaf or hearing impaired should notify Barbara Tejero, Office of Legislative and Legal Affairs, the Health and Human Services Commission, at least 72 hours prior to the hearing by calling (512) 424-6576.

Comments may be submitted to Stella M. Bryant, Texas Health and Human Services Commission, 4900 North Lamar Boulevard, 4th Floor, Austin, Texas 78751, (512) 424-6577. Comments must be received no later than 30 days following publication of this proposal in the *Texas Register*.

The new rule is proposed under the Texas Government Code, Chapter 531, §531.033, which authorizes the Commissioner of Health and Human Services to adopt rules necessary to carry out the Health and Human Services Commission's duties under Chapter 531.

The new rule affects Chapter 531 of the Texas Government Code.

§351.13. Substitute Care Provider Outcome Standards.

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

(1) Medical domain: The medical domain is related to a child's physical health. It includes, but is not limited to, medication management, medication monitoring, and management of acute and chronic medical conditions.

(2) Safety and security domain: The safety and security domain is characterized by the absence of harm to self and others and safety to self, others, and community. This domain includes, but is not limited to, self-harm, aggression, and destructive acts. The safety and security domain depends upon a child's ability to modify inappropriate behavior.

(3) Recreational domain: The recreational domain involves the child's ability to choose and participate in age-appropriate play and activities. This domain includes, but is not limited to, hobbies and sports.

(4) Educational domain: The educational domain is related to a child's performance and conduct in an academic or vocational setting.

(5) Mental/behavioral health domain: The mental/behavioral health domain refers to the behavioral and emotional functioning of the child, as well as any psychiatric symptomatology that may be present.

(6) Relationship domain: The relationship domain is characterized by, but is not limited to, a child's ability to trust, to form positive relationships, to function well as part of family unit, as well as by the development and maintenance of age-appropriate social relationships.

(7) Socialization domain: The socialization domain is characterized by, but is not limited to, age-appropriate social behavior, problem-solving, and social skills in various social settings.

(8) Permanence domain: The permanence domain is characterized by a child moving out of a substitute care system and remaining in the least restrictive environment in the community and, whenever possible, in a family setting.

(9) Parent and child satisfaction domain: The parent and child satisfaction domain involves, but is not limited to, both the parent's and child's general satisfaction with services, their relationship with service providers, their participation in the treatment or service plan, and improvement in the relationship between the child and the parents.

(b) Other Definitions.

(1) Contracting entity-a health and human services agency (the Texas Juvenile Probation Commission, Texas Department of Mental and Mental Retardation, and/or Texas Department of Protective and Regulatory Services) that is responsible for implementing, coordinating, and monitoring outcome standards for substitute care services for children placed in a licensed foster families, foster group homes, or 24-hour residential care facilities.

(2) Substitute care provider-a person who provides residential care for children for 24 hours a day, including:

(A) a child-care institution, as defined by §42.002, Human Resources Code;

(B) a child-placing agency, as defined by §42.002, Human Resources Code;

(C) a foster group home or foster family home, as defined by §42.002 Human Resources Code; and

(D) an agency group home or agency home, as defined by §42.002 Human Resource Code, other than an agency group home, agency home, or a foster home verified or certified by the Texas Department of Protective and Regulatory Services.

(3) Individualized Treatment Plan-this term has the same meaning as that provided in 25 TAC §402.53.

(4) Service Plan-This term has the same meaning as that provided in 40 TAC §700.1331.

(c) Individualized Treatment Plan or Service Plan. A substitute care provider who receives funds from the state to provide substitute care services to children under the care of the State shall maintain an individualized treatment plan or service plan on each individual child. The plan shall contain specific behavioral goals that are appropriate to the child and the types of services to be provided under the appropriate levels of care. The provider should use the nine domains in subsection (a) of this section in setting the behavioral goals. A child is not required to have a goal in each domain; however, a child may have one or more different goals within the same domain.

(d) Development of Goals. The responsibility of developing goals in a child's individual treatment plan or service plan resides with the contracting entity in conjunction with the substitute care provider. The child and family should be involved in the development of treatment goals whenever possible. Once a child has met goal(s) identified in the treatment or service plan, new goals should be developed for the child.

(e) Measure of Progress toward Goals.

(1) The staff, representative, or third party independent agent of the contracting entity shall monitor the progress of the child in achieving the goals. The frequency of monitoring shall be based upon the current review period appropriate for that specific child's level of care. A five-point scale measures the child's progress towards

the achievement of each goal. The staff, representative, or third party independent agent also rates the child. Progress is rated at given intervals on the following five-point scale:

(A) +2 Substantial improvement in behavior identified in the goal;

(B) +1 Some improvement in behavior identified in the goal;

(C) 0 Behavior identified in the goal maintained;

(D) -1 Some worsening in behavior identified in the goal; and

(E) -2 Substantial worsening in behavior identified in the goal.

(2) The child's progress will be assessed on each identified goal within the nine domains listed in subsection (a) of this section. If the child has shown improvement in 50% or more of the identified goal(s) as measured by a positive rating (+1 or +2) during the monitoring period, the child will be considered to be progressing towards the goal(s).

(3) The outcome of a substitute care provider's service delivery shall be measured by the percentage of children under its care that are considered to have made progress towards their goals, as defined in paragraph (2) of this subsection.

(4) When a contracting entity has an option in placing a child in substitute care, the entity shall consider whether the children in a particular substitute care provider's care are progressing as provided in subsection (c)(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 April 13, 1998.

TRD-9805150

Marina S. Henderson

Executive Deputy Commissioner

Health and Human Services Commission

Earliest possible date of adoption: May 24, 1998

For further information, please call: (512) 424-6578

◆ ◆ ◆
TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 7. Pesticides

Subchapter C. Licensing

4 TAC §7.22

The Texas Department of Agriculture (the department) proposes amendments to §7.22, concerning licensing of pesticide applicators. The department proposes the amendments to provide an exemption from testing fees for certain employees of governmental entities. The amendment exempts from testing fees employees of political subdivisions of the state of Texas or of a federal agency operating in Texas who utilize the license in the course of their employment.

Donnie Dippel, Assistant Commissioner for Pesticide Programs, has determined that for the first five-year period the amend-

ments are in effect there will be fiscal implications to state and local government as a result of enforcing or administering the proposal. There will be a decrease in revenue to state government and a corresponding increase in revenue to local government for the elimination of testing fees for certain governmental employees. The estimated amount of the effect is not determinable at this time and will depend on the number of applicators eligible for the testing fee exemption.

Mr. Dippel also has determined that for each year of the first five years the proposal is in effect the expected public benefit derived from enforcement and administration of the proposal will be continued licensing and testing of governmental employees at a more cost-efficient rate. There will be no effect on small businesses. The effect on persons required to comply with the proposal is a decrease in cost of licensing due to the elimination of testing fees.

Comments on the proposal may be submitted to Donnie Dippel, Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Agriculture Code, §76.106, which provides the department with the authority to classify licenses, establish testing requirements and set and charge a fee for testing in each license category.

The Code affected by the proposal is the Texas Agriculture Code, Chapter 76.

§7.22. *Licensing of Pesticide Applicators.*

(a)-(c) (No Change.)

(d) Commercial and noncommercial applicators must meet the following requirements:

(1) (No Change.)

(2) A fee of \$20 shall be required for testing each applicant in each license use category and subcategory, and must be paid at the time the test or tests are given. ~~Political subdivision employees may submit a purchase order number in lieu of payment at time of the examination.~~ Employees of political subdivisions of the State of Texas or of a federal agency operating in Texas who utilize the license solely in the course of their employment [state universities and state agencies] are exempt from examination fees.

(3) (No Change.)

(e)-(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 April 6, 1998.

TRD-9804800

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: May 24, 1998

For further information, please call: (512) 463-7541



TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 22. Practice and Procedure

Subchapter M. Procedures and Filing Requirements in Particular Commission Proceedings

16 TAC §22.246

The Public Utility Commission of Texas (PUC) proposes an amendment to §22.246, relating to Administrative Penalties. The proposed amendment will streamline existing administrative penalty procedures in a manner that facilitates rapid response and timely enforcement action by the commission, and that more closely conforms the rule to the terms of the Public Utility Regulatory Act, Texas Utilities Code Annotated, §15.023 and §15.024 (Vernon 1998) (PURA). The proposed amendment will also allow the commission to develop and refine interdivisional procedures to ensure a close working relationship between the Office of Customer Protection and the Office of Regulatory Affairs on enforcement-related activities. In addition, the proposed amendment seeks to encourage settlement negotiations between parties at any stage of the proceeding by deleting the time period during which a party must request a settlement conference. Project Number 18121 has been assigned to this proposed amendment.

Mr. Bill Magness, Director, Office of Customer Protection, has determined that for each year of the first five-year period the proposed 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. Magness has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be efficient and effective enforcement of PURA and commission rules and orders. There will be no effect on small businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Magness has also determined that for each year of the first five years the proposed section is in effect there will be no impact on employment in the geographical area affected by implementing the requirements of the section.

Comments on the proposed amendment (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. All comments should refer to Project Number 18121.

The commission staff will conduct a public hearing on this rule-making under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas, on June 3, 1998, at 9:00 a.m.

This amendment is proposed under PURA §14.002 and §14.052, which provide the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and specifically, PURA §15.023 and §15.024, which grant the commission authority to impose administrative penalties for violations of PURA or commission

adopted rules or orders, and set forth procedures for the assessment of administrative penalties.

Cross Reference to Statutes: Public Utility Regulatory Act, §§14.002, 14.052, 15.023 and 15.024.

§22.246. *Administrative Penalties.*

(a) (No change.)

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

(1) Executive director — The executive director of the commission or the executive director's designee.

~~(2) ORA Director — The director of the commission's office of regulatory affairs or the ORA director's designee.]~~

~~(2) [(3)] Person — Includes a natural person, partnership of two or more persons having a joint or common interest, mutual or cooperative association, and corporation.~~

~~(3) [(4)] Violation — Any activity or conduct prohibited by the Public Utility Regulatory Act (PURA), commission rule or commission order.~~

~~(4) Continuing violation — Any instance in which the person alleged to have committed a violation attests that a violation has been remedied and was accidental or inadvertent and subsequent investigation reveals that the violation has not been remedied or was not accidental or inadvertent.~~

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

~~(e) Report of violation. If, based on the investigation undertaken pursuant to subsection (d) of this section, the executive director determines [and the ORA director determine] that a violation has occurred, the executive director may issue a report to the commission. [The executive director must obtain concurrence from the ORA director that a violation has occurred before the report is issued to the commission; provided, however, that if within 30 days of the date the draft report is provided to the ORA director, the ORA director does not expressly concur or not concur in the issuance of the report, the report may be issued without such concurrence.]~~

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

(f) Options for response to notice of violation.

(1) Opportunity to remedy ~~[eure]~~.

~~(A) Within 30 days of the date of receipt of the notice of violation set out in subsection (e)(2) of this section, the person against whom the penalty may be assessed may notify the commission in writing that the alleged violation has been remedied [will be eured] and that the alleged violation was accidental or inadvertent. A person who claims to have remedied an alleged violation has the burden of proving to the commission both that an alleged violation was remedied and was accidental or inadvertent. Proof [; and that proof] that the alleged violation has been remedied [eured] and was accidental or inadvertent shall [will] be filed with the commission within 40 days of the person's receipt of the notice of violation. Proof that an alleged violation has been remedied [eured] and that the alleged violation was accidental or inadvertent shall be evidenced in writing, under oath, and supported by necessary documentation [; and shall be filed with the commission within 40 days of the person's receipt of the notice of violation].~~

~~[(B) Within 20 working days of receipt of the evidence required by subparagraph (A) of this paragraph, the executive director~~

~~shall make a determination as to whether further proceedings are necessary. The executive director must obtain the written concurrence from the ORA director before initiating such proceedings or closing the matter. However, if the ORA director does not expressly concur or not concur within ten days of receiving the request for concurrence, the executive director may implement the decision to proceed or not proceed without such concurrence.]~~

~~(B) [(C)] If the executive director determines that the alleged violation has been remedied, [eured; and] was remedied [eured] within 30 days, and that the alleged violation was accidental or inadvertent, [and has obtained concurrence from the ORA director,] no penalty will be assessed against the person who is alleged to have committed the violation.~~

~~(C) If the executive director determines that the alleged violation was not remedied or was not accidental or inadvertent, the executive director shall make a determination as to what further proceedings are necessary.~~

~~(D) If the executive director determines that the alleged violation is a continuing violation, the executive director shall institute further proceedings, including referral of the matter for hearing pursuant to subsection (h) of this section.~~

(2) (No change.)

~~[(3) Request for settlement conference. Within 30 days of the date the person receives the notice set out in subsection (e)(2) of this section, the person may submit to the executive director a written request that a settlement conference be held to discuss the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty. A settlement conference shall be held within 45 days from the date the executive director receives the request and shall be conducted pursuant to the procedures set out in subsection (g) of this section.]~~

~~(3) [(4)] Request for hearing. Not later than the 20th day after [Within 30 days of] the date the person receives the notice set out in subsection (e)(2) of this section, [or at any time during the 45 days within which a settlement conference is held pursuant to paragraph (3) of this subsection,] the person may submit to the executive director a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.~~

~~(g) Settlement Conference. A settlement conference may be requested by any party to discuss the occurrence of the violation, the amount of the penalty, and the possibility of reaching a settlement prior to hearing. A settlement conference [requested pursuant to subsection (f)(3) of this section] is not subject to the Texas Rules of Evidence or the Texas Rules of Civil Procedure; however, the discussions are subject to Texas Rules of Civil Evidence 408, concerning compromise and offers to compromise. [The settlement conference shall be conducted in accordance with the procedures set out in paragraphs (1) - (3) of this subsection.]~~

~~[(1) Upon request of the parties, the commission's legal administration division shall conduct the settlement conference and shall act as a facilitator.]~~

~~(1) [(2)] If a settlement is reached:~~

~~(A) the parties [legal administration division] shall file [send] a report with [to] the executive director setting forth the factual basis for the settlement;~~

~~(B) the executive director shall issue the report of settlement to the commission; and~~

(C) the commission by written order will approve the settlement.

(2) ~~[(3)]~~ If a settlement is reached after the matter has been referred to SOAH [the State Office of Administrative Hearings (SOAH)], the matter shall be returned to the commission. If the settlement is approved, the commission shall issue an order memorializing commission approval and setting forth commission orders associated with the settlement agreement [and the commission by written order will approve the settlement].

(h) Hearing. If a person requests a hearing under subsection ~~(f)(3)~~ ~~[(f)(4)]~~ of this section, or fails to respond timely to the notice of the report of violation provided pursuant to subsection (e)(2) of this section, ~~[or if a settlement is not reached with 45 days of the date the executive director receives a request for a settlement conference under subsection (g) of this section,]~~ or if the executive director ~~[with the concurrence of the ORA director,]~~ determines that further proceedings are necessary ~~[under subsection (f)(1)(B) of this section, relating to the opportunity to cure the violation],~~ the executive director ~~[secretary]~~ shall set a hearing, provide notice of the hearing to the person, and refer the case to SOAH pursuant to §22.207 of this title (relating to Referral to State Office of Administrative Hearings). The case shall then proceed as set forth in paragraphs (1)-(5) of this subsection.

(1) The commission ~~[secretary]~~ shall provide the SOAH administrative law judge a list of issues or areas that must be addressed.

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

(4) Based on the SOAH administrative law judge's proposal for decision, the commission may:

(A) (No change.)

(B) determine that a violation occurred but that, pursuant to subsection (f)(1) of this section, the person remedied ~~[cured]~~ the violation within 30 days and proved that the violation was accidental or inadvertent, and that no penalty will be imposed; or,

(C) (No change.)

(5) Notice of the commission's order issued pursuant to paragraph (4) of this subsection shall be provided under the Government Code, Chapter 2001 ~~[of the Government Code]~~ and §22.263 of this title (relating to Final Orders) and shall include a statement that the person has a right to judicial review of the order.

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 April 7, 1998.

TRD-9804845

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: May 24, 1998

For further information, please call: (512) 936-7308



Part IX. Texas Lottery Commission

Chapter 401. Administration of the State Lottery Act

Subchapter E. Retailer Rules

16 TAC §401.369

The Texas Lottery Commission proposes an amendment to §401.369, concerning retailer sales incentive. The proposed amendment will allow a lottery retailer who has undergone a business reorganization but retained 100% of the principals in the business to be eligible for the reduction of the on-line service charge from \$20 to \$10.

Richard Sookiasian, Budget Analyst, has determined that for the first five-year period the rule is in effect, there will be fiscal implications as a result of enforcing or administering the section as proposed. The effect on state government for the following fiscal years will be an estimated loss in revenue: 1998 - \$0; 1999 - \$208,000; 2000 - \$416,000; 2001 - \$624,000; and 2002 - \$624,000. There will be no effect on local government as a result of enforcing or administering the proposed section.

Greg Hoelk, Sales and Retailer Relations Assistant Director, has determined that for each of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will be the enhanced ability of retailers to participate in and continue to sell Texas Lottery on-line tickets in a profitable manner notwithstanding the fact that retailer has undergone a business reorganization which resulted in the issuance of a new lottery sales agent's license provided that 100% of the principals remain the same.

Mr. Sookiasian also has determined that there will be no adverse effect on small or large businesses as a result of economic cost to individuals who we required to comply with the section as proposed.

Comments on the proposal may be submitted to Kimberly L. Kiplin, General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630.

The amendment is proposed under the Texas Government Code, §466.015, which gives the Texas Lottery Commission authority to adopt rules necessary to administer the State Lottery Act and to adopt rules governing the establishment and operation of the lottery and Texas Government Code, §467.102, which authorizes the Texas Lottery Commission to adopt rules for the enforcement and administration of the Texas Government Code, Chapter 467 and the laws under the commission's jurisdiction.

The Texas Government Code, Chapter 466 is affected by the proposed amendment.

§401.369. Retailer Sales Incentive.

(a) The Executive Director may reduce a lottery sales agent's on-line weekly service charge from \$20 to \$10 if the sales agent meets the following criteria:

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

(3) The license must be held by the same sales agent and must not have been transferred to another entity during the time period except in the event of a lottery sales agent who has undergone a business reorganization that results in the creation of a new entity which retains 100% of the principals.

(b) (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 April 13, 1998.

TRD-9805118

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: May 24, 1998

For further information, please call: (512) 344-5113

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TITLE 19. EDUCATION

Part II. Texas Education Agency

Chapter 75. Curriculum

Subchapter AA. Commissioner's Rules Concerning Driver Education

19 TAC §§75.1001-75.1003, 75.1010

The Texas Education Agency (TEA) proposes amendments to §75.1001-75.1003 and §75.1010, concerning driver education. The sections provide for a program of organized instruction in driver education and traffic safety for public school students and establish standards for certifying professional and para-professional personnel who conduct the programs in the public schools. Section 75.1010 also establishes the fee for a driver education certificate and requirements relating to issuing, completing, and maintaining the certificate.

The proposed amendment to 19 TAC §75.1001 establishes the requirement for driver education teachers in public entities to annually complete a minimum of six hours of continuing education. These proposed amendments are consistent with requirements for licensed schools outlined in Senate Bill 964, 74th Texas Legislature, 1995. Proposed amendments to 19 TAC §75.1002 and §75.1003 increase the minimum certification requirements for driver education teachers in public entities from six semester hours to nine semester hours. These proposed amendments are consistent with the requirements for licensed schools as outlined in Senate Bill 964, 74th Texas Legislature, 1995.

The proposed amendment to 19 TAC §75.1010 increases the fee for driver education certificates from \$1.00 to \$2.00. The fee increase provides for costs associated with the monitoring requirements of driver education programs and administrative costs. Senate Bill 964, 74th Texas Legislature, 1995, allows the TEA to charge up to \$4.00 for each certificate.

Pat Pringle, associate commissioner for school support and continuing education, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the sections.

The TEA is required by Senate Bill 964, 74th Texas Legislature, 1995, to provide driver education certificates to public schools and colleges and universities. The fee for each certificate will be \$2.00, which will be sufficient to cover TEA administrative costs associated with each certificate and costs to support curriculum development for driver education programs. The estimated increase in revenue for TEA will be \$110,000 for Fiscal Years (FYs) 1998-2002. The TEA will receive revenue from colleges,

universities, local school districts, and education service centers that conduct teenage driver education programs.

It is anticipated that the Department of Public Safety will recover the expenditure of approximately \$50,000 for FYs 1998-2002 and associated administrative costs through the fees charged to parents and legal guardians who purchase the course materials for the Parent Taught Driver Education course. The increase equates to only \$1.00 per student enrolling in a Parent Taught driver education program. It is anticipated that colleges and universities will also recover the expenditure of approximately \$10,000 for FYs 1998-2002 and associated administrative costs through the fees charged to students who enroll in their driver education programs. This increase equates to only \$1.00 per student enrolled in a college or university driver education program. It is anticipated that public schools and education service centers will recover the expenditure of approximately \$50,000 for FYs 1998-2002 and associated administrative costs through the fees charged to students who enroll in their driver education programs. This increase equates to only \$1.00 per student enrolled in a public school or education service center driver education program.

Mr. Pringle and Criss Cloudt, associate commissioner for policy planning and research, have 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 teacher training programs that are standardized and teachers who will be better prepared to conduct driver education programs. Also, the requirements for driver education personnel will be consistent.

There will be no effect on small businesses. The proposed increase from \$1.00 to \$2.00 will only impact public entities. Currently, private businesses licensed to conduct driver education programs are charged a fee of \$2.00 for driver education certificates. The proposed sections will standardize the fee charged to public and private entities for driver education certificates and still be below the maximum allowed by law. The anticipated economic cost to persons who are required to comply with the sections as proposed cannot be precisely determined. Any entity offering a driver education program can recover costs by charging a course fee. Driver education fees in Texas vary and are estimated to average between \$150 to \$225. Individuals participating in the driver education programs may be charged increased fees as a result of the proposed increase. However, the \$1.00 projected economic cost to individuals in FYs 1998-2002 is only an estimate. Increases will vary across Texas since administrative costs also vary. In addition, some schools may choose to absorb the increase within current fee structures or increase fees for reasons not associated with the proposed sections.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to rules@mail.tea.state.tx.us. All requests for a public hearing on the proposed sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

The amendments are proposed under Texas Education Code, §29.902, which authorizes the TEA to develop a program of organized instruction in driver education and traffic safety for

public school students and to establish standards for certifying professional and paraprofessional personnel who conduct the programs in public schools; and Senate Bill 964, §9A, 74th Texas Legislature, 1995, which authorizes the TEA to provide by rule for the design and distribution of the driver education certificate and to charge a fee for each certificate.

The amendments implement Texas Education Code, §29.902, and Senate Bill 964, §9A, 74th Texas Legislature, 1995.

§75.1001. *Administration and Supervision.*

(a) (No Change.)

(b) The superintendent, chief school official, or education service center (ESC) director must:

(1) certify that the course meets Texas Education Agency (TEA) and Texas Department of Public Safety (DPS) standards for an approved course in driver education for Texas schools;

(2) certify that all driver education personnel meet state requirements and annually complete a minimum of six hours of continuing education;

(3) provide each driver education instructor and administrator a copy of this subchapter; ~~and~~

(4) provide each driver education instructor a state-approved curriculum guide appropriate for his or her phase of instruction; and [-]

(5) conduct reviews on a periodic basis to assure that driver education programs and instructors are in compliance with all requirements specified for the programs and teachers.

(c) The TEA may conduct on-site compliance surveys and complaint investigations.

§75.1002. *Driver Education Teachers.*

(a) To qualify to teach all phases of driver education and add a driver education endorsement as a specialization area on his or her current Texas teaching certificate after January 1, 1999, an individual must: [- a teacher must meet the requirements in Chapter 137 of this title (relating to Professional Educator Preparation and Certification).]

(1) possess a Bachelor's degree;

(2) complete nine semester hours of driver education classroom, in-car, simulation, and traffic safety instruction;

(3) possess a valid Texas teaching certificate as defined by the State Board for Educator Certification in Chapter 230 of this title (relating to Professional Educator Preparation and Certification);

(4) possess a valid Texas driver's license for the type of vehicle used for instruction; and

(5) not accumulate ten or more penalty points on a driving record evaluation for the three-year period immediately preceding application using the record evaluation standards established by the Texas Department of Public Safety (DPS), which are the same standards used to evaluate Texas school bus drivers.

(b) A fully certified teacher of driver education may be designated by the Texas Education Agency (TEA) as a supervising teacher of driver education by successfully completing one of the following:

(1) six semester hours of university instruction beyond the basic ~~nine~~ [six] hours of driver education certification courses that include administering driver education programs that incorporate

classroom and in-car instruction, techniques of simulation and multicar driving range instruction, supervising, and administering traffic safety education. The instruction for supervising teachers must be given by a university approved to train driver education supervising teachers; or

(2) (No Change.)

(c) (No Change.)

(d) At least once each year a school district, an ESC, or a college or university must document that each certified driver education teacher employed in the driver education program meets the driving record evaluation standards established by the DPS [Texas Department of Public Safety (DPS)] for Texas school bus drivers.

§75.1003. *Teaching Assistants.*

(a) An individual may be employed as a teaching assistant in a driver education program under the direction of a supervising driver education teacher after completing one of the following programs.

(1) Teaching assistant (full). An individual may be approved as a teaching assistant (full) to assist certified teachers in the classroom phase of driver education and to conduct behind-the-wheel, multicar range, and simulator training by successfully completing one of the following requirements:

(A) a program of study in driver education developed by the Texas Education Agency (TEA). Applications are available from the TEA and must be submitted 30 days before the training program starts;

(B) ~~[the] nine [six]~~ semester hours of driver and traffic safety education from an approved university that are required for driver education teacher endorsement [~~plus three additional hours in techniques of teaching in-car instruction and simulation~~]; or

(C) ~~[the] nine~~ semester hours of driver and traffic safety education instructor training as outlined in Texas Civil Statutes, Article 4413(29c), §15A(b).

(2) Teaching assistant (in-car only). An individual may be approved as a teaching assistant (in-car only) to conduct only in-car training by completing one of the following requirements:

(A) ~~[the] six of the nine~~ semester hours of driver and traffic safety education required for driver education teacher certification that include driver education in-car, simulation, and traffic safety instructor development; or

(B) ~~[the] six~~ semester hours of driver and traffic safety education instructor training as outlined in Texas Civil Statutes, Article 4413(29c), §15A(b).

(b)-(f) (No Change.)

§75.1010. *Procedures for Student Certification.*

(a) The Texas Education Agency (TEA) shall be responsible for providing the driver education certificate (Form DE-964E) to public schools, education service centers (ESCs), and colleges or universities exempt from the Texas Driver and Traffic Safety Education Act. The TEA shall also provide the DE-964E certificate to the Texas Department of Public Safety (DPS) for driver education programs approved by DPS. On this form, the driver education instructor and the chief school official, ESC or DPS director, or individuals designated by the chief school official or ESC or DPS directors must certify that the driver education course was conducted according to TEA and DPS education standards for an approved course in driver education for Texas schools.

(1) (No Change.)

(2) The TEA shall charge a fee of \$2.00 [~~\$1.00~~] for each DE-964E certificate provided.

(3)-(6) (No Change.)

(b)-(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 April 13, 1998.

TRD-9805130

Criss Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

Earliest possible date of adoption: May 24, 1998

For further information, please call: (512) 463-9701



Chapter 89. Adaptions for Special Populations

The Texas Education Agency (TEA) proposes amendments to §§89.1001, 89.1011, 89.1015, 89.1020, 89.1025, 89.1030, 89.1035, 89.1040, 89.1045, 89.1050, 89.1055, 89.1060, 89.1065, 89.1075, 89.1085, 89.1115, 89.1125, 89.1131, 89.1141, 89.1155, 89.1160, 89.1165, 89.1170, 89.1175, 89.1180, 89.1185; new §§89.1181, 89.1186-89.1190; and the repeal of §§89.1095, 89.1105, and 89.1190, concerning special education services. The sections clarify federal regulations and state statutes pertaining to delivering special education services to students with disabilities. The sections also establish definitions, requirements, and procedures related to: interagency agreements; special education funding; personnel issues; regional education service centers special education programs; and hearings under the Individuals with Disabilities Education Act (IDEA).

The TEA is revising its rules to reflect changes as a result of the IDEA Amendments of 1997, which contain numerous changes to the federal law pertaining to the education of students with disabilities. The TEA rules are proposed for revision to ensure school district compliance with new procedural and reporting requirements. The revisions to the TEA rules focus primarily on changes to federal references. The most significant issue pertaining to the proposed changes relates to the repeal of 19 TAC §89.1095. Section 89.1095 required school districts to serve students with disabilities placed in private schools by their parents if the student was dually enrolled in the school district and private school. The amended federal law limits the obligation of school districts and states to serve students placed in private schools by their parents. Rules pertaining to due process hearings on students with disabilities are also proposed for revision to conform to the new provisions in IDEA and to promote effective and efficient determination of disputes arising under IDEA.

In addition to the changes in federal law, Texas Education Code (TEC), §30.057, 75th Texas Legislature, 1997, authorizes the commissioner of education to adopt rules pertaining to the Texas School for the Deaf. As a result of TEC, §30.057, a new subsection (c) is proposed in 19 TAC §89.1085. Also, 19 TAC §89.1105, pertaining to the memorandum of understanding relating to school-age residents of intermediate care facilities, is proposed for repeal because the section expired August 1997. Current 19 TAC §89.1115 includes intermediate care facilities. Subsection (d) of Section 89.1131, relating to the use of teacher

assistants, also expired August 1997 and is proposed for repeal. This specific provision may need to be revisited by TEA after the federal regulations have been finalized, if the regulations provide additional flexibility for school districts.

House Bill 1, General Appropriations Act, 75th Texas Legislature, Article IX, Rider 167, establishes a four-year sunset review cycle for all state agency rules. The TEA is also conducting a review of 19 TAC Chapter 89, Subchapter AA, Special Education Services, in accordance with Rider 167. The TEA finds sufficient reason for the rules to continue to exist and proposes revising the rules as indicated.

Carol Francois, associate commissioner for education of special populations, 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. However, the overall fiscal impact for implementing special education should increase due to the passage of the IDEA Amendments of 1997. The IDEA Amendments of 1997 contain additional prescriptive procedural and reporting requirements for the delivery of special education services.

Ms. Francois and Criss Cloudt, associate commissioner for policy planning and research, have 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 a consistent linkage to the IDEA Amendments of 1997 and a specific reference for school districts to the new federal requirements that provide for the education of students with disabilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to rules@mail.tea.state.tx.us. All requests for a public hearing on the proposed sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

Subchapter AA. Commissioner's Rules Concerning Special Education Services

Division I. General Provisions

19 TAC §89.1001

The amendment is proposed under 34 Code of Federal Regulations, §300.600, which outlines the responsibilities of TEA for all educational programs; Texas Education Code, §§29.001, 29.003, 29.005, 29.011, and 29.012, which authorizes the commissioner of education to adopt rules related to delivering special education services; and House Bill 1, General Appropriations Act, 75th Texas Legislature, Article IX, Rider 167, which establishes a four-year sunset review cycle for all state agency rules.

The amendment implements 34 CFR, §300.600; Texas Education Code, §§29.001, 29.003, 29.005, 29.011, and 29.012; and House Bill 1, General Appropriations Act, 75th Texas Legislature, Article IX, Rider 167.

§89.1001. *Scope and Applicability.*

(a) (No Change.)

(b) Education programs, under the direction and control of the Texas Youth Commission, Texas School for the Blind and Visually Impaired, Texas School for the Deaf, and schools within the Texas Department of Criminal Justice shall comply with state and federal law and regulations concerning the delivery of special education and related services to eligible students and shall be monitored by the Texas Education Agency (TEA) in accordance with the requirements identified in subsection (a) of this section.

(c) A school district having a residential care and treatment facility that is licensed by appropriate state agencies and located within the district's boundaries must provide special education and related services to eligible students residing in the facility, unless the facility meets the standards, as monitored by the TEA, for the purpose of offering contract day and/or residential special education and related services. [if the facility does not have an education program.]

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 April 13, 1998.

TRD-9805124

Criss Cloudt

Associate Commissioner, Policy Planning and Research
Texas Education Agency

Earliest possible date of adoption: May 24, 1998

For further information, please call: (512) 463-9701



Division II. Clarification of Provisions in Federal Regulations and State Law

19 TAC §§89.1011, 89.1015, 89.1020, 89.1025, 89.1030, 89.1035, 89.1040, 89.1045, 89.1050, 89.1055, 89.1060, 89.1065, 89.1075, 89.1085, 89.1115

The amendments are proposed under 34 Code of Federal Regulations, §300.600, which outlines the responsibilities of TEA for all educational programs; Texas Education Code, §§29.001, 29.003, 29.005, 29.011, 29.012, and 30.057, which authorizes the commissioner of education to adopt rules related to delivering special education services; and House Bill 1, General Appropriations Act, 75th Texas Legislature, Article IX, Rider 167, which establishes a four-year sunset review cycle for all state agency rules.

The amendments implement 34 CFR, §300.600; Texas Education Code, §§29.001, 29.003, 29.005, 29.011, 29.012, and 30.057; and House Bill 1, General Appropriations Act, 75th Texas Legislature, Article IX, Rider 167.

§89.1011. *Referral for Comprehensive Assessment.*

Referral of students for possible special education services shall be a part of the district's overall, regular education referral or screening system and child find system. Prior to referral, students experiencing difficulty in the regular classroom should be considered for all support services available to all students, such as tutorial, remedial, compensatory, and other services. This referral for assessment may be initiated by school personnel, the student's parents or legal guardian, or another person involved in the education or care of the student.

§89.1015. *Time Line for All Notices.*

"Reasonable time" required for the written notice to parents under 34 Code of Federal Regulations (CFR), §300.503 [~~§300.504~~], is defined as at least five school days, unless the parents agree otherwise.

§89.1020. *Written Notice to Parent Before Assessment.*

In accordance with the requirements of 34 Code of Federal Regulations (CFR), §300.503 and §300.504 [~~and §300.505~~], a district shall give written notice, which includes a full explanation of all procedural safeguards, to the parents and adult student a reasonable time before the district conducts an assessment.

§89.1025. *Consent for Initial Assessment and Reevaluation.*

A district shall obtain consent in writing in accordance with the requirements of 34 Code of Federal Regulations (CFR), §300.500 and §300.505 [~~§300.504(b)~~], before the district conducts an initial assessment and reevaluation.

§89.1030. *Comprehensive Individual Assessment.*

The comprehensive individual assessment, including a written report, shall be completed in accordance with 34 Code of Federal Regulations (CFR), §§300.6, 300.7, 300.21, 300.22, 300.27, 300.530-300.532, and 300.536 [~~300.15, 300.16, 300.18, 300.530-300.532, and 300.534~~]; the Texas Education Code (TEC), §29.004; and §89.1040 of this title (relating to Eligibility Criteria).

§89.1035. *Age Ranges for Student Eligibility.*

(a) Pursuant to state and federal law, services provided in accordance with this subchapter shall be available to all eligible students on their third birthday. A student receiving special education services who is younger than 22 years of age on September 1 of a scholastic year shall be eligible for services through the end of that scholastic year or until graduation in accordance with §89.1070 of this title (relating to Graduation Requirements), whichever comes first.

(b) In accordance with the Texas Education Code (TEC), §§29.003, 30.002(a), and 30.081, a free [] appropriate [] public education shall be available from birth to students with visual or auditory impairments.

§89.1040. *Eligibility Criteria.*

(a) (No Change.)

(b) Autism. A student with autism is one who evidences the criteria for autism as stated in 34 CFR, §300.7(b)(1). Students with pervasive developmental disorders are included under this category. The [~~team's~~] written report of evaluation shall include specific recommendations for behavior supports and interventions [~~management~~].

(c) Deaf-blind. A student with deaf-blindness is one who:

(1) meets the eligibility criteria for auditory impairment and visual impairment;

(2) meets the eligibility criteria for a student with a visual impairment and has a suspected hearing loss that cannot be demonstrated conclusively, and if a speech/language therapist, certified speech and language therapist, or licensed speech language pathologist indicates there is no speech at an age when speech would normally be expected;

(3) has documented hearing and visual losses that, if considered individually, may not meet the requirements for auditory impairment or visual impairment, but the combination of which adversely affects the student's educational performance; or

(4) has a documented medical diagnosis of a progressive medical condition that will result in concomitant hearing and visual

loss that, without special education intervention, will adversely affect the student's educational performance.

(e) Deaf-blind. A student with deaf-blindness is one who has a combination of severe hearing and visual losses after best correction and is determined to be eligible as auditorially impaired and as visually impaired according to the specific eligibility criteria for each of these disabilities. If an eligible student with a visual impairment has a suspected hearing loss that cannot be demonstrated conclusively, and if a speech/language evaluation performed by a certified speech and hearing therapist, certified speech and language therapist, or licensed speech language pathologist indicates there is no speech at an age when speech would normally be expected, the student may be eligible for services as deaf-blind.]

(d) (No Change.)

(e) Mental retardation. A student with mental retardation is one who has been determined to be functioning two or more standard deviations below the mean on individually administered scales of verbal ability [] and either performance or nonverbal ability, and who concurrently exhibits deficits in adaptive behavior.

(f)-(g) (No Change.)

(h) Emotional disturbance. A student with an emotional disturbance is one who has been determined to meet the criteria as defined in 34 CFR, §300.7(b) (4) [(9)]. The team's written report of evaluation shall include specific recommendations for behavior supports and interventions [management].

(i)-(k) (No Change.)

(l) Visual impairment.

(1) A student who has a visual impairment is one who:

(A) has been determined by a licensed ophthalmologist or optometrist to have no vision or to have a serious visual loss after correction, or has a medical diagnosis for a progressive condition that will result in no vision or a serious visual loss after correction. The visual loss should be stated in exact measures of visual field and corrected visual acuity at distance and near in each eye. The report should also include prognosis whenever possible. If exact measures cannot be obtained, the eye specialist must so state and give best estimates; and

(B) (No Change.)

(2) (No Change.)

§89.1045. *Notice to Parents for Admission, Review, and Dismissal (ARD) Committee Meetings.*

(a) A district shall invite the parents and adult student to participate as members of the admission, review, and dismissal (ARD) committee by providing written notice in accordance with 34 Code of Federal Regulations (CFR), §§300.345, 300.503, and 300.504 [and 300.505], and Part 300, Appendix C.

(b) (No Change.)

§89.1050. *The Admission, Review, and Dismissal (ARD) Committee.*

(a) (No Change.)

(b) Each school district shall establish at least one ARD committee that shall make decisions concerning eligibility determinations, development of the IEP, consideration of assistive technology, development of the behavior supports and interventions [management] plans, and placement of a student referred for consideration for special education services in accordance with 34 Code of Federal

Regulations (CFR), §§300.308, 300.342- 300.350 [300.349], 300.533-300.535, and 300.550- 300.554, and Part 300, Appendix C; state statute; State Board of Education (SBOE) rules; and this subchapter. For a child from birth through two years of age with visual and/or auditory impairments, an individualized family services plan (IFSP) meeting must be held in place of an ARD committee meeting in accordance with 34 CFR, §§303.340-303.346 and the agreement memorandum between the Texas Education Agency (TEA) and Texas Interagency Council on Early Childhood Intervention.

(c) The teacher that participates in the ARD committee meeting, in accordance with 34 CFR, §300.344(a) (3) [(2)], must be certified in the child's suspected areas of disability. When a specific certification is not required to serve certain disabilities categories, then the teacher must be qualified to provide the educational services the child may need. The committee must [district may] include a regular education teacher(s), in accordance with 34 CFR §300.344(a)(2), in addition to a certified special education teacher. Districts should refer to §89.1131 of this title (relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel) to ensure the appropriate teacher participates in the ARD committee meeting.

(d) The written report of the ARD committee shall document the findings required by subsection (b) of this section. The report shall include the date, names, positions, and signatures of the members participating in each meeting in accordance with 34 CFR, §§300.344, 300.345, 300.349 [300.348], and 300.350 [300.349]. The report shall also indicate each member's agreement or disagreement with the committee's decisions. A district shall obtain written consent in accordance with the requirements of 34 CFR, §300.500 and §300.505 [§300.504(b)], before initial placement occurs.

(e) For a student who is new to a school district, the ARD committee may meet when the student registers and the parents verify that the student was receiving special education services in the previous school district, or the previous school district verifies in writing or by telephone that the student was receiving special education services. Special education services are temporary, contingent upon either receipt of valid assessment data from the previous school district or the collection of new assessment data. A second ARD committee meeting shall be held within 30 school days from the first ARD committee meeting to finalize or develop a new IEP based on the assessment data. The student's current or previous school districts are not required to obtain parental consent before requesting or sending the student's special education records if disclosure is conducted in accordance with 34 CFR, §§99.30-99.37 (relating to the disclosure of personally identifiable information from education records); and Texas Education Code (TEC), §25.002 (Requirements for Enrollment).

(f) All disciplinary actions regarding students with disabilities shall be conducted in accordance with 34 CFR, §§300.520-300.529 (relating to Discipline Procedures) [federal requirements] and TEC [the Texas Education Code (TEC)], Chapter 37, Subchapter A (Alternative Settings for Behavior Management). [The ARD committee shall determine the instructional and related services to be provided during the time of expulsion. The student's IEP shall include goals and objectives designed to assist in returning the student to school and preventing significant regression.]

(g) All members of the ARD committee shall have the opportunity to participate in a collaborative manner in developing the IEP. A decision of the committee concerning required elements of the IEP shall be made by mutual agreement of the required members if possible. The committee may agree to an annual IEP or an IEP of shorter duration.

(1) When mutual agreement about all required elements of the IEP is not achieved, the party (the parents or adult student) who disagrees shall be offered a single opportunity to have the committee recess for a period of time not to exceed ten school days. This recess is not required when the student's presence on the campus presents a danger of physical harm to the student or others or when the student has committed an expellable offense or an offense which may lead to a placement in an alternative education program (AEP). The requirements of subsection (g) of this section do not prohibit the local school district from recessing an ARD committee meeting for reasons other than failure of the parents or adult student and school district from reaching mutual agreement about all required elements of the IEP.

(2)-(5) (No Change.)

(6) When a district implements an IEP with which the parents disagree or the adult student disagrees, the district shall provide prior written notice to the parents or adult student as required in 34 CFR, §300.503 and §300.504 [~~and §300.505~~].

(7) (No Change.)

§89.1055. *Content of the Individual Educational Plan (IEP).*

(a) The individual educational plan (IEP) developed by the admission, review, and dismissal (ARD) committee for each student with a disability shall include the following information in addition to the requirements of 34 Code of Federal Regulations (CFR), §300.346 and §300.347, and Part 300, Appendix C:

(1) (No Change.)

(2) a statement addressing nonexemption, modification/accommodation, or exemption from some or all of the criterion-referenced [basic skills] assessment instruments, as appropriate. Modifications/accommodation of regular classroom procedures [which are provided for students by the local district] as specified in the student's IEP shall be provided during the testing process in accordance with §101.3 of this title (relating to Testing Accommodations and Exemptions); and

(3) goals and objectives from the current IEP shall be specified if extended year services are included in the IEP.

(b) (No Change.)

(c)-(d) (No Change.)

§89.1060. *Definitions of Certain Related Services.*

(a) (No Change.)

(b) Interpreting services for students who are deaf. Interpreting services include interpreting/transliterating receptively and expressively for persons who are deaf or hard of hearing. Interpreting services for students who are deaf shall be provided by an interpreter who is certified by the Registry of Interpreters for the Deaf or the Texas Commission for the Deaf and Hard of Hearing or who has a permit [waiver] from the commissioner of education for not more than three consecutive years.

§89.1065. *Extended Year Services (EYS).*

Extended year services (EYS) are defined as individualized instructional programs beyond the regular school year for students who are eligible for [enrolled in a school district's] special education services under 34 Code of Federal Regulations (CFR), Part 300 [program].

(1)-(4) (No Change.)

(5) If the district does not propose EYS for discussion at the annual review of a student's IEP, the parent may request that the

ARD committee discuss EYS pursuant to 34 CFR [Code of Federal Regulations (CFR)], §300.503 [§300.504] and §300.505.

(6)-(9) (No Change.)

§89.1075. *General Program Requirements and Local District Procedures.*

(a)-(b) (No Change.)

(c) Each school district shall provide parents of students receiving special education services written reports of the students' progress, in accordance with 34 Code of Federal Regulations, §300.347(a)(7) and §300.343(c)(1)-(2), on the same timely basis as the reports provided to students in regular education.

(d)-(e) (No Change.)

(f) School districts that jointly operate their special education programs, as a shared services arrangement, shall do so in accordance with procedures developed by the Texas Education Agency.

§89.1085. *Referral for Texas School for the Blind and Visually Impaired and Texas School for the Deaf Services.*

(a)-(b) (No Change.)

(c) For students who are deaf or hard of hearing for whom the Texas School for the Deaf may be an appropriate placement, the following procedures shall be implemented in accordance with TEC, §30.057 (Admission to the Texas School for the Deaf).

(1) The student's parent or legal guardian, a person with legal authority to act in place of the parent or legal guardian, or the student, if the student is 18 years of age or older, may initiate a referral to the Texas School for the Deaf at any time during the school year if the school is chosen as the appropriate placement for the student rather than placement in the student's local or regional program recommended under the student's IEP. The IEP must include the requirements of 34 CFR, §§300.340-300.351; and TEC, §§29.301-29.314.

(2) The school district in which the student resides may initiate a referral to the Texas School for the Deaf at any time during the school year under the student's IEP. In addition to the requirements provided in subsection (b) of this section, the IEP must include the requirements of 34 CFR, §§300.340-300.351; and TEC, §§29.301-29.314. The school district remains responsible for free appropriate public education and related services in accordance with 34 CFR, Part 300; state statutes; and rules of the State Board of Education (SBOE) and commissioner of education.

(3) The Texas School for the Deaf shall accept referrals in accordance with paragraphs (1) and (2) of this subsection; 34 CFR, Parts 300 and 303; and applicable state statutes. For students accepted by the Texas School for the Deaf under paragraph (2) of this subsection, the Texas School for the Deaf and the referring school district will mutually develop a cooperative agreement relating to the implementation of each student's IEP. For students accepted by the Texas School for the Deaf under paragraph (1) of this subsection, the Texas School for the Deaf shall be responsible for free appropriate public education and related services in accordance with 34 CFR, Part 300; state statutes; and rules of the SBOE and commissioner of education.

[(e) Students enrolled in the Texas School for the Deaf under this section who are not referred by local ARD committees shall be supported in accordance with TEC, §30.003. Upon enrollment of children not referred by local ARD committees, the Texas School for the Deaf shall be responsible for free, appropriate, education and related services.]

(d) Students enrolled in the Texas School for the Deaf under this section shall be supported in accordance with TEC, §30.003.

§89.1115. *Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Care Facilities.*

(a)-(f) (No Change.)

(g) Parental participation.

(1) The parties acknowledge that parental participation is essential for the determination and the provision of appropriate special education services under IDEA. However, many of the school-age residents placed in RCFs are under the conservatorship of the State of Texas (usually through TDPRS). For these residents, the parties acknowledge the following "surrogate parent" requirements:

(A) The LEAs have the obligation to ensure that a properly trained surrogate parent with no conflicts of interest is appointed for these residents for whom:

(i)-(ii) (No Change.)

(ii) the parent cannot be located after reasonable efforts by the LEA to locate; or

(iii) are wards of the state (e.g., in Texas, the term "conservatorship" is often used to indicate a student is a ward of the state, pursuant to 34 CFR, §300.515(a). [~~§300.514(a)~~].)

(B)-(E) (No Change.)

(F) The surrogate parent appointed must have the knowledge and skills to ensure adequate representation of the child and no personal or professional interest which would create a conflict of interest in his or her representation of the child, pursuant to 34 CFR, §300.515(c) [~~§300.514(e)~~].

(G) Pursuant to 34 CFR, §300.515(c) [~~§300.514(e)~~], a person assigned as a surrogate parent may not be an employee of a public agency that is involved in the education or care of the child. Thus, public (state, county, or local) employees, like caseworkers or probation officers, would be ineligible to serve as surrogate parents.

(H) (No Change.)

(I) Pursuant to 34 CFR, §300.515(e) [~~§300.514(e)~~], surrogate parents may represent the child in all matters relating to:

(i)-(ii) (No Change.)

(2) (No Change.)

(h)-(j) (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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Criss Cloudt

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For further information, please call: (512) 463-9701

◆ ◆ ◆
19 TAC §§89.1095, 89.1105

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

The repeals are proposed under 34 Code of Federal Regulations, §300.600, which outlines the responsibilities of TEA for all educational programs; Texas Education Code, §§29.001, 29.003, 29.005, 29.011, 29.012, and 30.057, which authorizes the commissioner of education to adopt rules related to delivering special education services; and House Bill 1, General Appropriations Act, 75th Texas Legislature, Article IX, Rider 167, which establishes a four-year sunset review cycle for all state agency rules.

The repeals implement 34 CFR, §300.600; Texas Education Code, §§29.001, 29.003, 29.005, 29.011, 29.012, and 30.057; and House Bill 1, General Appropriations Act, 75th Texas Legislature, Article IX, Rider 167.

§89.1095. *Provision of Services for Students Placed by Their Parents in Private Schools.*

§ 89.1105. *Memorandum of Understanding Relating to School-Age Residents of Intermediate Care Facilities for the Mentally Retarded.*

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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◆ ◆ ◆
Division III. Special Education Funding

19 TAC §89.1125

The amendment is proposed under 34 Code of Federal Regulations, §300.600, which outlines the responsibilities of TEA for all educational programs; Texas Education Code, §§29.001, 29.003, 29.005, 29.011, and 29.012, which authorizes the commissioner of education to adopt rules related to delivering special education services; and House Bill 1, General Appropriations Act, 75th Texas Legislature, Article IX, Rider 167, which establishes a four-year sunset review cycle for all state agency rules.

The amendment implements 34 CFR, §300.600; Texas Education Code, §§29.001, 29.003, 29.005, 29.011, and 29.012; and House Bill 1, General Appropriations Act, 75th Texas Legislature, Article IX, Rider 167.

§89.1125. *Allowable Expenditures of State Special Education Funds.*

(a)-(f) (No Change.)

(g) State special education funds may be used to pay [special education] staff travel to perform services directly related to the education of students with disabilities. Funds may also be used to pay travel of staff (including administrators, general education teachers, and special education and related services personnel) to attend staff development meetings for the purpose of improving performance in assigned positions directly related to the education of students with disabilities. The purpose for attending shall not include time

spent in performing functions relating to the operation of professional organizations.

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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Division IV. Special Education and Related Service Personnel

19 TAC §89.1131

The amendment is proposed under 34 Code of Federal Regulations, §300.600, which outlines the responsibilities of TEA for all educational programs; Texas Education Code, §§29.001, 29.003, 29.005, 29.011, and 29.012, which authorizes the commissioner of education to adopt rules related to delivering special education services; and House Bill 1, General Appropriations Act, 75th Texas Legislature, Article IX, Rider 167, which establishes a four-year sunset review cycle for all state agency rules.

The amendment implements 34 CFR, §300.600; Texas Education Code, §§29.001, 29.003, 29.005, 29.011, and 29.012; and House Bill 1, General Appropriations Act, 75th Texas Legislature, Article IX, Rider 167.

§89.1131. Qualifications of Special Education, Related Service, and Paraprofessional Personnel.

(a) All special education and related service personnel shall be certified, endorsed, or licensed in the area or areas of assignment in accordance with 34 Code of Federal Regulations (CFR), §300.21 [§300.15] and §300.136 [§300.153]; the Texas Education Code (TEC), §§21.002, 21.003, and 29.304; or appropriate state agency credentials.

(b) A teacher who holds a special education certificate or an endorsement may be assigned to any level of a basic special education instructional program serving students 3-21 years of age, in accordance with the limitation of their certification, except for the following.

(1)-(3) (No Change.)

(4) Teachers certified in the education of students with visual impairments must be available to students who are visually impaired, including deaf-blind, through one of the school district's instructional options, a shared service arrangement unit with other school districts, or an education service center (ESC). These teachers must attend admission, review, and dismissal (ARD) committee and individualized family services plan (IFSP) meetings when a student, birth through 21 years of age, with a visual impairment, including deaf-blind, is being considered.

(5) Teachers certified in the education of students with auditory impairments must be available to students who are auditorially impaired, including deaf-blind, through one of the school district's instructional options, a regional day school program for the deaf, a shared service arrangement unit with other school districts, or

an ESC. These teachers must attend ARD committee and IFSP meetings when a student, birth through 21 years of age, with an auditory impairment, including deaf-blind, is being considered.

(6) (No Change.)

(7) Teachers assigned full-time or part-time to instruction of students from birth through age two with visual impairments, including deaf-blind, shall be certified in the education of students with visual impairments. Teachers assigned full-time or part-time to instruction of students from birth through age two who are deaf, including deaf-blind, shall be certified in education for students who are deaf and severely hard of hearing. Other certifications for serving these students shall require prior approval from TEA.

(8) (No Change.)

(c) Paraprofessional personnel may be assigned to work with eligible students, special education teachers, and related service personnel. Aides may also be assigned to assist students with special education transportation, [or] serve as a job coach, or serve in support of community-based instruction. Aides paid from state administrative funds may be assigned to the Special Education Resource System (SERS), the Special Education Management System (SEMS), or other special education clerical or administrative duties.

~~[(d) This subsection will expire August 31, 1997. An aide may be assigned to function as a teacher assistant under the following conditions:]~~

~~[(1) Qualifications shall include all of the following:]~~

~~[(A) high school graduate or equivalent;]~~

~~[(B) 30 semester hours of college credit with some emphasis on child growth and development or related areas, or a minimum of three years experience working directly with children or youth (as appropriate) in instructional or child care facilities; and]~~

~~[(C) documented ongoing inservice or other staff development activities related to the education of students with disabilities.]~~

~~[(2) Assignment of an aide as a teacher assistant shall be for the following purposes:]~~

~~[(A) providing individualized instruction in an environment other than the designated supervising teacher's classroom;]~~

~~[(B) reinforcing academic or developmental skills requiring extensive repetition or drill and practice on skills which have been previously taught by the supervising teacher; and]~~

~~[(C) assisting students in job training/employment and community-based instructional programs.]~~

~~[(3) Supervision shall be by a certified special education teacher who is directly responsible for the implementation of the students' IEPs and evaluation of their progress. For teacher assistants operating under paragraph (2)(A) and (B) of this subsection, supervision shall be for a minimum of one hour per day during student instruction, in addition to the time necessary for joint planning and preparation. For teacher assistants operating under paragraph (2)(C) of this subsection, supervision shall be for a minimum of one hour per day or five hours per week.]~~

~~[(4) Assignment shall be in one of the following:]~~

~~[(A) homebound;]~~

~~[(B) hospital class;]~~

[(C) self-contained classes listed in §89.63 of this title (relating to Instructional Arrangements and Settings);]

[(D) off home campus; or]

[(E) vocational adjustment class.]

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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Division V. Regional Education Service Center Special Education Programs [Component]

19 TAC §89.1141

The amendment is proposed under 34 Code of Federal Regulations, §300.600, which outlines the responsibilities of TEA for all educational programs; Texas Education Code, §§29.001, 29.003, 29.005, 29.011, and 29.012, which authorizes the commissioner of education to adopt rules related to delivering special education services; and House Bill 1, General Appropriations Act, 75th Texas Legislature, Article IX, Rider 167, which establishes a four-year sunset review cycle for all state agency rules.

The amendment implements 34 CFR, §300.600; Texas Education Code, §§29.001, 29.003, 29.005, 29.011, and 29.012; and House Bill 1, General Appropriations Act, 75th Texas Legislature, Article IX, Rider 167.

§89.1141. *Regional Education Service Center Special Education Programs Component.*

(a)-(g) (No Change.)

(h) For the purposes of this subchapter, an ESC [ESCs] shall be considered to be an educational service agency [intermediate educational units] as defined in federal 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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Division VI. Hearings Concerning Students with Disabilities Under the Individuals with Disabilities Education Act

19 TAC §§89.1155, 89.1160, 89.1165, 89.1170, 89.1175,
89.1180, 89.1181, 89.1185-89.1190

The amendments and new sections are proposed under 34 Code of Federal Regulations, §300.600, which outlines the responsibilities of TEA for all educational programs; Texas Education Code, §§29.001, 29.003, 29.005, 29.011, and 29.012, which authorizes the commissioner of education to adopt rules related to delivering special education services; and House Bill 1, General Appropriations Act, 75th Texas Legislature, Article IX, Rider 167, which establishes a four-year sunset review cycle for all state agency rules.

The amendments and new sections implement 34 CFR, §300.600; Texas Education Code, §§29.001, 29.003, 29.005, 29.011, and 29.012; and House Bill 1, General Appropriations Act, 75th Texas Legislature, Article IX, Rider 167.

§89.1155. *Definitions.*

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

(1) Eligible student - Any student who is 18 years of age or older and has not been adjudged incompetent by a court of proper jurisdiction, or any minor student whose disabilities of minority are removed by order of a court or by operation of law. A student determined not to have the ability to provide informed consent pursuant to 34 Code of Federal Regulations (CFR), §300.517(b), is not an eligible student.

(2) Parent - A parent, guardian, or person acting in the place of a parent, such as a grandparent or stepparent, with whom a student with disabilities lives. The term includes a surrogate parent who has been appointed in accordance with law, but does not include the state if the student is in the conservatorship of the state. As provided by 34 CFR, §300.19, a foster parent qualifies as a parent if:

(A) the natural parents' authority to make educational decisions on the student's behalf has been extinguished under state law;

(B) an ongoing, long-term parental relationship exists between the foster parent and the student;

(C) a willingness to participate in making educational decisions on the student's behalf exists; and

(D) the interests of the foster parent do not conflict with the interests of the student.

(3) Personally identifiable information - As defined in 34 CFR, §300.500(b)(3), information [Information] that includes:

(A) the name of the student, the student's parent, or other family member;

(B) the address of the student;

(C) a personal identifier, such as the student's social security number or student number; or

(D) a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(4) Public education agency - A [The] local school district, open-enrollment charter school, special education cooperative [cooperatives], and any other agency or political subdivision of the state responsible for providing education to students with disabilities (See 34 CFR, §300.20).

(5) Students with disabilities - Students suspected of, or evaluated as possessing, one or more disabilities as defined by the

Individuals with Disabilities Education Act (IDEA) and implemented by federal regulations, state law, and Texas Administrative Code (TAC) regulations (See 34 CFR, §300.7). In this subchapter, the term "student" means a student with disabilities, unless the context clearly indicates otherwise. 89.1160. Applicability. The provisions of this subchapter shall apply in any hearing brought under the Individuals with Disabilities Education Act (IDEA) involving the identification, evaluation, or educational placement of a student with disabilities or the provision of a free [] appropriate [] public education to the student (See 34 Code of Federal Regulations, §300.507(a)(1)).

§89.1165. *Request for Hearing.*

(a) A parent, eligible student, or public education agency may initiate a hearing on any matter described in §89.1160 of this title (relating to Applicability) by filing a request for hearing under 34 Code of Federal Regulations (CFR), §300.507(c)(1). The party filing the request for hearing is called the "petitioner" and the party complained about in the request is called the "respondent".

(b) The request for hearing shall be in writing and filed with the Texas Education Agency, 1701 N. Congress Avenue, Austin, Texas 78701. The request for public hearing may be filed by mail, hand-delivery, or facsimile. The request for hearing shall be deemed filed only when actually received by the Texas Education Agency (TEA) division responsible for hearings. A copy of the request for hearing must be sent to the superintendent or chief executive officer of each respondent at the same time and by the same method of delivery as the original request for hearing sent to TEA.

(c) The TEA shall develop and disseminate to public education agencies a model form which may be used to request a due process hearing in accordance with 34 CFR, §300.507(c)(3). A petitioner is not required to use the model form. Public education agencies shall, on request, provide this form to parents and eligible students. The model form shall be available on the TEA World-Wide Website.

(d) The request for hearing must be signed and must include:

(1) the name of the student and the address of the residence of the student;

(2) the mailing address, telephone number(s), and facsimile number for the petitioner (or the petitioner's representative);

(3) the name of the school the student is attending and, if known, the name of the student's contact person at that school;

(4) a description of the problem on which a hearing is requested, including a statement of the facts relating to the problem such as specific actions or decisions, dates, and names of individuals;

(5) the resolution or remedy of the problem requested (to the extent known and available to the petitioner at the time); and

(6) a separately signed statement declaring that the petitioner has sent a copy of the request to each respondent as required by subsection (b) of this section.

(e) [(e)] If the request for hearing does not specify the issues to be heard and the relief requested, the TEA division responsible for hearings shall docket the request, and the hearing officer shall [may], upon request, order the petitioner [complaining party] to supplement the request. This subsection does not require the petitioner to state all evidence relied upon. However, all issues relied upon by the petitioner must be raised in the request for hearing. The petitioner shall be denied an opportunity to present evidence on issues not raised in the request for hearing.

(f) A request for hearing is a confidential student record under the Family Educational Rights and Privacy Act of 1974 and 34 CFR, Part 99. The public education agency shall maintain the request for hearing in compliance with 34 CFR, §300.507(c)(1).

§89.1170. *Impartial Hearing Officer.*

(a) Hearings shall be conducted by an independent, impartial hearing officer appointed by the commissioner of education. The hearing officer selected by the commissioner shall not be a person who:

(1) (No Change.)

(2) has a personal or professional interest that would conflict with his or her objectivity in the hearing (See 34 Code of Federal Regulations, §300.508).

(b)-(c) (No Change.)

§89.1175. *Hearing Rights.*

(a) (No Change.)

(c) At least five business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations which the party intends to use at the hearing. A hearing officer may exclude any evaluation or recommendation that is not disclosed.

§89.1180. *Prehearing Procedures.*

(a) At the request of any party to the hearing, the [The] hearing officer shall set and hold a prehearing conference unless the interests of justice require otherwise. The prehearing conference shall be held by telephone unless circumstances require an in person conference. Action taken at the conference shall be recorded in the manner directed by the hearing officer. The purpose of the prehearing conference shall be to consider any of the following:

(1)-(5) (No Change.)

(b) No pleadings, other than the request for hearing under §89.1165 of this title (relating to Request for Hearing), are mandatory, unless ordered by the hearing officer. Any pleadings after the request for hearing [hearings] shall be filed with the hearing officer. Copies of all pleadings shall be sent to all parties of record in the hearing and to the hearing officer. If a party is represented by an attorney, all copies shall be sent to the attorney of record. Telephone facsimile copies may be substituted for copies sent by other means. An affirmative statement that a copy of the pleading has been sent to all parties and the hearing officer is sufficient to indicate compliance with this rule.

(c)-(d) (No Change.)

(e) Parties shall comply with the requirement in §89.1175(a)(3) and (c) of this title (relating to Hearing Rights) regarding disclosure of evidence five days before hearing. The hearing officer may specify the date and time that constitute compliance with this rule. Disclosure means providing copies of documentary evidence and an index of the documents, unless otherwise agreed by the parties, and providing the names, addresses, and professions of witnesses. In addition, copies of evidence disclosed under this subsection shall be filed with the hearing officer at least five days before hearing.

(f) On first contact with the parties, the hearing officer shall inform the parties how to obtain free mediation services from the TEA and shall urge them to resolve their dispute, if possible, by mediation or other means.

§89.1181. *Dismissal of Request Without a Hearing.*

(a) The hearing officer may dismiss a request without a hearing for any proper reason, including:

- (1) compromise;
- (2) unnecessary duplication of proceedings;
- (3) issue or claim preclusion;
- (4) withdrawal;
- (5) mootness;
- (6) untimely filing;
- (7) lack of jurisdiction;
- (8) failure to state a claim for which relief can be granted;

or

- (9) failure to prosecute.

(b) The hearing officer may dismiss a request for failure to comply with §89.1165 of this title (relating to Request for Hearing) only if the following findings are made:

(1) the request for hearing fails to comply with §89.1165 of this title (relating to Request for Hearing);

(2) the petitioner was afforded reasonable opportunity after notice of noncompliance to cure the defect in the request for hearing; and

(3) the petitioner failed or refused to amend the request for hearing to comply with the notice required in §89.1165 of this title (relating to Request for Hearing).

§89.1185. Hearing.

(a) Except as provided by §89.1190 of this title (relating to Expedited Due Process Hearing), the [The] hearing officer shall afford the parties an opportunity for hearing after reasonable notice of not less than ten days, unless the parties agree otherwise.

(b)-(e) (No Change.)

(f) [Upon request, the] The hearing officer, at his or her discretion, may permit testimony to be received by telephone.

(g)-(i) (No Change.)

(j) Filing of post-hearing [post-trial] briefs shall be permitted only upon order of the hearing officer and shall be limited to issues specified by the hearing officer.

[(k) The hearing officer shall issue a final decision, signed and dated, no later than 45 days after a request for hearing is filed. A final decision must be in writing and shall include findings of fact and conclusions of law separately stated. Findings of fact must be based exclusively on the evidence and on matters officially noticed under the Administrative Procedure Act (APA); Texas Government Code, §2001.141(e). The final decision shall be mailed to each party by the hearing officer. The hearing officer, at his or her discretion, may render his or her decision following the conclusion of the hearing, to be followed by written findings of fact and written decision.]

[(l) A hearing officer may grant extensions of time for good cause beyond the period specified in subsection (k) of this section at the request of either party. The extensions shall be granted to a specific date and shall be stated in writing by the hearing officer to the parties.]

[(m) The decision made under subsection (k) of this section is final, unless a party brings a civil action under 20 United States Code (USC), §1415(e), in state or federal court. A school district

shall implement any decision of the hearing officer that is, at least in part, adverse to the school district in a timely manner within 90 days after the date the decision was rendered. If a decision directing action on the part of a school district is not appealed or implemented within 90 days after the date of the decision, the Texas Education Agency (TEA) shall refer the matter for enforcement under the APA, Texas Government Code, §§2001.051 et seq.]

[(n) Under provisions of the Individuals with Disabilities Education Act (IDEA) concerning prompt rendering of final decisions, decisions issued under this subchapter shall be final. No motion for rehearing shall be required for a decision to be appealable to court under the APA, Texas Government Code, §2001.145. The decision shall recite the fact that the public welfare requires immediate effect of the final decision.]

[(o) Under the Texas Rules of Civil Procedure, Rule 298, a party may request specified additional or amended findings or conclusions within ten days after the date of the decision. The hearing officer shall issue any additional or amended findings or conclusions that are appropriate, within the discretion of the hearing officer, within ten days after the request is filed.]

[(p) Final decisions containing findings of fact and conclusions of law shall be made available to the public after any personally identifiable information has been deleted.]

§89.1186. Time for Issuance of Decisions and Extensions.

(a) The hearing officer shall issue a final decision, signed and dated, no later than 45 days after a request for hearing is filed.

(b) A hearing officer may grant extensions of time for good cause beyond the period specified in subsection (a) of this section at the request of either party. The extensions shall be granted to a specific date and shall be stated in writing by the hearing officer to the parties.

(c) Notwithstanding any extension under subsection (b) of this section, the hearing officer shall issue the final written decision no later than 30 days after the close of the record.

§89.1187. Hearing Officer Decision.

(a) A final decision must be in writing and shall include findings of fact and conclusions of law separately stated. Findings of fact must be based exclusively on the evidence and on matters officially noticed under the Administrative Procedure Act, Texas Government Code, §2001.141(c).

(b) The decision shall include an order which grants or rejects specific relief in clear and concise language, including specific deadlines for implementation of each mandate in the order. If the time for implementing any mandate in the order is unspecified or unclear, the mandate shall be implemented in a reasonable time.

(c) The final decision shall be mailed to each party by the hearing officer. The hearing officer, at his or her discretion, may render his or her decision following the conclusion of the hearing, to be followed by written findings of fact and written decision.

(d) Final decisions containing findings of fact and conclusions of law shall be made available to the public after any personally identifiable information has been deleted.

§89.1188. Appeal Process.

(a) The decision made under §89.1187 of this title (relating to Hearing Officer Decision) is final, unless a party brings a civil action under 20 United States Code (USC), §1415(i)(2), in state or federal court. A public education agency shall bring suit under 20 USC, §1415(i)(2), within 30 days to appeal any decision of the

hearing officer that is, at least in part, adverse to the public education agency.

(b) Under 34 Code of Federal Regulations, §300.510 and §300.511, decisions issued under this subchapter shall be final. No motion for rehearing shall be required for a decision to be appealable to court under the Administrative Procedure Act, Texas Government Code, §2001.145. The decision shall recite the fact that the public welfare requires immediate effect of the final decision.

(c) Under the Texas Rules of Civil Procedure, Rule 298, a party may request specified additional or amended findings or conclusions within ten days after the date of the decision. The hearing officer shall issue any additional or amended findings or conclusions that are appropriate, within the discretion of the hearing officer, within ten days after the request is filed.

§89.1189. Enforcement of Hearing Officer Decision.

(a) An individual with information indicating that a public education agency is in violation of a hearing officer decision may file a complaint in writing with the Texas Education Agency (TEA) division responsible for complaints at Texas Education Agency, 1701 N. Congress Avenue, Austin, Texas 78701. The complaint should state the violations and facts on which the complaint is based.

(b) If the TEA determines that a public education agency is in violation of a hearing officer decision, the TEA shall enforce the decision through appropriate findings and corrective actions in accordance with 34 Code of Federal Regulations (CFR), §300.661. The TEA may also refer the matter for enforcement by the Attorney General pursuant to the Administrative Procedure Act, Texas Government Code, §2001.051. In addition, the TEA may take appropriate action against the public education agency under Texas Education Code, Chapter 39.

(c) In resolving a complaint alleging failure to provide appropriate services, the TEA may order compensatory services as a corrective action for the denial of a free appropriate public education under 34 CFR, §300.660.

(d) Any party to a due process hearing with information indicating that a public education agency is in violation of a hearing officer decision may file, in addition to any complaint, a civil action in state or federal court to enforce the order.

§89.1190. Expedited Due Process Hearing.

(a) A parent or eligible student may request an expedited due process hearing regarding a disciplinary action described in 34 Code of Federal Regulations (CFR), §300.520(a)(2) or §300.521, to challenge an interim alternative educational setting or a manifestation determination under 34 CFR, §300.525(a)(2). A public education agency may request an expedited due process hearing regarding the placement of a student after the expiration of an interim alternative placement under 34 CFR, §300.526(b), if the public education agency maintains that it is dangerous for the student to return to the prior placement in accordance with 34 CFR, §300.526(c)(1).

(b) A party who requests an expedited due process hearing under subsection (a) of this section shall attach a separate sheet of paper to the front of the request for hearing with the statement "Expedited Discipline Hearing Requested" prominently displayed. Failure to attach this statement as required shall constitute a waiver of the right to expedite the hearing.

(c) An expedited due process hearing under this section must be conducted by a due process hearing officer assigned pursuant to §89.1170 of this title (relating to Impartial Hearing Officer). The decision required by §89.1186 of this title (relating to Time

for Issuance of Decisions and Extensions) shall be issued within ten business days of the request for the hearing, unless the parties otherwise agree.

(d) Unless the parties agree to extend the time period provided by subsection (c) of this section to 45 days or more, the following provisions shall apply to hearings under this section:

(1) the ten-day notice required under §89.1185(a) of this title (relating to Hearing) and the Administrative Procedure Act shall be shortened to two business days from receipt of the request;

(2) the five-day disclosure deadlines identified in §89.1175(a)(3) and (c) of this title (relating to Hearing Rights) shall be shortened to two business days; and

(3) the hearing officer may make additional modifications, in his or her sound discretion, to §89.1165 of this title (relating to Request for Hearing), §89.1180 of this title (relating to Prehearing Procedures), and §89.1185 of this title (relating to Hearing), consistent with state and federal law.

(e) A decision made under this section is appealable under §89.1188 of this title (relating to Appeal Process).

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 April 13, 1998.

TRD-9805135

Criss Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

Earliest possible date of adoption: May 24, 1998

For further information, please call: (512) 463-9701



Division VI. Hearings Concerning Students with Disabilities Under the Individuals with Disabilities Education Act

19 TAC §89.1190

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

The repeal is proposed under 34 Code of Federal Regulations, §300.600, which outlines the responsibilities of TEA for all educational programs; Texas Education Code, §§29.001, 29.003, 29.005, 29.011, and 29.012, which authorizes the commissioner of education to adopt rules related to delivering special education services; and House Bill 1, General Appropriations Act, 75th Texas Legislature, Article IX, Rider 167, which establishes a four-year sunset review cycle for all state agency rules.

The repeal implements 34 CFR, §300.600; Texas Education Code, §§29.001, 29.003, 29.005, 29.011, and 29.012; and House Bill 1, General Appropriations Act, 75th Texas Legislature, Article IX, Rider 167.

§89.1190. Student's Status During Proceedings.

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 April 13, 1998.

TITLE 22. EXAMINING BOARDS

Part V. State Board of Dental Examiners

Chapter 107. Dental Board Procedures

Subchapter C. Administrative Penalties

22 TAC §107.200

The State Board of Dental Examiners proposes amendments to §107.200, concerning administrative penalty, to clarify the separation between penalties to be assessed licensees who either (1) fail to comply with the Board's continuing education requirements or (2) commit other violations of the Dental Practice Act and/or Board rules.

Douglas A. Beran, Executive Director, State Board of Dental Examiners, has determined for the first five-year period the rule is in effect there will be no fiscal implications for local government as a result of enforcing or administering the rule. The impact on state government will be contingent upon the penalties assessed pursuant to §107.200 and §107.201.

Mr. Beran also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be a greater assurance that licensees will comply with the Dental Practice Act and Board rules because of possible penalties that may be assessed for lack of compliance.

There will be no economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered, all comments and written requests for public hearing must be received by the State Board of Dental Examiners on or before May 25, 1998.

The amended rule is proposed under Texas Government Code §2001.021 et seq; Texas Civil Statutes, Article 4543§2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act; and Article 4548j. The proposed amendment to the rule is a new subsection (a) which provides that administrative penalties for failure to complete required continuing education hours will be set forth in another rule. This rule sets administrative penalties for all other violations of the Dental Practice Act and board rules.

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

§107.200. Administrative Penalty.

(a) Procedures and amounts for administrative penalties portrayed in this rule apply generally to violations of the Dental Practice Act and/or Board rules except for violations of the continuing education requirements prescribed in the Dental Practice Act in

Article 4544, §5, Texas Civil Statutes; Article 4551e, §5A, Texas Civil Statutes and in Chapter 104 of this title (relating to Continuing Education). Procedures and amounts for administrative penalties for failure to comply with continuing education requirements are set forth in §107.201 of this title (relating to Administrative Penalties for Continuing Education Violations).

(b) ~~[(a)]~~ Upon review of the completed investigation file and on the recommendation of the Board Secretary or his/her designee an administrative penalty may be imposed on a licensee or registrant for violation(s) of the Dental Practice Act and/or Board rules and regulations.

(c) ~~[(b)]~~ Administrative penalties may be imposed for the following violation categories:

- (1) Advertising;
- (2) Utilizing an unregistered dental laboratory;
- (3) Failure to maintain a centralized inventory ledger for Controlled Substances;
- (4) Failure to complete the required continuing education hours;
- (5) Violating the terms and conditions of an issued Board Order;
- (6) Practicing dentistry or operating a registered dental laboratory with a delinquent license or registration certificate;
- (7) Failure to provide timely notice of a change of address;
- (8) Failure to maintain the dental office in a sanitary condition;
- (9) Failure to make, maintain, and keep adequate records of the diagnosis made and treatment performed for and upon each dental patient;
- (10) Failure to post the required consumer information;
- (11) Failure to have at least one certified dental technician employed a minimum of 30 hours per week at a specific dental laboratory;
- (12) Other technical violations of the Dental Practice Act or the Board's rules and regulations that will not likely cause harm or danger to the public of Texas.

(d) ~~[(c)]~~ The penalty for a violation may be in the amount not to exceed \$5,000. Each day a violation continues or occurs is a separate violation for the purposes of imposing a penalty.

(e) ~~[(d)]~~ The amount of penalty imposed shall be based on the following criteria:

- (1) The seriousness of the violation, including but not limited to, the nature, circumstances, extent, and gravity of the prohibited acts and the hazard or potential hazard created to the health, safety, or welfare of the public;
- (2) The economic damage to property or the environment caused by the violation;
- (3) The history of previous violations;
- (4) The amount necessary to deter future violations;
- (5) Efforts to correct the violation; and
- (6) Any other matter that justice may require.

(f) [(e)] The amount of penalty imposed shall be based on a standardized penalty schedule as described below. Initial offense or repeat offenses shall be based on finalized administrative action.

(1) First offense: \$100 to \$1,000 per violation for each day the violation continues or occurs;

(2) Second offense: \$100 to \$2,500 per violation for each day the violation continues or occurs; and

(3) Third offense: \$100 to \$5,000 per violation for each day the violation continues or occurs.

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

Filed with the Office of the Secretary of State on April 8, 1998.

TRD-9804935

Douglas A. Beran, Ph.D.

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: May 24, 1998

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



Part VI. Texas Board of Professional Engineers

Chapter 131. Practice and Procedure

Subchapter A. Bylaws and Definitions

22 TAC §131.18

The Texas Board of Professional Engineers proposes an amendment to §131.18, concerning bylaws and definitions.

The section is being amended to clarify that a resident of Texas may be someone who is practicing engineering in Texas exclusively on a Texas facility owned by that person's employer.

John R. Speed, P.E., executive director, Texas Board of Professional Engineers, has determined that for the first five-year period the section is in effect there will no effect for state or local government.

Mr. Speed 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 clarification of the definition resident to include an individual who is practicing engineering in Texas exclusively on a Texas facility owned by that person's employer.

Comments on the proposal may be submitted to John R. Speed, P.E., Executive Director, Texas Board of Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760-8329.

The amendment is proposed 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.

Texas Civil Statutes, Article 3271a, §2 and §21 is affected by the proposed amendment.

§131.18. Definitions.

In applying the Texas Engineering Practice Act and the board rules, the following definitions shall prevail unless the word or phrase is

defined in the text for a particular usage. Singular and masculine terms shall be construed to include plural and feminine terms and vice versa.

(1)-(25) (No change.)

(26) Resident-An individual physically residing at a Texas address or who is practicing engineering in Texas exclusively on a Texas facility owned by the individual's employer.

(27)-(29) (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 April 13, 1998.

TRD-9805112

John R. Speed, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: May 24, 1998

For further information, please call: (512) 440-7723



Subchapter B. Application for License

22 TAC §131.52

The Texas Board of Professional Engineers proposes an amendment to §131.52, concerning application for license.

The section is being amended to consolidate all the engineering branches recognized by the board in one rule and denote software engineering as a new branch designation.

John R. Speed, P.E., executive director, Texas Board of Professional Engineers, has determined that for the first five-year period the section is in effect there will no effect for state or local government.

Mr. Speed 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 consolidation of all the engineering branches recognized by the board in one rule and the denoting of software engineering as a new branch designation.

Comments on the proposal may be submitted to John R. Speed, P.E., Executive Director, Texas Board of Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760-8329.

The amendment is proposed 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.

Texas Civil Statutes, Article 3271a, §12 and §14 is affected by the proposed amendment.

§131.52. Applications for a Professional Engineer License.

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

(g) Applicants shall indicate a primary branch of engineering under which experience has been gained. Applicants seeking permission to take the Principles and Practice of Engineering examination shall indicate a primary branch for which there is an available National Council of Examiners for Engineering and Surveying (NCEES) examination as denoted, or other Board approved examination, or for which the Board will issue a license under applicable examination

waiver rules. The [available] branches and their corresponding alphabetical code are:

- (1) (F) agricultural (NCEES);
- (2) (K) chemical (NCEES);
- (3) (C) civil (NCEES);
- (4) (X) control systems (NCEES);
- (5) (E) electrical, electronic, computer, communications (NCEES) ;
- (6) (V) environmental (NCEES) ;
- (7) (H) fire protection (NCEES);
- (8) (L) industrial (NCEES) ;
- (9) (M) mechanical (NCEES) ;
- (10) (I) mining/mineral (NCEES) ;
- (11) (J) metallurgical (NCEES) ;
- (12) (U) manufacturing (NCEES) ;
- (13) (N) nuclear (NCEES) ;
- (14) (P) petroleum (NCEES) ;
- (15) (B) structural (NCEES) ;
- (16) (A) aeronautical/aerospace;
- (17) (R) biomedical;
- (18) (D) ceramic;
- (19) (Q) engineering sciences;
- (20) (G) geological;
- (21) (O) ocean;
- (22) (T) textile;
- (23) (S) sanitary;
- (24) (Z) software;
- (25) (Y) other.

(h)-(i) (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 April 13, 1998.

TRD-9805113

John R. Speed, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: May 24, 1998

For further information, please call: (512) 440-7723



Subchapter F. Examinations

22 TAC §131.101

The Texas Board of Professional Engineers proposes an amendment to §131.101, concerning examinations.

The section is being amended to establish a waiver from the Fundamentals of Engineering examination for individuals who meet certain educational requirements.

John R. Speed, P.E., executive director, Texas Board of Professional Engineers, has determined that for the first five-year period the section is in effect there will no effect for state or local government.

Mr. Speed 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 establishment of a waiver from the Fundamentals of Engineering examination for individuals who meet certain educational requirements.

Comments on the proposal may be submitted to John R. Speed, P.E., Executive Director, Texas Board of Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760-8329.

The amendment is proposed 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.

Texas Civil Statutes, Article 3271a, §12 is affected by the proposed amendment.

§131.101. Engineering Examinations Required for a License to Practice as a Professional Engineer.

(a)-(e) (No change.)

(f) It is the intent of the board to utilize the examination as an integral part of the licensing process; all applicants are expected to have passed the examinations or to offer sufficient evidence of their qualifications in the absence of passage of the examinations. The board may waive the Fundamentals of Engineering examination for any applicant with at least four years of creditable experience and who holds at least the educational credentials described in paragraph (3)(A) of this subsection. The board may waive one or both of the experience and knowledge examinations for applicants who do not pose a threat to the public health, safety, or welfare; request a waiver in writing at the time the application is filed; and meet one of the following requirements listed in paragraphs (1)-(3) of this subsection:

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

(g)-(i) (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 April 13, 1998.

TRD-9805114

John R. Speed, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: May 24, 1998

For further information, please call: (512) 440-7723



Subchapter G. Board Review of Application

22 TAC §131.114, §131.116

The Texas Board of Professional Engineers proposes amendments to §131.114 and §131.116, concerning board review of application.

The sections are being amended to require that an applicant will be scheduled to appear before the full board for an interview instead of appearing before the licensing committee and to remove the branch designation listed in §131.116 as the branch designations are being consolidated in §131.52 which is being amended in this issue of the *Texas Register*.

John R. Speed, P.E., executive director, Texas Board of Professional Engineers, has determined that for the first five-year period the sections are in effect there will no effect for state or local government.

Mr. Speed 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 the requirement of an applicant to appear before the full board for an interview instead of appearing before the licensing committee and the removal of the branch designation listed in §131.116 as the branches are being consolidated in §131.52.

Comments on the proposal may be submitted to John R. Speed, P.E., Executive Director, Texas Board of Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760-8329.

The amendments are proposed 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.

Texas Civil Statutes, Article 3271a, §§12, 14, and 15 is affected by the proposed amendments.

§131.114. *Personal Interviews of Applicants.*

(a) The executive director [~~Licensing Committee of the board~~] may schedule [and conduct] a personal interview of an applicant before the board:

(1) by issuing an invitation at the direction of board members to provide additional information or clarify information submitted in support of the application;

(2) (No change.)

(b) An invitation [~~A request~~] to appear before the board under subsection (a)(1) of this section may be issued by the executive director at any time. Requests made under subsection (a)(2) of this section must be initiated by the applicant and [~~Licensing Committee~~] must be made in writing and received at the board office by the close of business on or before the 60th calendar day from the date of the letter notifying the applicant that the reconsideration was non-approved or the request for an examination waiver was denied. The executive director shall issue an invitation or deny the invitation for cause.

(c) An applicant appearing for a personal interview shall be scheduled by the executive director to appear at the next appropriate board [~~Licensing Committee~~]meeting.

(d) -(f) (No change.)

(g) Personal interviews requested under §131.113(c) of this title (relating to Reconsideration of Non-Approved Applications or Examination Waivers) to review an application non-approved under reconsideration or to reconsider the denial of an examination waiver shall constitute the last administrative appeal available to the applicant. [~~The Licensing Committee shall recommend approval or non-approval of an application to the full board at the next regular board meeting. Applicants who have appeared for a personal interview may appear and testify before the full board at this time. Requests for reconsideration of an examination waiver request shall~~

~~be forwarded to the board for approval only if the committee finds such a waiver in order.] If the board~~ [~~committee~~] does not approve an application or [~~recommend a~~] waiver, the previous board action [~~approval or non-approval~~] is sustained. [~~These actions shall constitute the last administrative appeal available to the applicant.]~~

§131.116. *Issuance of License.*

(a)-(i) (No change.)

(j) The records of the board shall indicate a branch considered by the board or license holder to be dominant. [~~The branch designation is limited to those branches listed in §131.52 of this title (relating to Applications for a Professional Engineer License) and those identified in paragraphs (1)-(9) of this subsection:]~~

[(1) (~~A~~) aeronautical/aerospace;]

[(2) (~~R~~) biomedical;]

[(3) (~~Q~~) engineering sciences;]

[(4) (~~G~~) geological;]

[(5) (~~O~~) ocean;]

[(6) (~~T~~) textile;]

[(7) (~~D~~) ceramic;]

[(8) (~~S~~) sanitary;]

[(9) (~~Y~~) other.]

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 April 13, 1998.

TRD-9805115

John R. Speed, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: May 24, 1998

For further information, please call: (512) 440-7723



Subchapter I. Professional Conduct and Ethics

22 TAC §131.155

The Texas Board of Professional Engineers proposes an amendment to §131.155, concerning professional conduct and ethics.

The section is being amended to define inappropriate behaviors and clarify an engineer's conduct with regard to the personal reputation and retaliation under engineer's responsibility to the profession.

John R. Speed, P.E., executive director, Texas Board of Professional Engineers, has determined that for the first five-year period the section is in effect there will no effect for state or local government.

Mr. Speed 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 defining of inappropriate behaviors and clarification of an engineer's conduct with regard to the personal reputation and retaliation under engineer's responsibility to the profession.

Comments on the proposal may be submitted to John R. Speed, P.E., Executive Director, Texas Board of Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760-8329.

The amendment is proposed 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.

Texas Civil Statutes, Article 3271a, §8 is affected by the proposed amendment.

§131.155. *Engineers' Responsibility to the Profession.*

(a) (No change.)

(b) The engineer shall:

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

(4) conduct engineering and related business affairs in a manner that is respectful of the client, involved parties, and employees. Inappropriate behaviors or patterns of inappropriate behaviors may include, but are not limited to, misrepresentation in billing; unprofessional correspondence or language; sale and/or performance of unnecessary work; or conduct that harasses or intimidates another party.

(c) The engineer shall not:

(1) (No change.)

(2) maliciously injure or attempt to injure or damage the personal or professional reputation of another by any means. This does not preclude an engineer from giving a frank but private appraisal of engineers or other persons or firms when requested by a client or prospective employer;

(3) retaliate against a person who provides reference material for an application for a license or who in good faith attempts to bring forward an allegation of wrongdoing;

(4)-(7) (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 April 13, 1998.

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John R. Speed, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: May 24, 1998

For further information, please call: (512) 440-7723



Part XVI. Texas Board of Physical Therapy Examiners

Chapter 341. License Renewal

22 TAC §341.8

(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 Board of Physical Therapy Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Physical Therapy Examiners proposes the repeal of §341.8 and new §341.8, concerning license renewal. The section is being repealed and replaced as new to clarify and update the requirements regarding inactive status.

The new section will add the requirement that a licensee must notify the board at the end of each two-year cycle that he or she wish to remain inactive and a late fee will be charged if the licensee does not notify the board before the license expiration date. Also, the licensee must be in good standing to enter inactive status and to reinstate active status.

The repeal of this section will eliminate the board's inactive register. The board currently tracks all statuses electronically, and no longer prints rosters on a monthly basis.

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

Mr. Maline 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 clarified and updated requirements regarding inactive status.

Comments on the proposal may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701.

The repeal is proposed under the Physical Therapy Practice Act, Texas Civil Statutes, Article 4512e, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering the Act.

Texas Civil Statutes, Article 4512e is affected by this repeal.

§341.8. *Inactive Status.*

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 April 13, 1998.

TRD-9805152

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: May 24, 1998

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



The new section is proposed under the Physical Therapy Practice Act, Texas Civil Statutes, Article 4512e, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering the Act.

Texas Civil Statutes, Article 4512e is affected by this new section.

§341.8. *Inactive Status.*

(a) Requirements for inactive status. Inactive status indicates the voluntary termination of the right or privilege to practice physical therapy in Texas by a licensee in good standing with the board.

(1) A licensee who is not actively engaged in the practice of physical therapy in the state may request in writing a change to inactive status, to be effective on the next license renewal date. On

or by that date, the licensee must submit to the board the following listed in subparagraphs (A)-(B) of this paragraph:

(A) proof of having met the continuing education requirement for the current renewal period; and

(B) a completed inactive status application as provided by the board.

(2) A licensee may remain on inactive status for no more than six consecutive years (three renewal periods). A licensee may petition the board in writing for an extension of inactive status for more than six years.

(3) A licensee on inactive status must notify the board by the end of each renewal period of his/her intention to remain on inactive status. A fee equal to that for late renewal will be charged if the licensee does not notify the board prior to the expiration of the license.

(b) Reinstatement of active status. A licensee on inactive status may request a return to active status at any time. After the licensee has fulfilled the requirements for reinstatement, the board will send a renewal certificate for the current two-year renewal period to the licensee for display purposes. To return to active status, a licensee must submit the following listed in paragraphs (1)-(4) of this subsection:

(1) the Inactive to Active Status reinstatement fee;

(2) the license renewal fee for the current renewal period;

(3) a completed and notarized re-instatement application;

and

(4) proof of the required amount of continuing education for each two-year renewal period on inactive status, including the current period. The continuing education must be obtained during the time spent on inactive status. Alternatively, the licensee applying for reinstatement to active status may substitute one of the following actions for the continuing education requirements listed in subparagraphs (A)-(C) of this paragraph:

(A) re-take and pass the national licensure exam;

(B) attend a university review course pre-approved by the board; or

(C) complete an internship (equal to 150 hours of continuing education) pre-approved 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 April 13, 1998.

TRD-9805153

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: May 24, 1998

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

◆ ◆ ◆
TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 29. Purchased Health Services

Subchapter A. Medicaid Procedures for Providers

25 TAC §29.6

On behalf of the State Medicaid Director, the Texas Department of Health (department) submits a proposed new §29.6, concerning surety bond requirements for certain types of Medicaid providers. Specifically, the section covers the department's policy governing bond requirements for providers within a provider type which has demonstrated a history of or potential for fraud or abuse.

Senate Bill 30, Section 2.03, 75th Legislature, 1997, amended the Human Resources Code, Chapter 32, to require the department to establish a rule requiring providers in provider types that have demonstrated a significant history of or potential for fraud or abuse to file a surety bond with the department, naming the department as the obligee.

The Texas Medical Assistance Program may determine that some provider types have a significant history of or potential for fraud and abuse in the Medicaid program. This rule would require these providers to maintain a surety bond, in an amount determined by the division of Medicaid Program Integrity, Office of Investigations and Enforcement of the Health and Human Services Commission (HHSC). The bond would be payable to the department and would allow the department to recover its costs and expenses as well as any damages, fines and penalties imposed as a result of the investigation, prosecution and conviction of a provider for fraud and abuse.

Mr. Joe Moritz, Health Care Financing Budget Director, has determined that for the first five year period the section is in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the section as proposed.

Mr. Moritz has also determined that for each year of the five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be the assurance that the department will be compensated for damages or penalties or fines resulting from fraud or abuse by a bonded provider. Providers within the provider type required to obtain a surety bond will incur the additional expense of obtaining the surety bond. The bond requirement may adversely impact local employment and small business operations.

Comments on the proposed rule may be submitted to Everett Daniel, Program Specialist III, Health Care Financing, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3168, (512) 794-5140. Comments will be accepted for 30 days following publication in the *Texas Register*.

The new section is proposed under the Human Resources Code, §32.021 and Government Code, §531.021, which provide the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and is submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

The new section affects Chapter 32 of the Human Resources Code.

§29.6. Surety Bond Requirements.

The Texas Department of Health (department) requires that each provider in a provider type which has been determined by the Health

and Human Services Commission to have a significant history of or potential for fraud or abuse to obtain and file a surety bond with the department.

(1) The surety bond must:

(A) be issued by an insurance company licensed by the Texas Department of Insurance;

(B) name the department as the obligee;

(C) be payable to the department to compensate the department for costs and expenses and damages resulting from or penalties or fines imposed in connection with an act of fraud or abuse committed by the provider under the Texas Medicaid Program; and

(D) provide for the faithful performance of the provider in accordance with the provider agreement or contract, and all specifications related to the Texas Medicaid Program.

(2) The department will inform each provider within the provider type of the necessity to obtain a surety bond and the amount of the required surety bond.

(3) Providers who operate more than one entity or participate in more than one provider type for which a bond is required, are required to obtain and file a separate surety bond for each entity and each provider type in which they participate.

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 April 13, 1998.

TRD-9804965

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: May 24, 1998

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



Subchapter F. Physician Services

25 TAC §29.502

On behalf of the State Medicaid Director, the Texas Department of Health (department), submits a proposed amendment to §29.502, concerning the provision requiring a physician's "personal supervision" of services provided by a physician assistant (PA) and advanced practice nurses (APN). The amendment makes §29.502 consistent with state law and regulations, enhances access to medical care and treatment, and improves the efficiency of the economical administration of the Medicaid program.

The Medical Practice Act (Article 4495b, §3.06(b)(6), Texas Civil Statutes) and the rules of the Texas Board of Medical Examiners (§185.2 "Definitions," and §§193.1-193.8 "Standing Delegation Orders") allow PAs and APNs to perform an array of medical services pursuant to protocols jointly developed with the physician, without the physician's personal supervision. In contrast, §29.502 provides for Medicaid payment only when a physician provides personal supervision of PA and APN provided medical services. The proposed amendment would allow for Medicaid payment to the physician when PAs and APNs perform pursuant to protocols jointly developed with the physician, in accordance with their scope of practice and state law.

Joe Moritz, Budget Director, Health Care Financing, has determined that for the first five year period the amendment is in effect, there will be no fiscal implications to state or local government as a result of its administration or enforcement of the amendment as proposed. This amendment does not change the amount, duration, or scope of services provided by the Texas Medicaid Program. There are no fiscal implications as a result of the proposed amendment for small businesses or persons required to comply with the rule. The public benefit of this rule will be through enhanced access to medical care and the improved efficiency of the economical administration of the Texas Medicaid Program.

Comments may be sent to Everett Daniel, Program Specialist III, Health Care Financing, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3168, (512) 794-5140. Comments will be accepted for 30 days following publication of the amended rule in the *Texas Register*.

The proposed amendment is submitted in accordance with the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531, which provides the Health and Human Services Commission with the authority to adopt rules to administer the State's medical assistance program and is submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program as authorized by Chapter 15, §1.07, Acts of the 72nd Legislature.

The proposed amendment affects Chapter 32 of the Human Resources Code and Chapter 531 of the Government Code.

§29.502. *Authorized Physician Services.*

(a) The term "physician services" includes those reasonable and medically necessary services that are provided by or under the personal supervision of a physician and that are within the scope of practice of medicine or osteopathy as defined by state law. Unless otherwise specified in writing by the department or its designee, or except for services specified in subsection (e) of this section, the physician must have examined the patient, made a diagnosis, and established a plan of care, and documented these tasks on the appropriate medical records of the patient before submitting claims for payment to the department or its designee. If such documentation is not present in the appropriate medical record, then any payment may be recouped. Except as specified in subsections (b), (c), [Ø] (d), or (e) of this section, the term "personal supervision" means that the physician must be in the building of the office or facility at the time, when, and where the service is provided.

(b) (No change.)

(c) If the attending physician delegates health care tasks to a qualified physician [physician's] assistant or advanced practice nurse in a [an intermediate care/skilled] nursing facility, the [physician] services are covered if the supervision or delegation is consistent with the rules and regulations of the Texas State Board of Medical Examiners. Services provided by physician's assistants and advanced practice nurses in [intermediate care/skilled] nursing facilities must be consistent with applicable rules, regulations, and laws [the requirements of 40 TAC §§16.1906, 16.1912, 16.3017(e), and 16.3207(a) (concerning Operating Policies and Procedures; Recipient/Patient Care Policies; Conformance with Physician Orders; and Drug Orders)]. If the supervision of the delegated task is not appropriately documented in the patient's chart, any payment for services may be recouped.

(d) (No change.)

(e) If the services are provided by a physician assistant or advanced practice nurse, practicing within the scope of their license and based on protocols which have been agreed to and signed by their supervising licensed physician, the physician services are covered.

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 April 13, 1998.

TRD-9805121

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: May 24, 1998

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



TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 39. Public Notice

Subchapter F. Public Notice of Radioactive Material License Applications

30 TAC §§39.303, 39.305, 39.307, 39.309, 39.313

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§39.303, 39.305, 39.307, 39.309 and new §39.313, concerning Public Notice.

EXPLANATION OF PROPOSED RULE

The purpose of these rules is to implement Senate Bill (SB) 1857, 75th Legislature, 1997, to incorporate revisions and additions which are needed to maintain compatibility with the rules of the United States Nuclear Regulatory Commission (NRC), and to continue with agency-wide regulatory reform efforts to simplify language and requirements. Compatibility of the commission's rules with the federal program is necessary to preserve the status of Texas as an Agreement State under Title 10 Code of Federal Regulations Part 150 and the "Articles of Agreement between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended."

On July 20, 1997, SB 1857 transferred jurisdiction over licensing of source material and disposal of by-product material from the commission to the Texas Department of Health (TDH).

Section 39.303(b) (relating to Notice of License Applications Upon Completion of Technical Review) is proposed to be amended to delete a reference to the source material licensing and by-product disposal jurisdiction transferred to the TDH by SB 1857.

Section 39.305(1) and (5) (relating to Mailed Notice for Radioactive Material Licenses) are proposed to be amended and §39.305(6) is proposed to be deleted to remove language concerning the source material licensing and by-product disposal jurisdiction transferred to the TDH by SB 1857 and to simplify

the overall language; old paragraph (7) is also proposed to be renumbered to (6) due to the deletion of old paragraph (6).

Section 39.307 (relating to Public Notice) is proposed to be amended to remove a reference to the source material licensing and by-product disposal jurisdiction transferred to the TDH by SB 1857 and to simplify the publication requirement by requiring the notice to just be published in the newspaper that has the largest circulation in the county in which the facility is located. It is also proposed to delete the requirement for additional advertisement outside of the notice section of the newspaper because it is overly burdensome, not required statutorily, and inconsistent with other commission notice requirements.

Section 39.309 (b) and (c) (relating to Notice of Contested Case Hearing on Application) are proposed to be amended to remove language concerning the source material licensing and by-product disposal jurisdiction transferred to the TDH by SB 1857. Section 39.309(d) is proposed to be deleted to ensure consistency and eliminate a redundancy with §39.11(13) (relating to Text of Public Notice).

New §39.313 (relating to Public Notification and Public Participation) is derived from NRC's new 10 CFR §20.1405 and is proposed to maintain compatibility with the federal program.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed are in effect, there will be no significant fiscal implications for state government as a result of administration or enforcement of the rules. There are no fiscal implications for units of local government, except those that may operate an inactive radioactive disposal site subject to the provisions of these sections. For these local governments, the fiscal implications of these sections will be equivalent to those for any affected public or private entity.

PUBLIC BENEFIT

Mr. Minick has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be more efficient decommissioning of inactive radioactive material disposal sites and consistency between state and federal regulations. Compliance with the proposed state regulations will result in no significant increase in costs to affected parties that would not otherwise result from compliance with the existing federal regulations proposed for incorporation and may result in a cost decrease. Cost savings anticipated to any person, including any small business, required to comply with these sections as proposed is proportionate to the savings for a larger business.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

Although this rule is to protect the environment and reduce the risk to human health from environmental exposure, this is not a major environmental rule because it does not adversely affect in a material way the economy, a sector of the economy,

productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, this rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency. The rule adds federal requirements that are necessary to maintain compatibility with the rules of the Nuclear Regulatory Commission.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that Assessment. The specific purpose of the rules is to remove commission rule language related to the source material licensing and by-product disposal jurisdiction transferred to the TDH by SB 1857, 75th Legislature, 1997; to incorporate revisions and additions which are needed to maintain compatibility with the rules of the NRC; and to continue with agency-wide regulatory reform efforts to simplify language and requirements. Compatibility of the commission's rules with the federal program is necessary to preserve the status of Texas as an Agreement State under Title 10 Code of Federal Regulations Part 150 and the "Articles of Agreement between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to the Atomic Energy Act §274 of 1954, as Amended." The rules will substantially advance this specific purpose by removing commission rule language related to the source material licensing and by-product disposal jurisdiction transferred to the TDH and by incorporating into commission rules the new federal requirements contained in "Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials, Clean Air Act", 61 Fed. Reg. 65120, December 10, 1996, effective January 9, 1997 and "Radiological Criteria for License Termination", 62 Fed. Reg. 39058, July 21, 1997, effective August 20, 1997. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because they primarily make federal decommissioning requirements less stringent. Section 336.501 extends the deadline to apply for a license to decommission from January 1, 1999 to January 1, 2000. If these existing, unlicensed sites decommission before January 1, 2000, owners or operators will avoid license application and annual fees. For both licensed and unlicensed disposal sites, new alternatives for decommissioning without meeting the criteria for unrestricted use are offered in new §336.607 (relating to Criteria for License Termination under Restricted Conditions) and §336.609 (relating to Alternate Criteria for License Termination). A site using one of these alternatives may save on decommissioning cost.

Also, the following exceptions to the application of Chapter 2007 of the Texas Government Code listed in Texas Government Code, §2007.003(b) apply to these rules: Section 2007.003(b)(4)—an action that is reasonably taken to fulfill an obligation mandated by federal law.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The executive director has reviewed the proposed 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 Coordina-

tion Act Implementation Rules, 31 TAC §505.11. Therefore, the proposal is not subject to the Coastal Management Program.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Bettie Bell, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments must be received by May 25, 1998 and should reference Rule Log Number 97154-336-WS. Comments received by 5:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. For further information, please contact Kathy Vail at (512) 239-6637.

STATUTORY AUTHORITY

The amendments and new section are proposed under the Texas Radiation Control Act, Texas Health and Safety Code, §§401.011, 401.051, and 401.412, and Texas Water Code, §5.103, which give the commission the authority to adopt rules necessary to carry out its responsibilities to regulate and license the disposal of radioactive substances.

The amendments and new section implement Health and Safety Code, Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation).

§39.303. *Notice of License Applications Upon Completion of Technical Review.*

(a) (No change.)

(b) For an application for minor amendment to a license issued under Chapter 336, Subchapter F of this title (relating to Alternative Methods of Disposal of Radioactive Material) [~~or Subchapter G of this title (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities)~~], notice shall be mailed in accordance with the requirements of this subchapter. The deadline to file public comment, protests, or hearing requests is ten days after mailing.

§39.305. *Mailed Notice for Radioactive Material Licenses.*

When notice by mail is required under this subchapter, the chief clerk shall mail notice to:

(1) the mayor and health authorities of the city in which the facility is or will be located [~~; or, for licenses issued under Chapter 336, Subchapter G of this title (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities), the mayor and health authorities of each incorporated city whose city limits are within five highway miles of the site of the facility];~~

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

(5) [~~for applications under Chapter 336, Subchapter F of this title (relating to Licensing of Alternative Methods of Disposal) or Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste), each owner of property adjacent to the proposed site; or, for licenses under Chapter 336, Subchapter G of this title, owners of property within 1,000 feet of the perimeter of the proposed license area]. For the purposes of determining property ownership under this subsection, the applicant shall provide the chief clerk the names of the relevant landowners from the county tax rolls that are available no more than 30 days before the date of newspaper publication of the notice; and~~

[~~(6) for applications under Chapter 336, Subchapter G of this title, the chief executive of each political subdivision and special district levying taxes upon all or any part of the site of the facility and~~

each member of the Texas Legislature in whose district the facility is or will be located; and]

(6) [(7)] any other person the chief clerk or executive director may elect to include.

§39.307. *Published Notice.*

(a) For applications under Chapter 336, Subchapter F of this title (relating to Alternative Methods of Disposal of Radioactive Material)[or Subchapter G of this title (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities)], when notice is required to be published under this subchapter, the applicant shall publish notice at least once in a newspaper of largest general circulation in the county in which the facility is [or will be]located[; or, if no newspaper is published in the county or counties in which the facility is or will be located, in a newspaper of general circulation in each county adjacent to the county in which the facility is located. In addition, in the same edition that the notice is published, the applicant shall publish an advertisement outside the notice section of the newspaper that directs the reader to the notice section for the details of the proposed licensing action].

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

§39.309. *Notice of Contested Case Hearing on Application.*

(a) (No change.)

(b) For applications under Chapter 336, Subchapter F of this title (relating to Licensing of Alternative Methods of Disposal)[or Subchapter G of this title (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities)], notice shall be mailed no later than 30 days before the hearing. For applications under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste), notice shall be mailed no later than 31 days before the hearing.

[(c) For applications under Chapter 336, Subchapter G of this title, if a hearing has been set at the time the notice of application is provided, the notice of hearing may be combined with the notice of application.]

[(d) A written environmental analysis, if required, shall be made available to the public no later than 31 days before the date of hearing.]

§39.313. *Public Notification and Public Participation.*

Upon the receipt of a license termination plan or decommissioning plan from the licensee, or a proposal by the licensee for release of a site under §336.603 of this title (relating to Radiological Criteria for Unrestricted Use) or §336.607 of this title (relating to Criteria for License Termination under Restricted Conditions), or whenever the commission deems notice to be in the public interest, the commission shall:

(1) notify and solicit comments from:

(A) local and state governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning; and

(B) the Environmental Protection Agency for cases where the licensee proposes to release a site under §336.609 of this title (relating to Alternate Criteria for License Termination); and

(2) publish a notice in the Texas Register and in a forum, such as local newspapers, letters to state or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site, and solicit comments from affected parties.

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 April 13, 1998.

TRD-9805156

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 24, 1998

For further information, please call: (512) 239-6087

◆ ◆ ◆
Chapter 114. Control of Air Pollution From Motor Vehicles

The commission proposes amendments to Subchapter A, §114.1 and §114.3, concerning Definitions; Subchapter E, §§114.150, 114.151, and 114.153-114.157, and the repeal of §114.152, concerning Low Emission Fleet Vehicle Requirements; Subchapter F, §114.201 and §114.202, concerning Vehicle Retirement and Mobile Emission Reduction Credits; and a proposed revision to the State Implementation Plan (SIP) concerning this proposal.

EXPLANATION OF PROPOSED RULES

Revisions to Chapter 114, concerning Control of Air Pollution from Motor Vehicles, and the corresponding SIP revision are to implement Senate Bill 681 (SB 681), Acts of the 75th Texas Legislature, 1997, concerning the low emission vehicle (LEV) fleet requirements; the Federal Clean Air Act as amended, Acts of the 101st U.S. Congress, 1990, concerning provisions for attainment and maintenance of health protective, national ambient air quality standards; and for other purposes. Sections 114.1, 114.3, 114.151, 114.153, 114.155-114.157, and 114.201-114.202 have been previously submitted to EPA as part of the SIP; therefore, revisions to these sections are considered to be revisions to the SIP.

Section 114.1 and §114.3, concerning Definitions, incorporate numerous editorial changes to ensure the definitions are consistent with the Guiding Principles and policies of the commission, and are consistent in format, style, and tone per commission guidelines. New and amended definitions were also numbered to be consistent with new *Texas Register* rules (23 TexReg 1289). In §114.1(8), the commission requests specific public comment on the definition of "Law enforcement vehicle." The commission is considering the option of allowing private law enforcement vehicles to qualify for the exemption from the fleet vehicle requirements, but is unsure if there are any private vehicles which are truly involved in law enforcement. In order to allow exemptions for private law enforcement vehicles, the phrase "controlled by a local government and primarily" would be deleted from the definition. Additional clarification was added to the definition of "low emission vehicle" in §114.1. The title of §114.3 was changed from "Low Emission Fleet Vehicle Definitions" to "Low Emission Vehicle Fleet Definitions" to better reflect the nature of the program. Several LEV fleet definitions were added to §114.3 to define terms specific to the state's substitute LEV program and the requirements of SB 681. These added definitions include "affected area," "affected entity," "normally operates," "normally parked at the residence of the individual," "private entity," "private fleet," "projected net costs," and "purchase date." The commission requests specific public com-

ment on the definition for "normally parked at the residence of the individual." The intent of the proposed wording is to specify how much time a vehicle should be parked at the individual's residence after duty hours in order to qualify for the exemption from the fleet vehicle requirements. One definition, "mobile emission reduction credit," was moved to §114.1 because it applied to multiple subchapters of Chapter 114. Finally, several definitions were deleted because they were no longer necessary, or they were defined in other chapters. These deleted definitions include "Beaumont/Port Arthur nonattainment area," "capable of being centrally fueled," "centrally fueled," "clean-fuel vehicle," "control," "Dallas/Fort Worth nonattainment area," "El Paso nonattainment area," "Houston/Galveston nonattainment area," "operate," "own," and "private person."

Revisions to Subchapters E and F incorporate numerous editorial changes to ensure the language is consistent with the Guiding Principles and policies of the commission, and is consistent in format, style, and tone per commission guidelines. In addition, the term "clean fuel vehicle" was changed to "low emission vehicle" or "LEV" throughout the chapter, and the title of Subchapter E was changed from "Low Emission Fleet Vehicles" to "Low Emission Vehicle Fleets" to better reflect the nature of the program. Other revisions to specific sections in Subchapters E and F are discussed below:

Section 114.150, concerning Requirements for Mass Transit Authorities, contains the LEV requirements for mass transit authorities. The basic requirement is for the affected mass transit authorities to have 50% of their total fleet vehicles certified as LEVs. LEVs, in excess of the 50% requirement, may be eligible for Program Compliance Credit (PCC) according to §114.157, or Mobile Emission Reduction Credits (MERCs) according to §114.201. Subsection (a) changed from listing specific nonattainment areas to referring to an affected area as defined in §114.3. Subsection (b) drops the compliance date of September 1, 1996, because the date had already passed. Subsection (c) adds the provision that requirements may be met by using PCCs and MERCs. Subsection (d) changes the term "qualifying vehicles" to include vehicles certified to LEV and EPA standards more stringent than LEV. Subsection (e) combines the old subsections (e) and (f) and extended the date from September 1, 1998, until September 1, 1999, for those vehicles converted, purchased, leased, or otherwise acquired prior to that date to be counted toward compliance with percentage requirements. Subsection (e) also changes the dual fuel vehicle certification from EPA's Title 40 Code of Federal Regulations (40 CFR), Part 88 to Texas' recognized fuels such as electricity, ethanol, liquefied petroleum gas, methanol, and natural gas; and also added specific emission limits specified by vehicle weight and EPA emissions standards. Subsection (g) (formerly subsection (h)) adds specific reporting requirements for mass transit fleets.

Section 114.151, concerning Requirements for Local Governments and Private Entities, contains LEV requirements for local governments and private entities. The LEV requirements for these fleets are 30% of fleet vehicle purchases after September 1, 1998, or at least 10% of the total fleet vehicles as of September 1, 1998; 50% of fleet vehicle purchases after September 1, 2000; 70% of light-duty fleet vehicle purchases after September 1, 2002; and 50% of heavy-duty fleet vehicle purchases after September 1, 2002. Subsection (a) was revised to refer to affected areas, as defined in §114.3 of this title rather than specific nonattainment areas. Subsection (b) was revised to

include leased fleet vehicles in the requirements. In addition, subsection (b) deleted the requirement of 20% of existing fleet vehicles as of September 1, 2000; changed the percentages for light-duty fleet vehicles purchased after September 1, 2002, from 90% to 70%; added a 50% percentage for heavy-duty fleet vehicle purchases after September 1, 2002; and removed the requirement of 45% in the total fleet as of September 1, 2002. Subsection (c) reduced the no-purchase exemption from 90% to 70%. Subsection (e) changed the term "clean-fuel vehicles" to the term "low emission vehicles." Subsection (f) clarifies that this section does not require the conversion and EPA certification of conventional vehicles to the LEV standards. Subsection (g) allows specified Texas fuels and uncertified conversions prior to 1995 instead of 1998 to be used as credit. Subsection (i) deleted the September 1, 1997 date because it had already passed, and added information to be included in fleet registration. Subsection (k) changed the first reporting year from 1998 to every even numbered year.

Section 114.152, concerning Use of Certain Vehicles for Compliance, has been repealed, and the applicable requirements and allowances have been moved into §114.150 and §114.151.

Section 114.153, concerning Exceptions, provides for exceptions from the LEV requirements. Affected entities may be granted an exception from the LEV requirements, on a case-by-case basis, if: 1) a firm is engaged in a fixed price contract with a public works agency where compliance with the fleet implementation schedule requirements of the state's substitution program would cause economic harm to the firm; 2) adequate fueling required for the operation of LEVs is unavailable; 3) financing for the increased cost of operation of LEVs is unavailable from fuel suppliers; 4) the costs, over the lifetime of the LEV's operation, are more than the costs of the operation of a conventional vehicle; or 5) LEVs sufficient to meet business needs are unavailable. Subsection (a) added the fifth provision for exception provided that there are insufficient LEVs to meet business needs. A new subsection (c) states alternatives to applying for an exception to the applicable LEV requirements.

Section 114.154, concerning Exceptions for Certain Mass Transit Authorities, incorporated numerous editorial changes to ensure the language is consistent with the Health and Safety Code as amended by SB 681, 75th Legislature, 1997; with the Guiding Principles and policies of the commission; and in format, style, and tone with commission guidelines. In addition, the term "clean fuel vehicle" was changed to "low emission vehicle" throughout the section.

Section 114.155, concerning Reporting, provides the general reporting requirements for local governments and private entities. Each affected entity will submit their biennial fleet report to the executive director by September 1 of each even numbered year. Subsection (a) changed the reporting requirement from annually to biennially, and changed some of the reporting information.

Section 114.156, concerning Record Keeping, was modified to require the affected entities to maintain copies of all reports submitted in accordance with §114.155.

Section 114.157, concerning Low Emission Vehicle Fleet Program Compliance Credits, incorporates numerous editorial changes to ensure the language is consistent with the Guiding Principles and policies of the commission, and is consistent in format, style, and tone with commission guidelines. The name of §114.157 was changed by adding "Low Emission Vehicle

Fleet" in order to clarify the program specific nature of the section. In addition, the term "clean fuel vehicle" was changed to "low emission vehicle" throughout the section.

Section 114.201, concerning the Mobile Emission Reduction Credit Program, incorporates editorial changes to ensure the language is consistent with the Guiding Principles and policies of the commission, and is consistent in format, style, and tone with commission guidelines. In addition, the term "clean fuel vehicle" was changed to "low emission vehicle" throughout the section.

Section 114.202, concerning The Texas Mobile Emission Reduction Credit Fund, was changed to specify "low emission vehicle" in place of "clean fuel vehicle."

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period these rules as proposed are in effect, there will be no significant fiscal implications for state or local government as a result of administration or enforcement of the rules. There will be no significant fiscal implications to the commission.

PUBLIC BENEFIT

Mr. Minick has also determined that for each year of the first five years the rules as proposed are in effect, the public benefit will be minimally changed as a result of enforcement of and compliance with the proposed rules. As more and more LEVs are purchased and operated, the quality of the ambient air will improve slightly in each of the affected areas. There will be no additional economic impact on owners and operators of affected fleets. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The specific intent of the rules is to protect the environment and reduce risks to human health from environmental exposure by adopting state requirements which are essentially equivalent to federal requirements regarding low emission fleet vehicles. However, the rules do not adversely affect the economy because they lessen the financial impact of the current rules through exceptions. If EPA determines that this program is not essentially equivalent to the federal program, it will still be protective of the environment and human health because the commission will make up the shortfall through other measures. In this way, there is no adverse impact to the environment or the public health and safety of the state. Therefore, this proposal does not meet the full definition of a major environmental rule. The proposed rulemaking also does not meet any of the four applicability requirements for being subject to §2001.0025 as stated below. It will fulfill an obligation mandated by Part C, Subchapter II of the FCAA which requires states to implement a clean fuel fleet program, and is essentially equivalent to the federal law. The proposal does not exceed requirements specified by Chapter 382, Subchapter F, Health and Safety Code. The proposal is not an agreement or contract between the state and the federal government which lays out requirements for this program; and is directed by

Chapter 382, Subchapter F, Health and Safety Code, rather than being proposed under the general powers of the commission. The commission invites public comment on the draft Regulatory Impact Analysis.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. SB 681, Acts of the 75th Legislature, 1997, modified requirements for certain motor vehicle fleets in the Texas Health and Safety Code. Prior to the passage of SB 681, the commission adopted LEV fleet requirements based on the provisions of SB 200, Acts of the 74th Legislature, 1995. The program was adopted as an opt-out of the Federal Clean Fuel Fleet program required by the 1990 FCAA Amendments. SB 681 was intended to replace the existing program requirements of §§114.1, 114.3, 114.150-155, 114.157, and 114.201-202. The primary purpose of this rule is to meet requirements for the commission to adopt rules requiring fleets to purchase LEVs. This action is being taken to comply with federal and state legislative mandates. This proposed rulemaking does not affect private real property, since fleet vehicles are not considered to be private real property. Most capital expenditures will involve the purchase of vehicles. However, the regulation proposes that the purchase of vehicles for compliance is in the affected entity's discretion (§382.134(e), Health and Safety Code), and the statute has provisions for a cost-effectiveness exception (§382.136, Health and Safety Code).

COASTAL MANAGEMENT PLAN CONSISTENCY REVIEW

The commission has determined that the proposed rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resource Code, §§33.201 et. seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this proposed action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council and has determined that the proposed action is consistent with the applicable CMP goals and policies. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations at 40 CFR, to protect and enhance air quality in the coastal area, (31 TAC §501.14(q)). This proposal does not change existing requirements which already comply with regulations at 40 CFR, and is therefore consistent with this policy. Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

PUBLIC HEARINGS

Public hearings on this proposal will be held in Austin on May 19, 1998, at 10:00 a.m., in Building F, Room 2210 of the commission's central office, located at 12100 North IH-35, Park 35 Technology Center, Austin; and in Irving on May 20, 1998, at 7:00 p.m., at the City of Irving Central Library Auditorium located at 801 West Irving Boulevard, Irving. The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements

when called upon in order of registration. Open discussion will not occur during the hearings; however, a commission staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after each hearing.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97139-114-AI. Comments must be received by 5:00 p.m., May 26, 1998. For further information or questions concerning this proposal, contact Al Giles, Mobile Source Section, Office of Air Quality, (512) 239-1943. Copies of the proposed SIP revision can be obtained by calling Ms. Evans at (512) 239-1970 or by accessing the "proposals/adoption" portion of the commission's web site at www.tnrcc.state.tx.us/oprd.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the commission at (512) 239-4900. Requests should be made as far in advance as possible.

Subchapter A. Definitions

30 TAC §§114.1, 114.3

STATUTORY AUTHORITY

The amendments are proposed under the TCAA, Texas Health and Safety Code, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; TCAA, §382.019, which provides the commission with the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; §382.133 which provides the commission with the authority to adopt rules regarding fuels in Mass Transit Fleet Vehicles; §382.134 which provides the commission with the authority to adopt rules regarding fuels in local government and private fleet vehicles; §382.136 which provides the commission with the authority to adopt rules regarding exceptions to participation in the clean fuel fleet program; §382.142 which provides the commission with the authority to adopt rules regarding the granting and use of program compliance credits; and §382.143 which provides the commission with the authority to adopt rules regarding the Texas mobile emissions reduction credit program.

The proposed amendments implement TCAA, §382, Subchapter F and Texas Transportation Code (TTC), Chapter 451, Subchapter G.

§114.1. Definitions.

Unless specifically defined in the TCAA or in the rules of the ~~commission~~ [Texas Natural Resource Conservation Commission (commission)], the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Dual-fuel vehicle - Any motor vehicle or motor vehicle engine engineered and designed to be operated on two different fuels, but not a mixture of the two.

(2) Emergency vehicle - A vehicle defined as an authorized emergency vehicle according to Texas Transportation Code, §541.201(1).

(3) Emissions - The emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, particulate, or any combination of these substances.

(4) First safety inspection certificate - Initial Department of Public Safety (DPS) certificates issued through DPS certified inspection stations for every new vehicle found to be in compliance with the rules and regulations governing safety inspections.

(5) Gross vehicle weight rating (GVWR) - The value specified by the manufacturer as the maximum design loaded weight of a vehicle. This is the weight as expressed on the vehicle's registration, and includes the weight the vehicle can carry or draw.

(6) Heavy-duty vehicle - Any passenger vehicle or truck capable of transporting people, equipment, or cargo, that has a GVWR greater than 8,500 lbs., and is required to be registered under the Texas Transportation Code, Section 502.002. For purposes of the Mobile Emission Reduction Credit (MERC) trading program the heavy-duty class is divided into the following subclasses:

(A) Light heavy-duty vehicle - Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 8,500 lbs., but less than or equal to 10,000 lbs.

(B) Medium heavy-duty vehicle - Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 10,000 lbs. but less than or equal to 19,500 lbs.

(C) Heavy heavy-duty vehicle - Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 19,500 lbs.

(7) Inherently low emission vehicle - A vehicle as defined by Title 40, [of the] Code of Federal Regulations (40 CFR), Part 88.

(8) Law enforcement vehicle - Any vehicle controlled by a local government and primarily operated by a civilian or military police officer or sheriff, or by state highway patrols, or other similar law enforcement agencies, and which is used for the purpose of law enforcement activities including, but not limited to, chase, apprehension, surveillance, or patrol of people engaged in or potentially engaged in unlawful activities.

(9) Light-duty vehicle - Any passenger vehicle or truck capable of transporting people, equipment, or cargo, that has a GVWR less than or equal to 8,500 lbs., and registered or required to be registered under [the] Texas Transportation Code, §502.002. For purposes of the MERC trading program the light-duty class is divided into the following subclasses:

(A) Light-duty vehicle - Any passenger vehicle capable of seating 12 or fewer passengers that has a GVWR less than or equal to 6,000 lbs.

(B) Light-duty truck 1 - Any passenger truck capable of transporting people, equipment, or cargo, that has a GVWR less than or equal to 6,000 lbs.

(C) Light-duty truck 2 - Any passenger truck capable of transporting people, equipment, or cargo, that has a GVWR greater than 6,000 lbs. but less than 8,500 lbs.

(10) Loaded mode inspection and maintenance (I/M) test - A measurement of the tailpipe exhaust emissions of a vehicle while the drive wheel rotates on a dynamometer, which simulates the full weight of the vehicle driving down a level roadway. Loaded test equipment specifications shall meet EPA requirements for Acceleration Simulation Mode equipment.

(11) Low emission vehicle (LEV) - A vehicle [as defined by 40 CFR, Part 88.] in a class or category of vehicles that has been certified by the EPA for any model year to meet:

(A) the LEV standards applicable under the Federal Clean Air Act as amended Part C, Subchapter II, (U.S.C. 42 Section 7581 et seq.); or

(B) emission limits at least as stringent as the applicable LEV standards for the Federal Clean Fuel Fleet program under 40 CFR, Parts 88.104-94, 88.105-94, and 88.311-93 as published in the *Federal Register* on September 30, 1994 (59 FR 50042).

(12) Mass transit authority - A transportation or transit authority or department established under Chapter 141, [Acts of the] 63rd Legislature, [Regular Session,] 1973 as defined in the Texas Transportation Code, Chapters 451- 453 (relating to Metropolitan Rapid Transit Authorities [?]), [452 (] Regional Transportation Authorities [?]), and [453 (] Municipal Transportation Authorities), that operates a mass transit system under any of those laws.

(13) Mobile emission reduction credit (MERC) - The credit obtained from a quantifiable, permanent, enforceable, and surplus (with respect to other federal and state regulations) emission reduction generated by a mobile source as set forth in Subchapter F of this chapter (relating to Vehicle Retirement and Mobile Emission Reduction Credits) and which has been banked in accordance with §101.29 of this title (relating to Emissions Credit Banking and Trading).

(14) Revised Texas I/M State Implementation Plan (SIP) - The portion of the Texas SIP which includes the procedures and requirements of the vehicle emissions inspection and maintenance program as adopted by the commission May 29, 1996, in accordance with the 40 CFR Part 51, Subpart S, issued November 5, 1992; the EPA flexibility amendments dated September 18, 1995; and the National Highway Systems Designation Act of 1995. A copy of the revised Texas I/M SIP is available at the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas, 78753; mailing address: P.O. Box 13087, MC 166, Austin, Texas 78711-3087.

(15) Tier I federal emission standards - The standards are defined in the FCAA as amended in Section 202, USC Title 42 Section 7521, and in 40 CFR, Part 86. The phase-in of these standards began in model year 1994.

(16) Ultra low emission vehicle - A vehicle as defined by 40 CFR, Part 88.

(17) Zero emission vehicle - A vehicle as defined by 40 CFR, Part 88.

§114.3. Low Emission [Fleet] Vehicle *Fleet* Definitions.

Unless specifically defined in the TCAA or in the rules of the commission [Texas Natural Resource Conservation Commission (commission)], the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following words and terms, when used in Subchapter E of this chapter (relating to Low Emission [Fleet] Vehicle *Fleet* Requirements), shall have the following meanings, unless the context clearly indicates otherwise:

(1) Affected area - Any consolidated metropolitan statistical area or metropolitan statistical area with a population of 350,000 or more that, under national ambient air quality standards provided by Federal Clean Air Act §181, as amended (42 United States Code Section 7511 and Table 1), is a serious, severe, or extreme nonattainment area.

(2) Affected entity - Any individual, partnership, firm, company, business trust, corporation, organization, or association which operates a fleet within an affected area.

[Beaumont/Port Arthur nonattainment area-Hardin, Jefferson, and Orange Counties.]

[Capable of being centrally fueled - A fleet or that part of a fleet consisting of vehicles that could be refueled 100% of the time at a location that is owned, operated, or controlled by the fleet operator or that is under contract with the fleet operator. The fact that one or more vehicles in a fleet are not centrally fueled does not exempt an entire fleet from the program.]

(3) Capable of operating - Having the necessary permanently installed equipment that enables a vehicle to use a specified fuel.

[Centrally fueled - A fleet or that part of a fleet consisting of vehicles that are refueled 100% of the time at a location that is owned, operated, or controlled by the fleet operator or that is under contract with the fleet operator. The fact that one or more vehicles in a fleet are not centrally fueled does not exempt an entire fleet from the program. The term does not include retail credit card purchases or commercial fleet card purchases.]

(4) Certified - A vehicle that has been issued a certificate of conformity [The process established] by the EPA to ensure compliance, throughout the entire useful life of a vehicle, with the required emission standards as defined in Title 40, Code of Federal Regulations, Parts 86 and 88 [40 (CFR)].

[Clean-fuel vehicle - A vehicle in a class or category of vehicles that has been certified to meet for any model year:]

[(A) the clean-fuel vehicle standards applicable under the FCAA as amended Part C, Subchapter II, (U.S.C. 42 Section 7581 et seq.);]

[(B) emission limits at least as stringent as the applicable low-emission vehicle standards for the clean-fuel fleet program under 40 CFR, Sections 88.104-94, 88.105-94, and as published in the *Federal Register* of September 30, 1994; and]

[(C) vehicles certified to the inherently low-emission vehicle standards under 40 CFR, Section 88.311-93 as published in the *Federal Register*, March 1, 1993, will also be considered clean-fuel vehicles.]

[Control -]

[(A) When it is used to join all entities under common management, means any one or a combination of the following:]

[(i) a third person or firm has equity ownership of 51% or more in each of two or more firms;]

[(ii) two or more firms have common corporate officers, in whole or in substantial part, who are responsible for the day-to-day operation of the companies;]

[(iii) one firm leases, operates, supervises, or in 51% or greater part owns equipment and/or facilities used by another person or firm, or has equity ownership of 51% or more of another firm.]

[(B) When it is used to refer to the management of vehicles, means a person has the authority to decide who can operate a particular vehicle, and the purposes for which the vehicle can be operated.]

~~[(C) When it is used to refer to the management of people, means a person has the authority to direct the activities of another person or employee in a precise situation, such as the workplace.]~~

~~(5) Conventional vehicle - A vehicle which meets all applicable federal emission standards in place at the time of manufacture, but is not certified as a low emission [clean-fuel] vehicle.~~

~~[Dallas/Fort Worth nonattainment area - Collin, Dallas, Denton, and Tarrant Counties.]~~

~~[El Paso nonattainment area - El Paso County.]~~

~~(6) Fleet - The aggregate of the [all] vehicles under the authority of a mass transit authority, local government, or private entity [that are owned, operated, or controlled by an affected entity and are registered under the Texas Transportation Code, §502.002] and operated primarily within an affected [any one nonattainment] area.~~

~~(7) Fleet vehicle - A vehicle registered or required to be registered under [the] Texas Transportation Code (TTC), Chapter 502, except a motor bus used to transport pre-primary, primary, or secondary students to or from school or for approved extracurricular activities, or a vehicle registered under TTC, §502.006(c) [§502.002, and that is centrally fueled, capable of being centrally fueled, or fueled at facilities serving both business customers and the general public]. The term does not include:~~

~~(A) a [fleet] vehicle that, when not in use, is normally parked at the residence of the individual who normally [usually] operates it [and that is available to such individual for personal use];~~

~~(B) a [fleet] vehicle that has a gross vehicle weight rating (GVWR) of greater than 26,000 pounds [, when not in use, is normally parked at the residence of the individual who usually operates it and who does not report to a central location]; [or]~~

~~(C) a [fleet] vehicle used in the maintenance or repair of underground mass transit facilities which is required by federal law or regulation to operate on diesel fuel; or [that has a gross vehicle weight rating (GVWR) greater than 26,000 pounds except vehicles owned or operated by mass transit authorities.]~~

~~(D) a law enforcement or emergency vehicle, as defined by the Texas Transportation Code (TTC) §541.201.~~

~~[Houston/Galveston nonattainment area - Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.]~~

~~(8) Lessor - A private entity [person] who leases or rents vehicles to other entities for the purpose of short-term rental or an extended term leasing [c] with or without a maintenance agreement [)], without a driver, and under a contract. Fleets or vehicles [that are owned,] operated[, or controlled] by lessors for operations other than lease or rental to other entities may be subject to the requirements of this chapter.~~

~~(9) Local government - A city, county, municipality, or political subdivision of a state. This term does not include school districts.~~

~~[Mobile emission reduction credit - The credit obtained from an enforceable, permanent, quantifiable, and surplus (to other federal and state regulations) emission reduction generated by a mobile source as set forth in §114.201 and §114.202 of this title (relating to the Mobile Emission Reduction Credit Program, and The Texas Mobile Emission Reduction Credit Fund) and which has been banked in~~

~~accordance with §101.29 of this title (relating to Emissions Banking and Trading).]~~

~~(10) Non-road vehicle - A vehicle which is not required to be registered under the Texas Transportation Code, §502.002.~~

~~(11) Normally operates - A person is considered to normally operate a vehicle if they operate the vehicle more than 50% of the time.~~

~~(12) Normally parked at the residence of the individual - A vehicle that is parked more than 75% of the time that it is parked after business hours at the residence of the individual who normally operates it.~~

~~[Operate - Use of a vehicle on any public road.]~~

~~(13) Operates primarily - Use of a fleet in any one affected nonattainment area more than 50% of the total [average] annual vehicle miles traveled or [operating] time as measured from January 1 through December 31 [documented by the affected entity from July 1 through June 30th] of each year.~~

~~[Own - Having legal title to a vehicle.]~~

~~(14) Private entity - Any individual, partnership, firm, company, business trust, corporation, organization, or association which owns, operates, or controls a fleet.~~

~~(15) Private fleet - All fleet vehicles operated by a private person.~~

~~[Private person - Any individual, partnership, firm, company, business trust, corporation, organization, or association which owns, operates, or controls a fleet.]~~

~~(16) Program compliance credits - Credits that may be granted to a fleet [vehicle owner/] operator for a vehicle which [who] exceeds the low emission [clean-fuel] vehicle provisions and requirements of this chapter.~~

~~(17) Projected net costs - All expenses associated with the operation of fleet vehicles after deduction of any available state or federal funding or incentives for the use of low emission vehicles.~~

~~(18) Public works agency - A governmental body established by the legislative branch, including municipalities and counties acting by ordinance, charged with administering the construction and maintenance of improvements constructed with public funds for public use, protection, or enjoyment, and those who oversee provision of public services.~~

~~(19) Purchase date - The date the buyer and seller are in a legally binding purchase or lease agreement. Payment or delivery of the vehicle is not required to have taken place.~~

~~(20) Vehicle - A self propelled device designed to operate with four or more wheels in contact with the ground, in or by which a person or property is or may be transported, and which is registered under the TTC [Texas Transportation Code], §502.002 excluding vehicles registered under TTC, §502.006(c).~~

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

Filed with the Office of the Secretary of State, on April 9, 1998.

TRD-9805043

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

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Subchapter E. Low Emission ~~[Fleet]~~ Vehicle
Fleet Requirements

30 TAC §§114.150, 114.151, 114.153-114.157

STATUTORY AUTHORITY

The amendments are proposed under the Texas Clean Air Act (TCAA), Texas Health and Safety Code, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and TCAA, §382.019, which provides the commission with the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles. The proposed amendments implement TCAA, §382, Subchapter F; Texas Transportation Code (TTC), Chapter 451, Subchapter G; TTC, Chapter 452, Subchapter F; and TTC, Chapter 453, Subchapter F.

§114.150. *Requirements for Mass Transit Authorities.*

(a) Mass transit authorities, as defined in §114.1 of this title (relating to Definitions), that ~~[own,] operate [; or control vehicles in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston nonattainment areas, as defined in §101.1 of this title (relating to Definitions);]~~ in an affected area are subject to the low emission ~~[fleet] vehicle~~ (LEV) provisions and requirements of this section ~~[chapter].~~

(b) Mass transit authorities must ensure that at least 50% of their fleet vehicles are certified to meet or certified to exceed the LEV standards ~~[low emission fleet vehicle fleets by September 1, 1996].~~

(c) The requirements of subsection (b) of this section may be met using Program Compliance Credits (PCCs) or Mobile Emission Reduction Credit (MERCs) under §§114.157, 114.201, or 114.202 of this title (relating to Low Emission Vehicle Fleet Program Compliance Credits; Mobile Emission Reduction Credit Program; and ~~[The] Texas Mobile Emission Reduction Credit Fund~~) ~~[may be used to meet the percentage requirements of subsection (b) of this section].~~

(d) The ~~early~~ acquisition of LEVs or acquisition of cleaner LEVs, such as ultra low emission vehicles, inherently low emission vehicles, or zero emission vehicles ~~[qualifying low emission fleet vehicles]~~ may qualify for both PCCs and MERCs. ~~[;] However, [however] only one type of credit may be used per generating vehicle.~~

~~[(e) The percentage requirements of subsection (b) of this section may be met by the dual-fuel conversion or capability of conventional gasoline-powered or diesel-powered vehicles to be certified as low emission fleet vehicles under the dual-fuel standards found in 40 Code of Federal Regulations, Part 88.]~~

(e) ~~[(f)]~~ Vehicles converted, purchased, leased, or otherwise acquired before September 1, 1999, but not certified to the LEV standards, ~~[1998] may be counted towards a mass transit authority's compliance with the percentage requirements of subsection (b) of this section, if the vehicles: [in accordance with §114.152 of this title (relating to Use of Certain Vehicles for Compliance):]~~

(1) are capable of operating on a fuel or power source recognized by any State of Texas fleet or mass transit fuel program prior to September 1, 1995. These fuels are as follows:

(A) electricity;
(B) ethanol, or ethanol/gasoline blends of 85% or greater ethanol;

(C) liquefied petroleum gas, commonly referred to as propane;

(D) methanol or methanol/gasoline blends of 85% or greater methanol; or

(E) natural gas; and

(2) meet at a minimum the following emission standards:

(A) for vehicles under 8,500 pounds gross vehicle weight rating (GVWR), the federal Tier I emission standards under Federal Clean Air Act, §202 as amended (42 U.S.C. Section 7521); or

(B) for vehicles over 8,500 pounds GVWR, the federal emission standards in place at the time of the chassis' manufacture.

(f) ~~[(g)]~~ Exceptions from the requirements of subsection (b) of this section may be granted under §114.153 of this title (relating to ~~[concerning] Exceptions~~).

(g) ~~[(h)]~~ Affected [By September 30 of each year starting in 1996, mass] transit authorities must submit annual fleet reports by September 1 of each year. [as required under §114.155 of this title (relating to Reporting):] The report shall be submitted to the executive director and must contain, at a minimum:

(1) the total number of vehicles registered according to Texas Transportation Code (TTC), §502.002, excluding vehicles registered under TTC, §502.006(c);

(2) the total number of LEVs;

(3) make, model, year, vehicle license numbers, vehicle identification numbers, GVWR, fuel type(s) and certified emission standards of each vehicle used for compliance;

(4) vehicles offered for lease to the public;

(5) an estimate of the annual vehicle miles traveled (VMT) for each vehicle used for compliance;

(6) if the vehicle is a dual-fuel vehicle, a percent estimate of the vehicle's annual operation on each fuel, measured in VMT or time; and

(7) a demonstration of compliance with the requirements of subsection (b) of this section.

(h) ~~[(i)]~~ Mass transit authorities must maintain records under §114.156 of this title (relating to Record Keeping).

(i) ~~[(j)]~~ Mass transit authorities are eligible for MERCs under Subchapter F of this chapter (relating to Mobile Emission Reduction Credits) ~~[\$114.201 or §114.202 of this title] for the operation of light rail cars which have been demonstrated by the mass transit authority to have no direct emissions.~~

§114.151. *Requirements for Local Governments and Private Entities [Persons].*

(a) Local governments that ~~[own,] operate [; or control] a fleet of more than 15 vehicles, excluding law enforcement and emergency vehicles, and private entities [persons] that [own,] operate [; or control] a fleet of more than 25 fleet vehicles, excluding law enforcement and emergency vehicles, are subject to the low emission~~

~~[clean-fuel] vehicle (LEV) provisions and requirements of this chapter when operated primarily in an affected area [the El Paso and Houston/Galveston nonattainment areas].~~

(b) Beginning September 1, 1998, local governments and private ~~entities [persons]~~, as specified by subsection (a) of this section, must ensure that their fleet vehicles, including leased fleet vehicles, are certified to meet or are certified to exceed the LEV standards ~~[clean-fuel vehicles]~~ in accordance with the following schedule:

(1) 30% of fleet vehicles purchased after September 1, 1998; or at least 10% of the fleet vehicles in the total fleet as of September 1, 1998;

(2) 50% of fleet vehicles purchased after September 1, 2000; and ~~[at least 20% of the fleet vehicles in the total fleet as of September 1, 2000; and]~~

(3) 70% [90%] of light-duty fleet vehicles purchased after September 1, 2002; and at least 50% [45%] of the heavy-duty fleet vehicles purchased after ~~[in the total fleet as of] September 1, 2002.~~

(c) A local government or private ~~entity [person]~~ is not required to purchase any additional fleet vehicles certified to meet or certified to exceed the LEV standards ~~[clean-fuel vehicles]~~ if there are 70% [a proportion of 90%] or more LEVs ~~[clean-fuel vehicles is] maintained in the [their] fleet.~~

(d) Program Compliance Credits (PCCs) or Mobile Emission Reduction Credits (MERCs) under §§114.157, 114.201, or 114.202 of this title (relating to Low Emission Vehicle Fleet Program Compliance Credits; Mobile Emission Reduction Credit Program; and [The] Texas Mobile Emission Reduction Credit Fund) may be used to meet the percentage requirements of subsection (b) of this section.

(e) The acquisition of LEVs [qualifying clean-fuel vehicles] may qualify for both PCCs and MERCs; however, only one type of credit may be used per generating vehicle.

(f) The percentage requirements of subsection (b) of this section may be met by ~~[dual-fuel] an EPA certified conversion of currently owned or newly purchased conventional vehicles to meet or exceed the LEV standards~~ [or capability of conventional gasoline-powered or diesel-powered vehicles to be certified as clean-fuel vehicles under the dual fuel standards found in 40 Code of Federal Regulations, Part 88]. For purposes of this section, the conversion and EPA certification of conventional vehicles to the LEV standards shall be treated the same as the purchase of an original equipment manufacturer's LEV. Nothing in this section shall be construed as to require the conversion and EPA certification of conventional vehicles to the LEV standards.

(g) Fleet vehicles [Vehicles] converted, purchased, leased, or otherwise acquired before September 1, 1995 [1998] but not certified to the LEV standards may be counted towards a local government's or a private entity's [person's] compliance with the percentage requirements of subsection (b) of this section if the vehicles are capable of operating on a fuel or power source recognized by any State of Texas fleet fuel program prior to September 1, 1995. These fuels are as follows: ~~[in accordance with §114.152 of this title (relating to Use of Certain Vehicles for Compliance):]~~

(1) electricity;

(2) ethanol, or ethanol/gasoline blends of 85% or greater ethanol;

(3) liquefied petroleum gas, commonly referred to as propane;

(4) methanol or methanol/gasoline blends of 85% or greater methanol; or

(5) natural gas.

(h) Exceptions from the requirements of subsection (b) of this section may be granted under §114.153 of this title (relating to Exceptions).

(i) Within [By September 1, 1997, or within] 90 days of meeting the minimum fleet size, where applicable, affected local governments and private ~~entities [persons]~~ specified under subsection (a) of this section must register with the executive director for identification and compliance tracking. Registration must include the submission of the following information:

(1) the affected entity's name, mailing address, telephone and fax numbers;

(2) the name, title, mailing address and telephone number of the specific person responsible for the ~~[affected] fleet; [and]~~

(3) the total number of vehicles ~~[owned,] operated primarily in an affected area, [or controlled,] including [non-covered and] exempted vehicles; and [-]~~

(4) affected area counties of operation for all fleet vehicles.

(j) Upon registration, the executive director will assign each fleet a unique identification number for data tracking purposes.

(k) By September 1 of each even numbered year, [starting in 1998,] affected local governments and private entity fleets [persons] must submit reports to the executive director, as required under §114.155 of this title (relating to Reporting).

(l) Affected local governments and private entity fleets [persons] must maintain records as required under §114.156 of this title (relating to Record Keeping).

(m) The requirements contained in §114.1 of this title (relating to Definitions); Subchapter E of this chapter (relating to Low Emission Vehicle Fleet Requirements) ~~[§§114.150-114.157 of this title (relating to Requirements for Mass Transit Authorities; Requirements for Local Governments and Private Persons; Use of Certain Vehicles for Compliance; Exceptions; Exceptions for Certain Mass Transit Authorities; Reporting; Record Keeping; and Program Compliance Credits)]; and §114.201 and §114.202 of this title [(relating to Mobile Emission Reduction Credit Program and the Texas Mobile Emission Reduction Credit Fund)] do not apply to lessors of vehicles with regard to vehicles they lease or rent to other entities.~~

§114.153. *Exceptions.*

(a) Exceptions from the applicable low emission [clean-fuel] vehicle (LEV) requirements of this chapter may be granted for a period of up to two years. Exceptions are based on the determination by the executive director that one of the following conditions exist:

(1) A firm engaged in fixed price contracts with public works agencies can demonstrate that compliance with the LEV requirements ~~[of clean-fuel vehicle provisions and requirements of this chapter]~~ would result in substantial economic harm to the firm under a contract entered into before September 1, 1997. The following documentation must be submitted to the executive director when applying for this exception:

(A) copies of the relevant contracts; and

(B) a demonstration of how and by what means the firm would be harmed by complying with the LEV requirements [~~of the clean-fuel vehicle provisions and requirements~~] of this chapter.

(2) Fuels required for LEV operation that meet the normal requirements of the principal business of the affected entity are not available in the affected areas in which the vehicles are to be operated. [~~The affected entity's vehicles will be operating primarily in an area that does not have or cannot reasonably be expected to establish adequate refueling for the operation of clean-fuel vehicles as required by the clean-fuel vehicle provisions and requirements of this chapter.~~] The affected area where the entity's fleet operates must be indicated [~~following information must be submitted to the executive director~~] when applying for this exception. ~~[-]~~

~~[(A) the name of the county where the affected entity's fleet primarily operates;]~~

~~[(B) the physical address of the nearest refueling station that provides fuels necessary for clean-fuel operation; and]~~

~~[(C) a demonstration of the normal operating range of the affected entity's fleet sufficient for the executive director to determine that the fleet will be operating primarily in an area that does not have or cannot be reasonably expected to establish adequate refueling for the fleet's normal operational needs.]~~

(3) The affected entity is unable to secure financing provided by or arranged through the proposed supplier or suppliers of the fuels required [~~fuel necessary~~] for the operation of LEVs as [~~the clean-fuel vehicles~~] required by the [~~clean-fuel vehicle~~] provisions [~~and requirements~~] of this chapter sufficient to cover the additional costs of such fueling. The following information must be submitted to the executive director when applying for this exception:

(A) a description of the financing required by the affected entity;

(B) a description of the financing offered by the proposed supplier(s) of the fuels necessary for the operation of LEVs [~~clean-fuel vehicles~~]; and

(C) a demonstration of why the affected entity is unable to secure such financing as provided by the fuel supplier sufficient to cover the additional costs of fueling LEVs. [~~clean-fuel vehicles.~~]

(4) The projected net costs of the fueling [~~]~~ for EPA certified conversion or replacement [~~]~~ and operation of LEVs are [~~clean-fuel vehicles~~] reasonably [~~is~~] expected to exceed comparable costs [~~of the fueling, replacement, and operation~~] of conventional vehicles [~~when~~] measured over the expected useful life of such vehicles. Included [~~and after including~~] in such cost calculations are any available state or federal funding or incentives for the use of fuels required to operate LEVs. [~~clean-fuel vehicles.~~] The following information must be submitted to the executive director when applying for this exception:

(A) the types of vehicles needed; and

(B) a demonstration of how the projected net costs of fueling for LEVs [~~using clean-fuel vehicles~~] exceeds the comparable costs of [~~using~~] conventional vehicles over the useful life of such vehicles, after the identification of any available state or federal funding or incentives for the use of fuels required to fuel LEVs. [~~clean-fuel vehicles.~~]

(5) Original equipment manufacturer's vehicles, or converted vehicles, that meet the normal requirements and practices of the local government or private entity and have been certified by the EPA as LEVs are not available. The following information must be submitted to the executive director when applying for this exception:

(A) the types of vehicles needed and proof of non-availability; and

(B) a justification of why the normal requirements and practices of the local government or private entity cannot be met by the use of currently available LEVs.

(b) Exception applications will be reviewed by the executive director in accordance with the following process and are subject to the following provisions:

(1) Exception applications will be reviewed on a case by case basis;

(2) All currently available LEVs [~~vehicle/fuel configurations~~] must be evaluated by the affected entity before an exception application will be reviewed;

(3) The executive director may request additional information in order to evaluate an exception application;

(4) Applications will be accepted by the executive director at any point within the 12 months preceding a compliance deadline, provided a current fleet report containing the information in §114.155 of this title (relating to Reporting) is also provided;

(5) The affected entity receiving a notice of exception must maintain a copy of the notice on-site at the reported fleet address for the duration of the exception period and must make such copies available to the executive director [~~or local air pollution control agencies~~] upon request;

(6) Affected entities which have been granted [~~who are operating under~~] an exception may not trade or sell Program Compliance Credits or Mobile Emission Reduction Credits (MERCs), or enter into a contract according to [§§114.157, 114.201, or] §114.202 of this title (relating to [~~Program Compliance Credits; Mobile Emission Reduction Credit Program; and the~~] Texas Mobile Emission Reduction Credit Fund), for the duration of the exception period; and

(7) Affected entities will not be considered in violation of the applicable LEV [~~clean-fuel vehicle~~] requirements of this chapter while an exception application is under review by the executive director, if the exception application has been submitted to the executive director within the 12 months preceding the [~~before~~] the applicable compliance date.

(c) Alternatives to applying for an exception to the applicable LEV requirements of this chapter are:

(1) to meet the requirements through the acquisition of equivalent MERC credits under Subchapter F of this chapter (relating to Mobile Emission Reduction Credits). Equivalent MERCs are those credits necessary to meet a fleet's LEV requirements according to §114.150 and §114.151 of this title (relating to Requirements for Mass Transit Authorities, and to Local Governments and Private Entities); or

(2) to meet the requirements through the acquisition of equivalent Program Compliance Credits (PCCs) under §114.157 of this title (relating to Low Emission Vehicle Fleet Program Compliance Credits). Equivalent PCCs are those credits necessary to meet a fleet's LEV requirements according to §114.150 and §114.151 of this title.

§114.154. *Exceptions for Certain Mass Transit Authorities.*

(a) This section applies only to a mass transit authority confirmed at a tax election before July 1, 1985, and in which the principal city has a population of less than 750,000, according to the most recent federal census.

(b) The executive director may reduce any percentage specified by, or waive the requirements of, Texas Transportation Code (TTC), §451.3015 [~~§451.301~~] for up to two years, for an authority on receipt of certification supported by evidence acceptable to the executive director that:

(1) the authority's vehicles will be operating primarily in an area in which neither the authority nor a supplier has or can reasonably be expected to establish a central refueling station necessary for the operation of low emission vehicles (LEVs) [~~clean-fuel vehicles~~]; or

(2) the authority is unable to acquire or be provided equipment or refueling facilities necessary to operate LEVs [~~clean-fuel vehicles~~] at a projected cost that is reasonably expected to result in no greater net costs than the continued use of equipment or refueling facilities used to operate conventional vehicles, measured over the expected useful life of the equipment or facilities supplied.

(c) Certification by the executive director that an authority confirmed at a tax election before July 1, 1985, and in which the principal city has a population of less than 750,000, according to the most recent federal census, [~~covered by Texas Transportation Code, §451.301,] is unable to comply. This is accomplished through development of a proposal to be submitted to the executive director. The proposal must:~~

(1) contain an alternative implementation schedule for meeting the percentage requirements of TTC §451.3015 [~~Texas Transportation Code, §451.301~~]; and

(2) have been the subject of a public meeting held to discuss the authority's inability to comply with TTC §451.3015 [~~Texas Transportation Code, §451.301~~], and the alternative implementation schedule.

§114.155. *Reporting.*

(a) Entities affected by §114.151 of this title (relating to Requirements for Local Governments and Private Entities) [~~Affected entities~~] must submit biennial [~~annual~~] fleet reports by September 1 of each even numbered year. The report shall be submitted to the executive director and [~~The report~~] must contain, at a minimum:

(1) the fleet identification number (when assigned);

(2) the total number of vehicles registered according to the Texas Transportation Code (TTC), §502.002, excluding vehicles registered under TTC, §502.006(c);

(3) the total number of [~~fleet~~] vehicles registered according to the TTC [~~Texas Transportation Code~~], §502.002 used for compliance;

(4) the affected areas in which the affected fleet vehicles operate primarily; [~~vehicle license numbers, model years, manufacturers, model types, vehicle identification numbers, gross vehicle weight rating, fuel type(s) and certified emission standards of each vehicle being used for compliance with the requirements of §114.150 or §114.151 of this title (relating to Requirements for Mass Transit Authorities and Requirements for Local Governments and Private Persons)~~];

(5) the total number of purchases for the applicable period, starting with the biennial report in the year 2000;

(6) the following information for each vehicle being used for compliance with the requirements of §114.151 of this title:

(A) [~~(5)~~] purchase date, make, model, model year, vehicle license numbers, vehicle identification numbers, gross vehicle weight rating, fuel type(s), certified emissions standards, and an estimate of the annual vehicle miles traveled (VMT) measured from January 1 through December 31 of each year, and averaged over the two consecutive years; and [~~for each clean-fuel vehicle;~~]

(B) [~~(6)~~] if the vehicle used for compliance is a dual-fuel vehicle, an estimate of [~~documentation demonstrating~~] the percentages of the vehicle's annual operation on each fuel measured from January 1 through December 31 of each year, measured in [~~as documented by the~~] VMT or time operated on each fuel. Two consecutive years averaged will be used for the biennial fleet report; and

(7) a demonstration of compliance with the applicable implementation schedule under §114.151 of this title.

(b) Affected entities may submit the information required in subsection[~~section~~] (a) of this section for all vehicles in their fleet if the vehicles being used for compliance are so indicated.

§114.156. *Record Keeping.*

Affected entities must maintain copies of submitted [~~the~~] reports required by §114.155 of this title (relating to Reporting) on-site at the reported fleet address for a minimum of three years and shall make such reports available to the executive director or local air pollution control agencies having jurisdiction in the area upon request.

§114.157. *Low Emission Vehicle Fleet Program Compliance Credits.*

(a) Program Compliance Credits (PCCs) may be awarded only to entities affected [~~entities~~] by §114.150 or §114.151 of this title (relating to Requirements for Mass Transit Authorities, and Requirements for Local Governments and Private Persons) for one [~~any of the following;~~] or any combination of the following actions: [~~thereof;~~]

(1) The purchase, lease, or acquisition of a low emission [~~clean-fuel~~] vehicle (LEV) which is certified to a more stringent emission standard than the LEV [~~low emission vehicle (LEV)~~] standards. These vehicles include: [~~which include;~~]

(A) ultra low emission vehicle (ULEV) as certified by the EPA [~~certified clean-fuel vehicles~~];

(B) inherently low emission vehicle (ILEV) EPA certified [~~clean-fuel~~] vehicles; or

(C) zero emission vehicle (ZEV) EPA certified [~~clean-fuel~~] vehicles.

(2) The purchase, lease, or acquisition of LEVs [~~clean-fuel vehicles~~] in greater numbers than otherwise required under §114.150 or §114.151 of this title [~~(relating to Requirements for Mass Transit Authorities and Requirements for Local Governments and Private Persons)~~];

(3) The purchase, lease, or acquisition of LEVs [~~clean-fuel vehicles~~] in a category not otherwise required under §114.150 or §114.151 of this title; or

(4) The purchase, lease, or acquisition of an LEV [~~a clean-fuel vehicle~~] before the dates required under §114.150 or §114.151 of this title.

(b) PCCs will be awarded ~~[in two-year increments from 1998 until 2002. After 2002, credits will be awarded]~~ according to the estimated remaining useful life of the vehicle.

(c) PCCs may be used to demonstrate compliance with LEV ~~[clean-fuel vehicle]~~ provisions and requirements of this chapter, ~~[or]~~ may be banked for later use, or they may be traded, sold, or purchased, for use by any other entity ~~[person]~~ in the same nonattainment area, to demonstrate compliance with the LEV ~~[clean-fuel vehicle]~~ provisions and requirements of this chapter.

(d) PCCs generated under subsection (a) of this section have the following values:

- (1) LEV - one credit;
- (2) ULEV - two credits; and
- (3) ILEV and ZEV - three credits.

(e) Entities affected ~~[Affected entities]~~ by §114.150 or §114.151 of this title proposing to generate PCCs under this chapter may apply at any time to the executive director. A current fleet report containing the information in §114.150 of this title or §114.155 of this title (relating to Reporting) must accompany the application. Affected entities may also indicate their desire to obtain PCCs concurrent with fleet registration or annual reporting. The submission of additional vehicle or fleet information may also be required.

(f) PCCs will be banked with the Mobile Source Section of the commission ~~[Division]~~.

(g) Upon verification by the executive director:

- (1) each fleet will be issued a certificate, where applicable; and
- (2) a total credit summary sheet will be issued to the fleet.

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 April 9, 1998.

TRD-9805042

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: July 29, 1998

For further information, please call: (512) 239-1970



30 TAC §114.152

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

STATUTORY AUTHORITY

This repeal is proposed under the Texas Clean Air Act (TCAA), Texas Health and Safety Code, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. The proposed repeal implements Texas Health and Safety Code, §382.017.

§114.152. *Use of Certain Vehicles for Compliance.*

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 April 9, 1998.

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Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: July 29, 1998

For further information, please call: (512) 239-1970



Subchapter F. ~~[Vehicle Retirement and]~~ Mobile Emission Reduction Credits

Division II. Mobile Emission Reduction Credits

30 TAC §§114.201, 114.202

STATUTORY AUTHORITY

The amendments are proposed under the Texas Clean Air Act (TCAA), Texas Health and Safety Code, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and TCAA, §382.019, which provides the commission with the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles. The proposed amendments implement TCAA, §382, Subchapter F; Texas Transportation Code (TTC), Chapter 451, Subchapter G (relating to Metropolitan Rapid Transit Authorities); TTC, Chapter 452, Subchapter F (relating to Regional Transportation Authorities); and TTC, Chapter 453, Subchapter F (relating to Municipal Transportation Authorities).

§114.201. *Mobile Emission Reduction Credit Program.*

(a) Mobile Emission Reduction Credits (MERCs) will be based on the difference between the emissions from the replacement of a conventional vehicle with a low emission vehicle (LEV). ~~[clean-fuel vehicle and the conventional vehicle.]~~ Program participation is voluntary. MERCs ~~[, and]~~ will be awarded to ~~[affected]~~ entities which primarily operate vehicles ~~[and to individuals located]~~ within the state's nonattainment areas, as identified in §101.1 of this title (relating to Definitions), for any of the following, or combination thereof:

(1) The purchase, lease, or acquisition of an LEV ~~[a clean-fuel vehicle]~~ which is certified to a more stringent emission standard than the LEV ~~[low emission vehicle (LEV)]~~ standards. These vehicles include: ~~[, which include:]~~

(A) ultra-low emission vehicle (ULEV) as certified by the EPA ~~[certified clean-fuel vehicles];~~

(B) inherently low emission vehicle (ILEV) EPA certified ~~[clean-fuel]~~ vehicles, and

(C) zero emission vehicle (ZEV) EPA certified ~~[clean-fuel]~~ vehicles; or

(2) The purchase, lease, or acquisition of LEVs ~~[clean-fuel vehicles]~~ in greater numbers than otherwise required under §114.150 or §114.151 of this title (relating to Requirements for Mass Transit Authorities, and Requirements for Local Governments and Private Entities ~~[Persons]~~);

(3) The purchase, lease, or acquisition of LEVs ~~[clean-fuel vehicles in a category]~~ not required under §114.150 or §114.151 of this title; or

(4) The purchase, lease, or acquisition of LEVs ~~[clean-fuel vehicles before]~~ prior to the dates under §114.150 or §114.151 of this title.

(5) Entering into a binding contract as specified under §114.202 of this title (relating to Texas Mobile Emission Reduction Credit Fund).

(b) MERCs may be used as follows:

(1) ~~[used]~~ to demonstrate compliance with ~~[the clean-fuel vehicle provisions and requirements of this chapter or]~~ any applicable ~~[either]~~ mobile source emissions reductions requirements ~~[program that has marketable credits]; or~~

(2) to satisfy Reasonably Available Control Technology and Federal Clean Air Act offset requirements subject to the appropriate trading ratios and other commission rules. ~~[banked for later use; or]~~

(3) traded, sold, or banked [purchased] for later use by fleet vehicle owners or other mobile or stationary sources of emissions within the same affected area without discount or depreciation of such credits ~~[by any other person in the same nonattainment area to demonstrate compliance with the clean-fuel vehicle provisions and requirements of this chapter].~~

(c) The following restrictions apply to the trading or purchasing of fleet to fleet MERCs:

(1) Trades are restricted to the nonattainment area in which they are generated;

(2) Light-duty vehicle MERCs are restricted to trading within the light-duty vehicle class; and

(3) Heavy-duty vehicle MERCs may be traded within their specific subclass or from a heavier vehicle to a lighter vehicle (downward trading) within the heavy-duty vehicle class.

(d) ~~[For fleet to fleet trading or demonstration of compliance,]~~ MERCs will be determined in accordance with EPA rules and guidance as follows: ~~[quantified in terms of fleet to fleet credits using the following equation:]~~

(1) For fleet to fleet trading or trading from vehicle owners not subject to the requirements for fleets:
Figure 30 TAC §114.201(d)(1)

(2) ~~[(e)]~~ For trades to stationary sources, the following methodology is used for the calculation of MERCs for volatile organic compounds (VOCs) or oxides of nitrogen (NO_x) trades:
Figure: 30 TAC §114.201~~[(e)]~~ (d)(2)

(e) ~~[(f)]~~ In order for credits to be certified as tradable for stationary sources, fleets must have a minimum of one ~~[+]~~ ton per year reduction of VOCs or NO_x. Affected entities may aggregate VOCs or NO_x MERCs generated under this section in order to make the minimum one ton of emission reductions for trades to stationary sources. However, no minimum is required for banking credits tradable among fleets.

(f) ~~[(g)]~~ In order to apply for a MERC under subsection (a) of this section, an affected entity or individual must submit the following information to the executive director:

(1) the certified emission standard of the vehicle for which the affected entity or individual wishes to make an application for credit;

(2) the annual VMT ~~[traveled]~~ by the vehicle;

(3) the amount of time in years this vehicle is expected to be in service; and

(4) a current fleet report containing the information required to be submitted under §114.150 of this title or §114.155 of this title (relating to Reporting). The submission of additional vehicle or fleet information may be required at this time.

(g) ~~[(h)]~~ MERCs for trading between fleets will be banked with the Mobile Source Section of the commission ~~[Division].~~

(h) ~~[(i)]~~ MERCs for trading between fleets and stationary sources will be banked with the commission Emissions Bank.

(i) ~~[(j)]~~ Upon certification by the executive director, each credit owner ~~[vehicle]~~ will be issued a certificate indicating, where applicable:

(1) the standard to which the vehicle is certified;

(2) the weight class of the vehicle;

(3) the amount of emissions reduced per year in tons for the fleet;

(4) the number of years the emission reductions will be credited; and

(5) the number of light-duty or heavy-duty vehicle fleet to fleet MERCs.

(j) ~~[(k)]~~ A total emissions credit summary sheet will be issued to the affected entity ~~[fleet]~~ upon issuance of any MERC certificate.

(k) ~~[(l)]~~ MERCs issued under this section will be awarded in two-year increments for the period of 1998 through 2002. After 2002, MERCs will be awarded according to the expected remaining useful life of the vehicle.

(l) ~~[(m)]~~ The following are considered violations of the Texas MERC ~~[Mobile Emission Reduction Credit]~~ Program:

(1) claiming a MERC without meeting the appropriate acquisition requirements;

(2) submission of false data as information requested by commission rules; or

(3) counterfeiting or dealing commercially in counterfeit MERC certificates.

(m) ~~[(n)]~~ Any person found to be in violation of the Texas MERC ~~[Mobile Emission Reduction Credit]~~ Program is subject to penalties and enforcement as defined by the Health and Safety Code, Chapter 382, Subchapter D. ~~[a civil penalty of not more than \$25,000 per violation.]~~

§114.202. ~~[The]~~ Texas Mobile Emission Reduction Credit Fund.

(a) Mobile emission reduction credits may be assigned through the Texas Mobile Emission Reduction Credit Fund as established by this section to entities affected ~~[entities]~~ by §114.150 and §114.151 of this title (relating to Requirements for Mass Transit Authorities, and Requirements for Local Governments and Private Persons) provided:

(1) the ~~[affected]~~ entity enters into a binding contract with the commission, agreeing to purchase and place in service

in designated program areas low emission [~~clean-fuel~~] vehicles in accordance with the number of credits issued and the time frame specified by the commission; and

(2) the [~~affected~~] entity agrees to name the EPA as a third-party beneficiary of its contract with the commission.

(b) Contracts entered into under this section may be enforced in the courts of the State of Texas by an order of specific 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 April 9, 1998.

TRD-9805040

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: July 29, 1998

For further information, please call: (512) 239-1970



Subchapter G. Transportation Planning

30 TAC §114.260

The commission proposes amendments to §114.260, concerning Transportation Conformity, and a proposed revision to the State Implementation Plan (SIP) concerning Transportation Conformity.

EXPLANATION OF PROPOSED RULE

The Texas transportation conformity rule and its associated SIP were adopted on October 19, 1994, in response to the Federal Clean Air Act (FCAA) requirements. The FCAA required states to submit a revision to their SIP no later than November 25, 1994 establishing enforceable criteria and procedures for making conformity determinations for metropolitan transportation plans, transportation improvement programs, and projects funded by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA). Emissions estimates of transportation plans, programs, and projects must be found to conform with their corresponding emissions estimates or budgets contained in the applicable SIP before they are approved or funded by the United States Department of Transportation or the Metropolitan Planning Organizations (MPOs) in nonattainment and maintenance areas. Failure to demonstrate transportation conformity will result in a partial loss of federal highway funding. The Texas transportation conformity SIP and rule were approved by the United States Environmental Protection Agency (EPA) on November 8, 1995. Since their initial promulgation, the EPA has amended the federal transportation conformity rules three times; on August 7, 1995, November 14, 1995, and August 15, 1997. As a result of the August 15, 1997 amendments, Texas is required to amend the SIP and state transportation conformity rule to incorporate the federal amendments by August 15, 1998.

The proposed amendments will incorporate, by reference, the August 15, 1997, amendments to the federal transportation conformity rule (40 CFR, Part 51 Subpart T and Part 93 Subpart A) with the exception of §93.102(d) and §93.105. Section 93.102(d) established a grace period for new nonattainment areas and has been disallowed as a result of the Sierra Club versus the EPA federal court case on November 4, 1997.

Section 93.105 requires states to develop their own consultation procedures subject to the EPA guidelines. Section 114.260 establishes the interagency and public consultation procedures consistent with the EPA guidelines.

Most of the amendments to the federal transportation conformity rule are organizational or are slightly less stringent in nature. However, the amendment that requires a nonattainment area to demonstrate transportation conformity to a nitrogen oxide (NO_x) motor vehicle emissions budget, regardless of the area's NO_x waiver status, is more stringent than the current Texas transportation conformity rule. The proposed revisions to §114.260 will adopt the new federal NO_x requirements by reference.

This proposed rule revision will also simplify the transportation control measure (TCM) requirements by deleting references to §114.270(d), which is the TCM Enforcement Rule. Instead of being required to develop new TCMs consistent with the transportation conformity process to make up an emissions reduction shortfall, the nonattainment and maintenance area MPOs would only be required to ensure timely TCM implementation and report the implementation and emissions reductions status of adopted TCMs annually to the commission. Finally, this proposed rule will clarify the transportation conformity determination process by identifying who makes the determinations, who issues the joint conformity finding, and when the conformity is effective. MPOs and their governing bodies, or the Texas Department of Transportation, if applicable, would make the transportation conformity determinations. Upon completion of the transportation conformity review process, the FHWA and the FTA would issue a joint conformity finding, indicating the transportation conformity status of the documents under review. The transportation conformity determination would be effective on the date of the joint conformity finding.

FISCAL NOTE

Mr. Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the rule as proposed is in effect, there may be significant fiscal implications for state or local government as a result of administration or enforcement of the rule. One of the federal rules being adopted by reference requires nonattainment or maintenance areas to demonstrate transportation conformity to a NO_x mobile source emissions budget, regardless of the area's NO_x waiver status. Current MPO officials in Texas nonattainment areas predict that it will be extremely difficult to demonstrate transportation conformity for NO_x. If they cannot, highway sanctions will be imposed, resulting in a partial loss of federal highway funding for implementing agencies. Additional resources will be needed to develop NO_x mobile source emissions budgets and sufficient on-road mobile source NO_x emissions control strategies to ensure an area's compliance.

The other portions of the rule being amended will have minimal fiscal impact. All of the affected agencies are subject to the requirements of the current transportation conformity rule, so the effect of the rule will be minimal. The rule amendment would not increase or decrease costs for these agencies. There will be no significant fiscal implications to the commission.

PUBLIC BENEFIT

Mr. Minick has also determined that for each year of the first five years the rule as proposed is in effect, the public benefit of this rule will be the limitation of on-road mobile source emissions

to those specified in the SIP, which will result in the reduction and/or stabilization of on-road mobile source emissions and contribute to cleaner air. There will be no economic costs to persons or small businesses as a result of administration or enforcement of the proposed rule.

DRAFT REGULATORY IMPACT ANALYSIS

The proposed rulemaking is a "major environmental rule" because it deals with the construction of highway and other transportation projects within the nonattainment and maintenance areas of the state, most of which are major metropolitan areas. Incorporation of the new federal transportation conformity requirements by reference means that all nonattainment and maintenance areas will be required to demonstrate conformance of a budget for NO_x or be subject to loss of highway or other transportation funding. Under the existing rules, the nonattainment areas have not been required to conform to the NO_x budget.

However, the proposed rulemaking does not meet the other criteria for being subject to §2001.0025 because it does not exceed a standard set by federal law, does not exceed an express requirement of state law, does not exceed a requirement of a delegation agreement or contract to implement a state and federal program, is not being proposed solely under the general powers of the commission, and is not being proposed on an emergency basis to reduce risks to human health from environmental exposure. Therefore, the commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and has determined that the rulemaking is not subject to §2001.0025.

The commission invites public comment on the draft Regulatory Impact Analysis.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of the rule amendment is to meet the federal requirement to incorporate recent EPA changes to the federal transportation conformity rule, which requires all transportation plans, programs, and projects in nonattainment or maintenance areas to conform to the SIP. Other proposed amendments would simplify and reduce TCM requirements and clarify the transportation conformity determination process. The rule amendment will substantially advance this specific purpose by incorporating the required sections of the federal transportation conformity rule, as amended on August 15, 1997, by reference and including specific language that simplifies TCM requirements and clarifies the transportation conformity determination process. Promulgation and enforcement of this rule amendment will not affect private real property which is the subject of the rule because the proposed rule only serves to ensure that transportation plans, programs, and projects in nonattainment and maintenance areas conform with the SIP.

COASTAL MANAGEMENT PROGRAM

The commission has determined that this rulemaking action is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the

Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, agency rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency, and has determined that this rulemaking is consistent with the applicable CMP goals and policies. The primary CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations at 40 CFR to protect and enhance air quality in the coastal area. This rule amendment merely adopts the changes the EPA has made to 40 CFR Parts 51 and 93, and therefore, is in agreement with the CMP policy governing air pollutant emissions. In compliance with 31 TAC §505.22(e), the commission affirms that this rule is consistent with CMP goals and policies. Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

PUBLIC HEARING

A public hearing on this proposal will be held May 13, 1998 at 3:00 p.m. in Building F, Room 5108 at the Texas Natural Resource Conservation Commission complex, located at 12100 North IH-35, Park Technology Center, Austin. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Ms. Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98003-114-AI. Comments must be received by 5:00 p.m., May 25, 1998. For further information, please contact Cathy Stephens, Air Quality Planning and Assessment Division, (512) 239-1749 or Alan J. (Buddy) Henderson, Air Policy and Regulations Division, (512) 239-1510.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the commission at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The amendment is proposed under the Texas Clean Air Act (TCAA), Texas Health and Safety Code, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. Revisions to §114.260 are also proposed under TCAA, §382.011, which provides the commission with the authority to control the quality of the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examinations of records; and §382.019, which provides the commission with the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles.

§114.260. *Transportation Conformity.*

(a) Purpose. The purpose of this section is to implement the requirements set forth in Title 40 of the Code of Federal Regulations (40 CFR) Part 93, Subpart A [~~Part 51, Subpart F~~] (relating to Conformity to State or Federal Implementation Plans

of Transportation Plans, Programs, and Projects Developed, Funded, or Approved Under Title 23 United States Code or the Federal Transit Laws [Aet], which are the regulations developed by the EPA under the FCAA Amendments of 1990, §176(c). It includes policy, criteria, and procedures to demonstrate [for demonstrating] and assure [assuring] conformity of transportation planning activities with the State Implementation Plan (SIP).

(b) Applicability. This section applies to transportation-related pollutants for which an area is designated nonattainment or is subject to a maintenance plan. The pollutants include ozone, carbon monoxide, nitrogen dioxide, particles with an aerodynamic diameter of [less than or equal to] ten micrometers (PM₁₀) and smaller, and the precursors of those pollutants. The affected nonattainment and maintenance areas are listed in §101.1 of this title (relating to Definitions).

(c) CFR incorporation. The Transportation Conformity Rules, as specified in 40 CFR 93, Subpart A, (62 FR 43780) dated August 15, 1997, are incorporated by reference with the exception of §93.102(d) and §93.105. The requirements of §93.105 are addressed in this section. [The provisions promulgated in the following listed sections of 40 CFR, Part 51, Subpart T, dated November 24, 1993, are hereby incorporated by reference: §51.392, 51.394, 51.398, 51.400, 51.404, 51.406, 51.408, 51.410, 51.412, 51.414, 51.416, 51.418, 51.420, 51.422, 51.424, 51.426, 51.428, 51.430, 51.432, 51.434, 51.436, 51.438, 51.440, 51.442, 51.444, 51.446, 51.448, 51.450, 51.452, 51.454, 51.456, 51.458, 51.460, 51.462, and 51.464.]

(d) Consultation. Under 40 CFR, §93.105, [§51.402] regarding consultation, the following procedures shall be undertaken in nonattainment and maintenance areas before making conformity determinations and before adopting applicable SIP revisions.

(1) General factors.

(A) For the purposes of this subsection, concerning consultation, the affected agencies shall include:

- (i) EPA;
- (ii) Federal Highway Administration (FHWA);
- (iii) Federal Transit Administration (FTA);
- (iv) Texas Department of Transportation (TxDOT);
- (v) metropolitan planning organizations (MPOs) in nonattainment or maintenance areas;
- (vi) local publicly-owned transit services in nonattainment or maintenance areas (the designated recipient of FTA §9 funds);
- (vii) Texas Natural Resource Conservation Commission (commission); and
- (viii) local air quality agencies in nonattainment or maintenance areas (recipients of FCAA, §105 funds). [;]

(B) All correspondence with the affected agencies in subparagraph (A) of this paragraph shall be addressed to the following designated points [point] of contact:

- (i) MPO: executive director or designee;
- (ii) commission: executive director or designee;
- (iii) TxDOT: Director of Transportation Planning and Programming or designee;
- (iv) TxDOT: Director of Environmental Affairs Division or designee;

(v) FHWA: Administrator of Texas Division or designee;

(vi) FTA: Director of Office of Program Development or designee - FTA Region 6 [; or designee];

(vii) EPA: Regional Administrator or designee - EPA Region 6 [; or designee];

(viii) TxDOT District: District Engineer or designee;

(ix) local publicly-owned transit services (the designated recipient of FTA §9 funds): General Manager or designee;

(x) local air quality agencies (recipients of FCAA §105 funds): Director or designee; and

(xi) commission regions in nonattainment or maintenance areas: regional director or designee.

(2) Roles and responsibilities of affected agencies.

(A) The MPO, in cooperation with TxDOT and publicly owned transit services, shall consult with the agencies in paragraph (1)(A) of this subsection in the development of Metropolitan Transportation Plans (MTPs), Transportation Improvement Programs (TIPs), projects, technical analyses, travel demand or other modeling, and data collection. Specifically, the MPOs shall:

(i) allow the commission's Air Quality Planning and Assessment [Mobile Source] Division Director, or a designated representative, to be a voting member of [participate in meetings of] technical committees on surface transportation and air quality in each nonattainment and maintenance area in order to consult directly with the particular committee during the development of the transportation plans, programs, and projects;

(ii) send information on time and location, an agenda, and supporting materials (including preliminary versions of MTPs and TIPs) for all regularly scheduled meetings on surface transportation or air quality to each of the agencies specified in paragraph (1)(B) of this subsection. This [Such] information shall be provided in accordance with the locally adopted public involvement process as required by 23 CFR, Part 450, §450.316(b)(1);

(iii) (No change.)

(iv) for the purposes of regional emissions analysis, initiate a consultation process with the affected agencies specified in paragraph (1)(A) of this subsection during the development stage of new or revised MTPs and TIPs to determine which transportation projects should be considered regionally significant and which projects should be considered to have a significant change in design concept and scope from the effective MTP and TIP. Regionally significant projects will include, at a minimum, all facilities classified as principal arterial or higher, or fixed guideway systems or extensions that offer an alternative to regional highway travel. Also, these include minor arterials included in the travel demand modeling process which serve significant interregional and intra regional travel, and connect rural population centers not already served by a principal arterial, or connect with intermodal transportation terminals not already served by a principal arterial. A significant change in design concept and scope is defined as a revision of a project in the MTP or TIP that would significantly affect model speeds, vehicle miles traveled, or network connections. In addition to new facilities, examples [may] include changes in the number of through lanes or length of project (more than one mile), access control, addition of major intermodal terminal facilities (such as new international bridges, park-and-ride lots, and transfer terminals), addition/deletion

of inter- changes, or changing between free and toll facilities. When a significant change in the design and scope of a project is proposed, the MPO shall document the rationale for the change and give the affected agencies specified in paragraph (1)(A) of this subsection a 30-day opportunity to comment on their rationale. The MPO shall consider the views of each agency that comments, and respond in writing before ~~prior to~~ any final action on these issues. If the MPO receives no comments within 30 days, the MPO may assume concurrence by the agencies specified in paragraph (1)(A) of this subsection;

(v) include in the TIP a list of projects exempted from the requirements of a conformity determination under 40 CFR, Part 93, §93.126 and 93.127 ~~[Part 51, §51.460 and §51.462]~~. The MPO shall consult with the affected agencies specified in paragraph (1)(A) of this subsection in determining if a project on the list has potentially adverse emissions for any reason, including whether or not the exempt project will interfere with implementation of an adopted transportation control measure (TCM). The MPO shall respond in writing to all comments within 30 days on final MTP and TIP documents. In addition, if [H] no comments are received as part of the subsequent public involvement process for the TIP, the MPO may proceed with implementation of the exempt project;

(vi) notify the affected agencies specified in paragraph (1)(A) of this subsection in writing of any MTP or TIP revisions or amendments which add or delete the exempt projects identified in 40 CFR, §93.126 ~~[§51.460]~~;

(vii) as required by 40 CFR, §§93.116, and 93.123 ~~[§51.424 and §51.454 of the final EPA transportation conformity rule]~~, and in cooperation with TxDOT, make a preliminary identification of those projects located at sites in PM₁₀ nonattainment and maintenance areas that require quantitative PM₁₀ Hot Spot analyses. After these projects have been identified, the MPO shall submit a list of these projects and sufficient data to the agencies specified in paragraph (1)(A) of this subsection for review and comment;

(viii)- (ix) (No change.)

(x) ~~[under §114.270 of this title (relating to Transportation Control Measures);]~~ ensure ~~[the]~~ timely TCM implementation ~~[of TCMs]~~ and report ~~[to the commission annually]~~ on the implementation and emissions reductions status of adopted TCMs annually to the commission. ~~[If alternative TCMs or other reduction measures are deemed necessary, and these are not already included in the SIP, the MPO shall develop new TCMs with equal or greater emissions reductions consistent with the MTP, TIP, SIP, and conformity requirements, pursuant to §114.270(d) of this title. Any changes in TCMs will be coordinated with the affected agencies specified in paragraph (1)(A) of this subsection];~~

(xi)- (xii) (No change.)

(B) the commission, as the lead air quality planning agency, shall work in consultation with the agencies specified in paragraph (1)(A) of this subsection in developing applicable transportation-related SIP revisions, air quality modeling, general emissions analysis, emissions inventory, and all related activities. Specifically, the commission shall:

(i) (No change.)

(ii) schedule public hearings in order to gather public input on the applicable transportation-related SIP revisions and notify the agencies specified in paragraph (1)(B) of this subsection of the hearings according to 40 CFR, §93.105 ~~[§51.402]~~;

(iii) (No change.)

(iv) after consultation with the MPO regarding TCMs ~~[under §114.270(a) of this title]~~, distribute to all agencies specified in paragraph (1)(B) of this subsection and other interested persons the list of TCMs proposed for inclusion in the SIP. In consultation with the agencies specified in paragraph (1)(A) of this subsection, the commission shall determine whether past obstacles to implementation of TCMs have been identified and are being overcome, and determine whether the MPOs and the implementing agencies are giving maximum priority to approval or funding for TCMs. Also, the commission shall consider, in consultation with the affected agencies, whether delays in TCM implementation necessitate a SIP revision to remove TCMs or to substitute TCMs or other emission reduction measures.

(v) consult with the applicable agencies specified in paragraph (1)(A) of this subsection, in order to cooperatively choose conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by 40 CFR, §93.109(g)(2)(iii).

(3) General procedures.

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

(C) For the purposes of evaluating and choosing a model (or models) and associated methods and assumptions to be used in Hot-Spot and Regional Emissions Analyses, agencies specified in paragraph (1)(A) of this subsection shall participate in a working group identified as the Technical Working Group for Mobile Source Emissions (TWG). The frequency of meetings and agendas for the group will be cooperatively determined by the agencies specified in paragraph (1)(A) of this subsection. ~~[the commission shall establish a working group identified as the Transportation and Air Quality Technical (TAQT) Technical Working Group (TWG). The TAQT Working Group shall include the agencies specified in paragraph (1)(A) of this subsection. The frequency of meetings and agendas for them will be determined by the commission in cooperation with the agencies specified in paragraph (1)(A) of this subsection.]~~ The function of this working group may be delegated to an existing group with similar composition and purpose.

(D) The commission, affected MPOs, affected local air quality agencies, and TxDOT shall cooperatively evaluate events which will trigger the need for new conformity determinations. New conformity determinations may be triggered by events established in 40 CFR, §93.104 ~~[§51.400]~~ as well as other events, including emergency relief projects that require substantial functional, locational, and capacity changes, or in the event of any other unforeseeable circumstances.

(E) The MPO and its governing body, or TxDOT if applicable, shall make conformity determinations for all MTPs, TIPs, regionally significant projects, and all other events as required by 40 CFR, Part 93, Subpart A and this section. Upon completion of the transportation conformity determination review process, FHWA and FTA will issue a joint conformity finding, indicating the transportation conformity status of the document(s) under review. The document(s) transportation conformity status is effective on the date of the joint conformity finding.

(4) Conflict resolution.

(A) The commission and the MPO (or TxDOT where appropriate) shall make a good-faith effort to address the major concerns of the other party in the event they are unable to reach agreement on the conformity determination of a proposed MTP or TIP. The efforts shall include meetings of the agency executive directors, if necessary.

(B) In the event that the MPO or TxDOT determines that every effort has been made to address the commission's [~~commission~~] concerns, and that no further progress is possible, the MPO or TxDOT shall notify the commission executive director in writing to this effect. This subparagraph shall be cited by the MPO or TxDOT in any notification of a conflict which may require action by the Governor, or his or her delegate under subparagraph (C) of this paragraph.

(C) The commission has 14 calendar days from date of receipt of notification, as required in subparagraph (B) of this paragraph, to appeal to the Governor. If the commission appeals to the Governor, the final conformity determination must then have the concurrence of the Governor. The Governor may delegate his or her role in this process, but not to the commission or commission staff [~~of the commission~~], a local air quality agency, the Texas Transportation Commission or [staff of TxDOT staff, or an MPO. This subparagraph shall be cited by the commission in any notification of a conflict which may require action by the Governor or his or her delegate. If the commission does not appeal to the Governor within 14 calendar days from receipt of written notification, the MPO or TxDOT may proceed with the final conformity determination.

(5) Public comment on conformity determinations. Consistent with the requirements of 23 CFR, Part 450, concerning public involvement, the agencies [~~specified in paragraph (1)(A) of this subsection~~] making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment. This process shall, at a minimum, provide reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and before [~~prior to~~] taking formal action on conformity determinations for all MTPs and TIPs, [-] as required by 23 CFR §450.316 (b) and this section. Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR 7.95. In addition, these agencies shall address in writing any public comment claiming that a non-FHWA/FTA funded, regionally significant project has not been properly represented in the conformity determination for a MTP or TIP. Finally [~~Also~~], these agencies shall provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

(6) (No change.)

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

Filed with the Office of the Secretary of State, on April 9, 1998.

TRD-9805044

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: July 29, 1998

For further information, please call: (512) 239-1970



Chapter 305. Consolidated Permits

Subchapter C. Application for Permit

30 TAC §305.54

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §305.54, concerning Additional Requirements for Radioactive Material Licenses.

EXPLANATION OF PROPOSED RULE

The purpose of this rule is to implement Senate Bill (SB) 1857, 75th Legislature, 1997. On July 20, 1997, SB 1857 transferred jurisdiction over licensing of source material and disposal of by-product material from the commission to the Texas Department of Health (TDH).

Section 305.54(e) (relating to Additional Requirements for Radioactive Material Licenses) is proposed to be amended to delete language concerning the source material licensing and by-product disposal jurisdiction transferred to the TDH by SB 1857.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the section as proposed is in effect, there will be no significant fiscal implications for state government as a result of administration or enforcement of the rule. There are no fiscal implications for units of local government.

PUBLIC BENEFIT

Mr. Minick has also determined that for the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcement of and compliance with the section will be clarification of existing regulations relating to regulation of radioactive substances. Compliance with the proposed state regulations will result in no significant costs to affected parties. There are no direct fiscal implications anticipated for small businesses.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

Although this rule is to protect the environment and reduce the risk to human health from environmental exposure, this is not a major environmental rule because it does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, this rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency. The rule adds federal requirements that are necessary to maintain compatibility with the rules of the Nuclear Regulatory Commission.

TAKINGS IMPACT ASSESSMENT

The Commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code, §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to remove commission rule language related to the source material licensing and by-product disposal jurisdiction transferred to the Texas Department of Health (TDH)

by Senate Bill (SB) 1857, 75th Legislature, 1997. The rule will substantially advance this specific purpose by removing commission rule language related to the source material licensing and by-product disposal jurisdiction transferred to the TDH. Promulgation and enforcement of the rule will not burden private real property which is the subject of the rule because they merely delete commission rule language on a jurisdiction transferred to the TDH by statute.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The executive director has reviewed the proposed 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 proposal is not subject to the Coastal Management Program.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Bettie Bell, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments must be received by May 25, 1998 and should reference Rule Log Number 97154-336-WS. Comments received by 5:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. For further information, please contact Kathy Vail at (512) 239-6637.

STATUTORY AUTHORITY

This amendment is proposed under the Texas Radiation Control Act (TRCA), Texas Health and Safety Code, §§401.011, 401.051, and 401.412, and Texas Water Code, §5.103, which give the commission the authority to adopt rules necessary to carry out its responsibilities to regulate and license the disposal of radioactive substances.

This amendment implements Health and Safety Code, Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation).

§305.54. Additional Requirements for Radioactive Material Licenses.

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

~~[(e) For applications under Chapter 336, Subchapter G of this title (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities), an application shall include an environmental report containing the results of a one-year pre-operational monitoring program. For a renewal application, the environmental report shall include the results of the operational monitoring program.]~~

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 April 13, 1998.

TRD-9805155

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 24, 1998

For further information, please call: (512) 239-6087



Chapter 336. Radioactive Substance Rules [Radiation Rules]

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§336.1, 336.2, 336.101, 336.102, 336.107, 336.201, 336.203, 336.209, 336.211, 336.213, 336.304, 336.331, 336.332, 336.334, 336.341, 336.348, 336.352, 336.356, 336.501-336.503, 336.512, 336.513, 336.701, 336.702, 336.802-336.807; repeal of §§336.104, 336.108, 336.217, 336.357, 336.366, 336.514, 336.601-336.606, 336.613-336.629, 336.636; and proposes new §§336.514, 336.515, 336.517, 336.519, 336.601, 336.603, 336.605, 336.607, 336.609, 336.611, 336.613, concerning Radioactive Substance Rules.

In addition, this action constitutes the commission's proposal to review the rules contained in 30 TAC Chapter 336, concerning Radioactive Substance, in accordance with the General Appropriations Act, Article IX, Rider 167, 75th Legislature, 1997.

EXPLANATION OF PROPOSED RULE

The purpose of these rules is to remove commission rule language related to the source material licensing and by-product disposal jurisdiction transferred to the Texas Department of Health (TDH) by Senate Bill (SB) 1857, 75th Legislature, 1997; to incorporate revisions and additions which are needed to maintain compatibility with the rules of the United States Nuclear Regulatory Commission (NRC); and to continue with agency-wide regulatory reform efforts to simplify language and requirements. Compatibility of the commission's rules with the federal program is necessary to preserve the status of Texas as an Agreement State under Title 10 Code of Federal Regulations Part 150 and the "Articles of Agreement between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended."

Federal requirements that must be incorporated in commission rules to maintain compatibility include the "Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials, Clean Air Act", 61 Fed. Reg. 65120, December 10, 1996, effective January 9, 1997 and "Radiological Criteria for License Termination", 62 Fed. Reg. 39058, July 21, 1997, effective August 20, 1997.

Section 336.1(a) (relating to Scope and General Provisions) is proposed to be amended to delete references to source material licensing and by-product disposal because this jurisdiction was transferred to the TDH by SB 1857. Section 336.1(b) is proposed to be amended to correct the title of the commission's Underground Injection Control (UIC) and Radioactive Waste Section.

Section 336.2 (relating to Definitions) is proposed to be amended: by adding new definitions of "critical group", "distinguishable from background", and "residual radioactivity", and by amending the definitions of "background radiation" and "decommission" to maintain compatibility with changes to NRC's new 10 Code of Federal Regulations (CFR) §20.1003 (relating to Definitions); and by amending the definition of "major amendment" (by deleting subparagraph (B) with subsequent renumbering) and deleting the definitions of "source material recovery", "thorium recovery", and "uranium recovery" to remove references to the source material licensing and by-product disposal jurisdiction transferred to TDH by SB 1857.

Section 336.101(b) (relating to Radioactive Substance Fees) is proposed to be amended to simplify its language and to remove references to the source material licensing and by-product disposal jurisdiction transferred to TDH by SB 1857.

Section 336.102 (relating to Definitions) is proposed to be amended by deleting the definition of "post-closure" because its language concerns the source material licensing and by-product disposal jurisdiction transferred to TDH by SB 1857.

Section 336.104 (relating to Schedule of Fees for Subchapter G Licenses) is proposed to be repealed because it concerns the source material licensing and by-product disposal jurisdiction transferred to TDH by SB 1857.

Section 336.107(a) and (b) (relating to Annual License Fee Due Date and Period Covered) are proposed to be amended to delete references to §336.104, which is proposed to be repealed.

Section 336.108 (relating to Proration of Annual Fee Adjustments) is proposed to be repealed because it concerns §336.104, which is proposed to be repealed.

Section 336.201 (relating to Additional Application Requirements) is proposed to be amended to add a new subsection (d) to maintain compatibility with NRC's 10 CFR 20.1406 (relating to Minimization of Contamination).

Section 336.203 (relating to Environmental Analysis) is proposed to be amended by deleting subsection (a) to remove a requirement solely related to the source material licensing and by-product disposal jurisdiction transferred to TDH by SB 1857 and by renumbering the remaining subsections.

Section 336.209 (relating to Records and Reports) is proposed to be amended by deleting subsection (e) because it relates to the source material licensing and by-product disposal jurisdiction transferred to TDH by SB 1857; it is replaced by a new subsection (e) that allows the executive director the option of requesting copies of all records prior to termination.

Section 336.211(a)(3)(A) (relating to Reporting Requirements for Incidents) is proposed to be amended to add a requirement that a confirming facsimile accompany telephone incident reports to document the facts provided. Section 336.211 is also proposed to be amended by deleting subsection (b) to remove reporting requirements related to the source material licensing and by-product disposal jurisdiction transferred to TDH by SB 1857 and to remove the subsection (a) designation now that there is no accompanying subsection (b).

Section 336.213 (relating to Tests) is proposed to be amended by deleting the word "reasonable" from before the word "tests" that the executive director can request the licensee to perform. This change is proposed to eliminate disputes as to what tests are "reasonable."

Section 336.217 (relating to Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas) is proposed to be repealed. Its language is proposed to be moved, with revisions, to become new §336.519 (relating to Expiration and Termination of Licenses) and new §336.613 (relating to Additional Requirements). This will separate and clarify expiration and the termination of licenses requirements from the decommissioning requirements.

Section 336.304 (relating to Radiation Protection Programs) is proposed to be amended to add a new subsection (d), to main-

tain compatibility with NRC's new 10 CFR §20.1101(d) (relating to Radiation Protection Programs) by imposing a constraint on air emissions of radioactive material to the environment.

Section 336.331(a)(2) and (c) (relating to General Requirements for Waste Disposal) are proposed to be amended to delete language concerning the source material licensing and by-product disposal jurisdiction transferred to TDH by SB 1857. Subsection (a) paragraphs are also proposed to be renumbered due to the deletion of subsection (a)(2).

Section 336.332(b)-(f) (relating to Method of Obtaining Approval of Proposed Disposal Procedures) are proposed to be amended by deleting references to the source material licensing and by-product disposal jurisdiction transferred to TDH by SB 1857, with old subsection (f) being renumbered due to the deletion of subsection (e).

Section 336.334 (relating to Disposal by Burial in Soil) is proposed to be amended to delete a reference to the source material licensing jurisdiction transferred to TDH by SB 1857.

Section 336.341(a) (relating to General Requirements for Recordkeeping) is proposed to be amended to correct a cross-reference.

Section 336.348(a) (relating to Records of Waste Disposal) is proposed to be amended: to correct a cross reference to §331(a) where old paragraph (2) was proposed to be deleted, to delete a reference to the source material licensing and by-product disposal jurisdiction transferred to the TDH by SB 1857, and to simplify the subsection by removal of unnecessary cross references.

Section 336.352(a)(2)(F) (relating to Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Limits) is proposed to be amended to add language to maintain compatibility with NRC's new 10 CFR §20.2203(a)(2)(vi) (relating to Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Constraints or Limits) with respect to as low as is reasonably achievable (ALARA) constraints on air emissions. Subsection (b)(1)(D) is proposed to be amended to add language to maintain compatibility with NRC's new 10 CFR §20.2203(b)(1)(iv), also with respect to ALARA constraints. Subsection (b)(2) is proposed to be amended to maintain compatibility with NRC's new 10 CFR §20.2203(b)(2) with respect to the content of reports.

Section 336.356(a)-(e) (relating to Soil and Vegetation Contamination Limits) are proposed to be amended to maintain compatibility with NRC's new 10 CFR §20.1402 (relating to Radiological Criteria for Unrestricted Use) regarding the maximum dose to a member of the public from an unrestricted use area. Subsection (f) is proposed to be deleted and a portion of its language on decommissioning and release for unrestricted use moved to proposed new §336.603 (relating to Radiological Criteria for Unrestricted Use) to clarify and consolidate the decommissioning requirements.

Section 336.357 (relating to Surface Contamination Limits for Facilities and Equipment) is proposed to be repealed and moved to new §336.605 (relating to Surface Contamination Limits for Facilities, Equipment, and Materials) to consolidate the decommissioning requirements.

Section 336.366 (relating to Appendix I. Soil and Vegetation Contamination Limits for Selected Radionuclides) is proposed

to be repealed because it is no longer necessary with NRC's new 10 CFR §20.1402 (relating to Radiological Criteria for Unrestricted Use) and should be removed to maintain compatibility with the federal rule.

Section 336.501(a) (relating to Scope and General Provisions) is proposed to be amended to clarify the intent of Subchapter F (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), which is to provide criteria under which the commission may issue, amend or renew a license for on-site disposal of radioactive material or waste, and to require that all inactive disposal sites must comply with the decommissioning criteria for unrestricted use or apply for and obtain a license to decommission by a later date. Section 336.501(a) is also proposed to be amended to clarify that this rule does not apply to inactive disposal sites where diffuse NORM waste having concentrations of radium-226 or radium-228 of less than 2,000 pCi/g was disposed. Due to recent changes in the federal decommissioning criteria, §336.501(c) is also proposed to be amended to extend the deadline for filing an application to decommission an inactive burial site from January 1, 1999 to January 1, 2000, to allow time for the regulated public and the commission to benefit from and participate in the NRC decommissioning guidance document development process. Proposed new §336.501(c)(1)-(3) states that before January 1, 2000, owners or operators of unlicensed inactive disposal sites are required to: (1) demonstrate that an unlicensed inactive disposal site already meets the criteria for unrestricted use, thereby avoiding licensing and all application and license fees; (2) decommission an unlicensed inactive disposal site according to the criteria for unrestricted use before January 1, 2000, also avoiding all application and license fees; or (3) apply for a license and begin decommissioning, according to the criteria proposed in this rulemaking, within 90 days of license issuance. Subsection (c)(2) also includes a requirement that any decommissioning performed prior to January 1, 2000 shall be performed by a qualified, licensed individual to ensure that appropriate radiation protection standards for workers and the public are met, including the maintenance of records. Incorporating NRC's new §10 CFR 20.1401(c) (relating to General provisions and scope), §336.501(c)(1)-(3) proposes that once a site is decommissioned according to the proposed standards of new Subchapter G (relating to Decommissioning Standards) and the executive director verifies that the criteria have been met, the executive director will "certify in writing that the owner is in compliance with the decommissioning requirements and will not require any further cleanup, unless there is new evidence that the decommissioning standards for unrestricted use were not met and that residual radioactivity remaining at the site could result in significant threat to public health and safety". Section 336.501(d) is proposed to be amended to delete a reference to the source material jurisdiction transferred to TDH by SB 1857 and to delete the last sentence, to eliminate redundancy.

Section 336.502 (relating to Definitions) is proposed to be amended to add a definition for "funding plan", which is equivalent to the decommissioning funding plan of new NRC 10 CFR §30.35 (relating to Financial Assurance and Recordkeeping for Decommissioning) and §40.36 (relating to Financial Assurance and Recordkeeping for Decommissioning). The definition of "funding plan" is proposed to prevent confusion between the "decommissioning funding plan" and the "decommissioning plan" in the federal rules.

Section 336.503(b) (relating to Filing of Application) is proposed to be deleted because it refers to §336.514, which is proposed to be repealed and is proposed to be replaced by a new §336.514 (relating to Financial Assurance for Decommissioning) that will clarify that funding plans are required to be submitted with an application for license. The deleted subsection (b) is then replaced by a new subsection (b) stating that applications are to be accompanied by the appropriate application fee.

Section 336.512(a) (relating to Technical Requirements for Inactive Disposal Sites) is proposed to be amended to clarify that an applicant for a license to authorize possession of disposed radioactive material must also address subsequent decommissioning criteria (per the new federal requirements) and the applicant is to use a form provided by the agency for consistency in the information provided and more efficient review. Subsection (a)(4) is proposed to add the requirement to provide the identity of the personnel responsible for radiation safety functions in case the commission needs to contact them. Subsection (a)(7) is proposed to be amended to state that the application shall include a decommissioning plan that meets the new decommissioning standards in the proposed new Subchapter G (relating to Decommissioning Standards). New §336.512(a)(8) is proposed to require that information regarding financial assurance be submitted with the application in accordance with proposed new §336.514 (relating to Financial Assurance for Decommissioning). New Subsection (a)(9) is proposed to be added to require that the applicant submit information as to how facility design and operation minimize contamination of the facility and the environment and facilitate eventual decommissioning. This is necessary to maintain compatibility with NRC's new 10 CFR §20.1406 (relating to Minimization of Contamination). Section 336.512(b)(1) is proposed to be amended to clarify that an application for renewal of a license at an inactive disposal site includes a commitment on behalf of the owner to decommission the inactive site in a timely manner, and that the applicant is to use forms provided by the agency (to assure consistency in the type and format of information received and efficient review of the information provided). Section 336.512(b)(1)(E) is proposed to be added to maintain consistency with §336.512(a)(4). Section 336.512(b)(1)(F) and (G) propose to add provisions that a decommissioning plan meeting the criteria of proposed new Subchapter G (relating to Decommissioning Standards) is to be submitted with the application for renewal, along with information regarding financial assurance for decommissioning as required in proposed new §336.514 (relating to Financial Assurance for Decommissioning). Section 336.512(b)(2) is proposed to be amended to include the requirement that applicants are to provide new information if the information previously submitted to the agency is not current. Section 336.512(c)(1) is proposed to be amended to make the provision consistent with the specific dose limit for unrestricted release.

Section 336.513(a)(21) and (b)(1)(H) (relating to Technical Requirements for Active Disposal Sites) are proposed to be amended to maintain consistency with the proposed reorganization and clarification of §336.514 (relating to Financial Assurance for Decommissioning), by clarifying that financial assurance information for decommissioning is to be submitted with an application. Section 336.513(b)(1)(I) is proposed to be amended to maintain consistency with §336.512(a)(7) (relating to Technical Requirements for Inactive Disposal Sites), which requires an applicant to submit information on the evaluation of the alternative of disposing of the radioactive material at a

licensed disposal facility. Section 336.513(b)(2) is proposed to be amended to include the requirement that applicants are to provide new information if the information previously submitted to the commission is not current to keep commission files updated. Section 336.513(c)(1) is proposed to be amended to make the provision consistent with the specific dose limit for unrestricted release.

Old §336.514 (relating to Financial Assurance and Recordkeeping for Decommissioning) is proposed to be repealed and its modified language reused in proposed new §336.514 (relating to Financial Assurance for Decommissioning) to narrow the focus of the provision to financial assurance requirements and to clarify those requirements. The recordkeeping portion in §336.514(f) is moved to proposed new §336.515 (relating to Recordkeeping for Decommissioning).

New §336.514(a) (relating to Financial Assurance for Decommissioning) is proposed to require financial assurance for decommissioning and maintain compatibility with NRC's new 10 CFR §30.35(f)(5). New §336.514(b)-(e) are proposed to replace the old §336.514 language proposed to be repealed and to reorganize, simplify, and clarify financial assurance requirements for active and inactive sites.

Proposed new §336.515 (relating to Recordkeeping for Decommissioning) is the language moved from repealed §336.514(f) (relating to Financial Assurance and Recordkeeping for Decommissioning) with a slight modification to §336.514(f)(4) for consistency with other proposed language.

New §336.517 (relating to Financial Assurance for Control and Maintenance) is proposed to clarify the financial assurance requirements for the institutional control and maintenance of sites not released for unrestricted use in accordance with 10 CFR 20.1403(c) (relating to Criteria for License Termination Under Restricted Conditions).

Proposed new §336.519 (relating to Expiration and Termination of Licenses) contains the expiration and termination language of repealed §336.217(a)-(g), (l) and (o) (relating to Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas), rewritten for clarification. Proposed new §336.519(f) is proposed to add a requirement that licensees of inactive disposal sites begin decommissioning within 90 days of license renewal; and owners and operators of inactive disposal sites without a license must apply for a license to decommission and must begin decommissioning within 90 days of license approval. These changes are proposed to maintain compatibility with NRC's regulations "Timeliness in Decommissioning of Materials Facilities", 59 Fed Reg 36026, published July 15, 1994, effective August 15, 1994, and "Radiological Criteria for License Termination", 62 Fed Reg 39058, published July 21, 1995, effective August 20, 1997. The preamble for "Timeliness in Decommissioning of Materials Facilities" explains: "When decommissioning is delayed for long periods following cessation of operations, there is a risk that safety practices may become lax as key personnel relocate and management interest wanes. In addition, bankruptcy, corporate takeover, or other unforeseen changes in the company's financial status may complicate and perhaps further delay decommissioning...The lack of definitive criteria as to when licensees should commence and complete decommissioning their facilities has resulted in instances where the NRC has had to issue orders to establish schedules for timely decommissioning. Because timeliness in decommissioning is a

generic issue, the NRC is amending its regulations to clearly delineate the licensee's responsibility for timely decommissioning." Since the inactive disposal sites regulated by Subchapter F (relating to Licensing of Alternative Methods of Disposal of Radioactive Material) have been inactive for many years, proposed §336.519(f) requires that decommissioning commence within 90 days after license renewal or decommissioning license approval. Proposed §336.519(g) language is derived from repealed §336.217(f) and (f)(1) (relating to Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas) with slight modification for consistency with the other new provisions. Proposed §336.519(h) allows the executive director to extend the date of commencement of decommissioning in limited circumstances. Because the deadline for submittal of a decommissioning license on an unlicensed site is proposed to be extended until January 1, 2000, and the average time of processing of an application is expected to be longer than one year, the earliest date that an applicant should expect to be required to begin decommissioning would be in the year 2002. The preamble for "Radiological Criteria for License Termination", states near the end of page 39080 in III.F.2.3. that "sites that were not previously licensed but are discovered to have radioactivity levels that are licensable or are in excess of the levels presented here as appropriate for unrestricted site use...It is intended that the criteria of this rule will also apply, as appropriate, to residual radioactivity at sites that were not previously licensed." The new decommissioning standards of proposed new Subchapter G, therefore apply to all radioactive material or waste disposal sites, including licensed and unlicensed sites. Proposed §336.519(i) is derived from repealed §336.217(l), with the addition of §336.519(i)(5) to assure that the licensee has complied with all decommissioning criteria prior to license termination. Proposed §336.519(j) is derived from repealed §336.217(o), with the cross-reference updated.

Old §§336.601-336.606, 336.613-336.629, 336.636, which make up Subchapter G (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities), are proposed to be repealed due to the transfer of the source material jurisdiction to the TDH by SB 1857.

Proposed new Subchapter G (relating to Decommissioning Standards) incorporates the federal standards for decommissioning to maintain compatibility with Radiological Criteria for License Termination, 62 Fed Reg 39058, published July 21, 1997, effective August 20, 1997, as well as existing applicable decommissioning standards relocated from repealed §336.271 and §336.357 and amended §336.356.

Proposed new §336.601 (relating to Applicability) incorporates the requirements of NRC's 10 CFR §20.1401(a) (relating to General Provisions and Scope). Proposed new §336.601(b) incorporates and modifies NRC's grandfathering clause in 10 CFR §20.1401(b) to allow any licensees who have submitted a decommissioning plan and have received approval of that plan before the effective date of these new criteria to choose to decommission according to the rules in place at the time of filing of the plan or the newer criteria. Because current commission regulations are already compatible with NRC's 10 CFR §20.1402 (relating to Radiological Criteria for Unrestricted Use) and there are no decommissioning plans currently under review at the commission, an exact incorporation of the federal grandfathering clause would be meaningless. Proposed §336.601(c) is derived from NRC's new 10 CFR §20.1401(c) to maintain com-

patibility with the federal rule. Proposed §336.601(d) is also derived from NRC's new 10 CFR §20.1401(d) to maintain compatibility with the federal rule.

Proposed new §336.603(a) (relating to Radiological Criteria for Unrestricted Use) incorporates NRC's new 10 CFR §20.1402 (relating to Radiological Criteria for Unrestricted Use) to maintain consistency with the federal rule, and the last sentence is moved from deleted §336.356(f) (relating to Soil and Vegetation Contamination Limits). Proposed new §336.603(b) incorporates the last sentence of 10 CFR §20.1402 to maintain consistency with the federal rule. Proposed new §336.603(c) is language moved from the second to the last sentence of deleted §336.356(f).

Proposed new §336.605 (relating to Surface Contamination Limits for Facilities, Equipment, and Materials) contains language moved from repealed §336.357 (relating to Surface Contamination Limits for Facilities and Equipment) with slight modification to correct cross references.

Proposed new §336.607 (relating to Criteria for License Termination under Restricted Conditions) is derived from NRC's new 10 CFR §20.1403 (relating to Criteria for License Termination under Restricted Conditions) to maintain compatibility with the federal rule.

Proposed new §336.609 (relating to Alternate Criteria for License Termination) is derived from NRC's new 10 CFR §20.1404 (relating to Alternate Criteria for License Termination) to maintain compatibility with the federal rule.

Proposed new §336.611 (relating to Public Notification and Public Participation) is derived from NRC's new 10 CFR 20.1405 (relating to Public Notification and Public Participation) to maintain compatibility with the federal rule.

Proposed new §336.613 (relating to Additional Requirements) is language moved from repealed §336.217(f) and (h)-(k), which has also been reorganized for clarification; however, §336.613(l) is a simplified version of the language moved from the last sentence of §336.356(f), which is proposed to be deleted.

Proposed §336.701(d) (relating to Scope and General Provisions) is amended to require that all licensees, unless otherwise specified, also meet the new Subchapter G (relating to Decommissioning Standards).

Proposed §336.701(e) (relating to Scope and General Provisions) is amended to delete the last sentence concerning the source material licensing and by-product disposal jurisdiction transferred to the TDH by SB 1857.

Proposed §336.702 (relating to Definitions) is amended to number definitions.

Section 336.802 (relating to definitions), the definition of "long-term care," is proposed to be amended to delete language related to the source material jurisdiction transferred to the TDH in SB 1857.

Section 336.803(a) and (a)(4), (a)(8), and (b) (related to Financial Assurance Requirements) are proposed to be amended to remove references to the source material licensing and by-product disposal jurisdiction transferred to the TDH by SB 1857. Old subsection (c) is deleted for the same reason and old subsection (d) is renumbered to (c), accordingly.

Section 336.804(g) (relating to Financial Assurance Mechanisms) is proposed to be deleted because it pertains to the

source material licensing and by-product disposal jurisdiction transferred to the TDH by SB 1857. Old subsection (h) is then renumbered to subsection (g).

Section 336.805 (relating to Long-Term Care Requirements) is proposed to be amended to delete a reference to the source material licensing and by-product disposal jurisdiction transferred to the TDH by SB 1857.

Section 336.806(h) and (i) (relating to Wording of Financial Mechanisms) are proposed to be deleted because they apply to §336.804(g), which is proposed to be deleted.

Section 336.807(h) and (i) (relating to Appendix A. Wording of Financial Assurance Instruments) are proposed to be deleted because they apply to §336.804(g) and §336.806(h) and (i), which are also proposed to be deleted.

REVIEW OF AGENCY RULES

The commission also proposes to review the rules contained in 30 TAC Chapter 336, concerning Radioactive Substance, as mandated by the General Appropriations Act, Article IX, Section 167. Section 167 requires state agencies, every four years, to review and consider for re-adoption rules adopted under the APA. At a minimum, the reviews must include an assessment that the reason for the rules continues to exist. The commission has reviewed the rules in Chapter 336 and determined that those rules are still necessary. Chapter 336 applies to any application to issue, amend, modify, renew, correct, endorse, or transfer a license, or other authorization or approval of the commission relating to the disposal of radioactive material under Texas Health and Safety Code, Chapter 401.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed are in effect, there will be no significant fiscal implications for state government as a result of administration or enforcement of the rules. There are no fiscal implications for units of local government, except those that may own or operate an inactive radioactive disposal site subject to the provisions of these sections. For these local governments, the fiscal implications of these sections will be equivalent to those for any affected public or private entity, except governments are not required to submit financial assurance. They may provide a statement of intent containing a cost estimate for decommissioning and indicate that funds will be obtained when necessary.

PUBLIC BENEFIT

Mr. Minick has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be more efficient decommissioning of inactive radioactive material disposal sites and consistency between state and federal regulations. Compliance with the proposed state regulations will result in no significant increase in costs to affected parties that would not otherwise result from compliance with the existing federal regulations proposed for incorporation and may result in a cost decrease. Cost savings anticipated to any person, including any small business, required to comply with these sections as proposed is proportionate to the savings for a larger business.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

Although this rule is to protect the environment and reduce the risk to human health from environmental exposure, this is not a major environmental rule because it does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, this rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency. The rule adds federal requirements that are necessary to maintain compatibility with the rules of the Nuclear Regulatory Commission.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that Assessment. The specific purpose of the rules is to remove commission rule language related to the source material licensing and by-product disposal jurisdiction transferred to the TDH by SB 1857, 75th Legislature, 1997, to incorporate revisions and additions which are needed to maintain compatibility with the rules of the NRC, and to continue with agency-wide regulatory reform efforts to simplify language and requirements. Compatibility of the commission's rules with the federal program is necessary to preserve the status of Texas as an Agreement State under Title 10 Code of Federal Regulations Part 150 and the "Articles of Agreement between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to the Atomic Energy Act §274 of 1954, as Amended." The rules will substantially advance this specific purpose by removing commission rule language related to the source material licensing and by-product disposal jurisdiction transferred to the TDH and by incorporating into commission rules the new federal requirements contained in "Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials, Clean Air Act", 61 Fed. Reg. 65120, December 10, 1996, effective January 9, 1997 and "Radiological Criteria for License Termination", 62 Fed. Reg. 39058, July 21, 1997, effective August 20, 1997. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because they primarily implement less stringent federal decommissioning requirements. Section 336.501 extends the deadline to apply for a license to decommission from January 1, 1999, to January 1, 2000. If these existing, unlicensed sites decommission before January 1, 2000, owners or operators will avoid license application and annual fees. For both licensed and unlicensed disposal sites, new alternatives for decommissioning without meeting the criteria for unrestricted use are offered in new sections §336.607 (relating to Criteria for License Termination under Restricted Conditions) and §336.609 (relating to Alternate Criteria for License Termination). A site using one of these alternatives may save on decommissioning cost.

Also, the following exceptions to the application of Chapter 2007 of the Texas Government Code listed in Texas Government Code, §2007.003(b) apply to these rules: Section 2007.003(b)(4)—an action that is reasonably taken to fulfill an obligation mandated by federal law.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The executive director has reviewed the proposed 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 proposal is not subject to the Coastal Management Program.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Bettie Bell, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments must be received by May 25, 1998 and should reference Rule Log Number 97154-336-WS. Comments received by 5:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. The commission requests the comments on the results of the review of its rules be clearly distinguished from comments on the proposed changes in order to facilitate their assessment. For further information, please contact Kathy Vail at (512) 239-6637.

Subchapter A. General Provisions

30 TAC §336.1, §336.2

STATUTORY AUTHORITY

These amendments are proposed under the Texas Radiation Control Act (TRCA), Texas Health and Safety Code, §§401.011, 401.051, and 401.412, and Texas Water Code, §5.103, which give the commission the authority to adopt rules necessary to carry out its responsibilities to regulate and license the disposal of radioactive substances. The review of the commission's rules is proposed under Article IX, Rider 167, General Appropriations Act, 75th Legislature.

These amendments implement Health and Safety Code, Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation).

§336.1. Scope and General Provisions.

(a) Except as otherwise specifically provided, the rules in Chapter 336 of this title (relating to Radioactive Substance Rules) apply to all persons who ~~engage in source material recovery and processing or the disposal of radioactive substances, as defined in this subchapter, and for that purpose receive, possess, use, process, transfer, or~~ dispose of radioactive substances except by-product material defined by §336.2(13)(B) of this title (relating to Definitions). However, nothing in these rules shall apply to any person to the extent that person is subject to regulation by the United States Nuclear Regulatory Commission (USNRC) or to radioactive material in the possession of federal agencies. The rules in this chapter do not apply to the disposal of radiation machines as defined in this subchapter or electronic devices which produce non-ionizing radiation.

(b) Regulation by the State of Texas of source material, byproduct material, and special nuclear material in quantities not sufficient to form a critical mass is subject to the provisions of the agreement between the State of Texas and the USNRC and to

Part 150 of Title 10 Code of Federal Regulations (10 CFR Part 150) (relating to Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274). (A copy of the Texas agreement, "Articles of Agreement between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended" (Agreement), may be obtained from the UIC[~~Uranium~~] and Radioactive Waste Section, MC 131, Industrial and Hazardous Waste Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.) Under the Agreement and 10 CFR Part 150, the USNRC retains certain regulatory authorities over source material, byproduct material, and special nuclear material in the State of Texas. Persons in the State of Texas are not exempt from the regulatory requirements of the USNRC with respect to these retained authorities.

(c)-(e) (No change.)

§336.2. Definitions.

The following words and terms when used in this chapter shall have the following meanings, or as described in Chapter 3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Additional definitions used only in a certain subchapter will be found in that subchapter.

(1) Absorbed dose - The energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the rad and the gray (Gy).

(2) Accelerator-produced radioactive material - Any material made radioactive by exposing it to the radiation from a particle accelerator.

(3) Activity - The rate of disintegration (transformation) or decay of radioactive material. The units of activity are the curie (Ci) and the becquerel (Bq).

(4) Adult - An individual 18 or more years of age.

(5) Agreement state - Any state with which the United States Nuclear Regulatory Commission (USNRC) or the Atomic Energy Commission has entered into an effective agreement under the Atomic Energy Act of 1954, §274b, as amended through October 24, 1992 (Public Law 102-486).

(6) Airborne radioactive material - Any radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

(7) Airborne radioactivity area - A room, enclosure, or area in which airborne radioactive materials, composed wholly or partly of licensed material, exist in concentrations:

(A) in excess of the derived air concentrations (DACs) specified in §336.359, Appendix B, Table I, Column 1, of this title (relating to Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage); or

(B) to a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6% of the ALI or 12 DAC-hours.

(8) Annual limit on intake (ALI) - The derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the "reference man" that

would result in a committed effective dose equivalent of 5 rems (0.05 sievert) or a committed dose equivalent of 50 rems (0.5 sievert) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table I, Columns 1 and 2, of §336.359, Appendix B, of this title.

(9) As low as is reasonably achievable (ALARA) - Making every reasonable effort to maintain exposures to radiation as far below the dose limits in this chapter as is practical, consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of ionizing radiation and licensed radioactive materials in the public interest.

(10) Background radiation - Radiation from cosmic sources; non-technologically enhanced naturally-occurring radioactive material, including radon (except as a decay product of source or special nuclear material) and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include radiation from radioactive materials regulated by the commission, Texas Department of Health, USNRC, or an Agreement State.

(11) Becquerel (Bq) - See §336.4 of this title (relating to Units of Radioactivity).

(12) Bioassay - The determination of kinds, quantities, or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body. For purposes of the rules in this chapter, "radiobioassay" is an equivalent term.

(13) Byproduct material -

(A) A radioactive material, other than special nuclear material, that is produced in or made radioactive by exposure to radiation incident to the process of producing or using special nuclear material; and

(B) The tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes, and other tailings having similar radiological characteristics. Underground ore bodies depleted by these solution extraction processes do not constitute "byproduct material" within this definition.

(14) CFR - Code of Federal Regulations.

(15) Class - A classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for Class D (Days) of less than 10 days, for Class W (Weeks) from 10 to 100 days, and for Class Y (Years) of greater than 100 days. For purposes of the rules in this chapter, "lung class" and "inhalation class" are equivalent terms.

(16) Collective dose - The sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(17) Committed dose equivalent ($H_{T,50}$) (CDE) - The dose equivalent to organs or tissues of reference (T) that will be received

from an intake of radioactive material by an individual during the 50-year period following the intake.

(18) Committed effective dose equivalent ($H_{E,50}$) (CEDE) - The sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues.

(19) Critical group - The group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

(20) Curie (Ci) - See §336.4 of this title.

(21) Declared pregnant woman - A woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception.

(22) Decommission - To remove (as a facility) safely from service and reduce residual radioactivity to a level that permits:

(A) release of the property for unrestricted use and termination of license; or

(B) release of the property under restricted conditions and termination of the license.

(23) Deep-dose equivalent (H_D) (which applies to external whole-body exposure) - The dose equivalent at a tissue depth of 1 centimeter (1,000 milligrams/square centimeter).

(24) Depleted uranium - The source material uranium in which the isotope uranium-235 is less than 0.711%, by weight, of the total uranium present. Depleted uranium does not include special nuclear material.

(25) Derived air concentration (DAC) - The concentration of a given radionuclide in air which, if breathed by the "reference man" for a working year of 2,000 hours under conditions of light work (inhalation rate of 1.2 cubic meters of air/hour), results in an intake of one ALI. DAC values are given in Table I, Column 3, of §336.359, Appendix B, of this title.

(26) Derived air concentration-hour (DAC-hour) - The product of the concentration of radioactive material in air (expressed as a fraction or multiple of the derived air concentration for each radionuclide) and the time of exposure to that radionuclide, in hours. A licensee may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 5 rems (0.05 sievert).

(27) Distinguishable from background - The detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

(28) Dose - A generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of the rules in this chapter, "radiation dose" is an equivalent term.

(29) Dose equivalent (H_D) - The product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert (Sv).

(30) Dose limits - The permissible upper bounds of radiation doses established in accordance with the rules in this chapter. For purposes of the rules in this chapter, "limits" is an equivalent term.

(31) Dosimetry processor - An individual or organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

(32) Effective dose equivalent (H_E) - The sum of the products of the dose equivalent to each organ or tissue (H_T) and the weighting factor (w_T) applicable to each of the body organs or tissues that are irradiated.

(33) Embryo/fetus - The developing human organism from conception until the time of birth.

(34) Entrance or access point - Any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed radioactive materials. This includes portals of sufficient size to permit human access, irrespective of their intended use.

(35) Exposure - Being exposed to ionizing radiation or to radioactive material.

(36) Exposure rate - The exposure per unit of time.

(37) External dose - That portion of the dose equivalent received from any source of radiation outside the body.

(38) Extremity - Hand, elbow, arm below the elbow, foot, knee, and leg below the knee. The arm above the elbow and the leg above the knee are considered part of the whole body.

(39) Eye dose equivalent - The external dose equivalent to the lens of the eye at a tissue depth of 0.3 centimeter (300 milligrams/square centimeter).

(40) General license - An authorization granted by an agency under its rules which is effective without the filing of an application with that agency or the issuance of a licensing document to the particular person.

(41) Generally applicable environmental radiation standards - Standards issued by the United States Environmental Protection Agency under the authority of the Atomic Energy Act of 1954, as amended through October 4, 1996, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(42) Gray (Gy) - See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(43) High radiation area - An area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 millisievert) in 1 hour at 30 centimeters from any source of radiation or from any surface that the radiation penetrates.

(44) Individual - Any human being.

(45) Individual monitoring - The assessment of:

(A) dose equivalent by the use of individual monitoring devices; or

(B) committed effective dose equivalent by bioassay or by determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours; or

(C) dose equivalent by the use of survey data.

(46) Individual monitoring devices - Devices designed to be worn by a single individual for the assessment of dose equivalent. For purposes of the rules in this chapter, "individual monitoring equipment," "personnel dosimeter," and "dosimeter" are equivalent

terms. Examples of individual monitoring devices are film badges, thermoluminescent dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

(47) Inhalation class - See "Class."

(48) Inspection - An official examination and/or observation including, but not limited to, records, tests, surveys, and monitoring to determine compliance with the Texas Radiation Control Act (TRCA) and rules, orders, and license conditions of the commission.

(49) Internal dose - That portion of the dose equivalent received from radioactive material taken into the body.

(50) Land disposal facility - The land, buildings and structures, and equipment which are intended to be used for the disposal of radioactive wastes into the subsurface of the land. For purposes of this chapter, a "geologic repository" as defined in 10 CFR 60.2 as amended through October 27, 1988 (53 FedReg 43421) (relating to Definitions - high-level radioactive wastes in geologic repositories) is not considered a "land disposal facility."

(51) License - See "Specific license."

(52) Licensed material - Radioactive material received, possessed, used, processed, transferred, or disposed of under a license issued by the commission.

(53) Licensee - Any person who holds a license issued by the commission in accordance with the TRCA and the rules in this chapter. For purposes of the rules in this chapter, "radioactive material licensee" is an equivalent term. Unless stated otherwise, "licensee" as used in the rules of this chapter means the holder of a "specific license."

(54) Licensing state - Any state with rules equivalent to the Suggested State Regulations for Control of Radiation relating to, and having an effective program for, the regulatory control of naturally-occurring or accelerator-produced radioactive material (NARM) and which has been designated as such by the Conference of Radiation Control Program Directors, Inc.

(55) Lost or missing licensed radioactive material - Licensed material whose location is unknown. This definition includes material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

(56) Low-level radioactive waste - See "Radioactive waste."

(57) Lung class - See "Class."

(58) Major amendment -

(A) An amendment to a license issued under Subchapter F of Chapter 336 of this title (relating to Licensing of Alternative Methods of Disposal of Radioactive Material) which:

(i) authorizes a transfer of a license to another person;

(ii) authorizes enlargement of the disposal area beyond that authorized in the existing license or addition of disposal areas; or

(iii) authorizes a substantive change in the nature of the wastes to be disposed of or the method of disposal.

~~[(B) An amendment to a license issued under Subchapter G of Chapter 336 of this title (relating to Licensing Re-~~

quirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities) which:]

~~[(i) authorizes a transfer of the license to another person;]~~

~~[(ii) authorizes enlargement of the licensed site beyond that authorized in the existing license;]~~

~~[(iii) authorizes a method of disposal of byproduct material, as defined in subparagraph (B) of the definition of "byproduct material" of this section which is different from that specified in the existing license or authorizes a change to substantive provisions concerning an existing disposal method;]~~

~~[(iv) grants an exemption from or an alternative to any specific technical requirement of Subchapter G of Chapter 336 of this title, or §§336.627-336.629 of this title (relating to Financial Assurance Requirements, Long-Term Care and Surveillance Requirements, and Land Ownership of Tailings or Waste Disposal Sites);]~~

~~[(v) authorizes disposal of byproduct material from others or authorizes other commercial activity not proposed in the application for the initial issuance of the license;]~~

~~[(vi) authorizes alternate concentration limits under §336.615(e) of this title (relating to Secondary Groundwater Protection);]~~

~~[(vii) approves a reclamation plan for a tailings or waste disposal site under §336.622 of this title (relating to Closure Completion Milestones and Schedule);]~~

~~[(viii) approves a change in the date set in the license for completion of the final radon barrier or interim milestones under §336.622 of this title; or]~~

~~[(ix) authorizes a portion of a uranium mill tailings impoundment to accept materials from others for disposal during the closure process or after the final radon barrier is complete under §336.622 of this title.]~~

~~(B) [(C)] An amendment to a license issued under Subchapter H of Chapter 336 of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste) which:~~

~~(i) authorizes a change in the type or concentration limits of wastes to be received;~~

~~(ii) authorizes receipt of wastes from other states not authorized in the existing license;~~

~~(iii) authorizes a change in the operator of the facility;~~

~~(iv) authorizes closure and the final closure plan for the disposal site; or~~

~~(v) transfers the license to the custodial agency.~~

~~(C) [(D)] Any other amendment for which the executive director has prepared a written environmental analysis or has determined that an environmental analysis is required.~~

~~(59) Member of the public - Any individual except when that individual is receiving an occupational dose.~~

~~(60) Minor - An individual less than 18 years of age.~~

~~(61) Minor amendment - Any amendment to a license issued under this chapter which is not defined as a major amendment~~

in this section and does not have a significant impact or effect on the human environment.

(62) Monitoring - The measurement of radiation levels, radioactive material concentrations, surface area activities, or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of the rules in this chapter, "radiation monitoring" and "radiation protection monitoring" are equivalent terms.

(63) Naturally-occurring or accelerator-produced radioactive material (NARM) - Any naturally-occurring or accelerator-produced radioactive material except source material or special nuclear material.

(64) Naturally-occurring radioactive material (NORM) waste - Solid, liquid, or gaseous material or combination of materials, excluding source material, special nuclear material, and byproduct material, that:

- (A) in its natural physical state spontaneously emits radiation;
- (B) is discarded or unwanted; and
- (C) is not exempt under rules of the Texas Department of Health adopted under Health and Safety Code, §401.106.

(65) Near-surface disposal facility - A land disposal facility in which radioactive waste is disposed of in or within the upper 30 meters of the earth's surface.

(66) Nonstochastic effect - A health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of the rules in this chapter, "deterministic effect" is an equivalent term.

(67) Occupational dose - The dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation and/or to radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee or other person. Occupational dose does not include dose received from background radiation, as a patient from medical practices, from voluntary participation in medical research programs, or as a member of the public.

(68) Oil and gas naturally-occurring radioactive material (NORM) waste - Naturally-occurring radioactive material (NORM) waste that constitutes, is contained in, or has contaminated oil and gas waste as that term is defined in the Texas Natural Resources Code §91.1011.

(69) Personnel monitoring equipment - See "Individual monitoring devices."

(70) Planned special exposure - An infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

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

(72) Public dose - The dose received by a member of the public from exposure to radiation and/or radioactive material released by a licensee, or to any other source of radiation under the control of the licensee. It does not include occupational dose or doses received

from background radiation, as a patient from medical practices, or from voluntary participation in medical research programs.

(73) Quality factor (Q) - The modifying factor listed in Table I or II of §336.3 of this title that is used to derive dose equivalent from absorbed dose.

(74) Quarter (Calendar quarter) - A period of time equal to one-fourth of the year observed by the licensee (approximately 13 consecutive weeks), providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(75) Rad - See §336.3 of this title.

(76) Radiation - Alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. For purposes of the rules in this chapter, "ionizing radiation" is an equivalent term. Radiation, as used in this chapter, does not include non-ionizing radiation, such as radio- or microwaves or visible, infrared, or ultraviolet light.

(77) Radiation and Perpetual Care Fund - A fund established in the treasury of the State of Texas for the purposes set forth in the TRCA §401.305.

(78) Radiation area - Any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 millisievert) in 1 hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates.

(79) Radiation machine - Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(80) Radioactive material - A naturally-occurring or artificially-produced solid, liquid, or gas that emits radiation spontaneously.

(81) Radioactive substance - Includes byproduct material, radioactive material, radioactive waste, source material, special nuclear material, and NORM waste, excluding oil and gas NORM waste.

(82) Radioactive waste - Radioactive material other than byproduct material as defined in subparagraph (B) of the definition of "byproduct material" of this section, uranium ore, NORM waste, or oil and gas NORM waste, that is discarded or unwanted and is not exempt under rules of the Texas Department of Health adopted under Health and Safety Code, §401.106, or would require processing before it could have beneficial reuse. For purposes of the rules in this chapter, radioactive waste also excludes waste classified as high-level radioactive waste, transuranic waste, or spent nuclear fuel. For purposes of the rules in this chapter, radioactive waste means "low-level radioactive waste" as that term is used in 10 CFR Part 61 as amended through May 9, 1995 (60 FedReg 24552) (relating to Licensing Requirements for Land Disposal of Radioactive Waste). For purposes of the rules in this chapter, "radioactive waste" and "low-level radioactive waste" are equivalent terms. For purposes of the rules in this chapter, radioactive waste and low-level radioactive waste include accelerator-produced radioactive material.

(83) Radioactivity - The disintegration of unstable atomic nuclei with the emission of radiation.

(84) Radiobioassay - See "Bioassay."

(85) Reference man - A hypothetical aggregation of human physical and physiological characteristics determined by

international consensus. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base. A description of "reference man" is contained in the International Commission on Radiological Protection report, ICRP Publication 23, "Report of the Task Group on Reference Man."

(86) Rem - See §336.3 of this title.

(87) Residual radioactivity - Radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of 10 CFR Part 20.

(88) Respiratory protection equipment - An apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials. For purposes of the rules in this chapter, "respiratory protective device" is an equivalent term.

(89) Restricted area - An area, access to which is limited by the licensee for the purpose of protecting individuals against undue risks from exposure to radiation and radioactive materials. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

(90) Roentgen (R) - See §336.3 of this title.

(91) Sanitary sewerage - A system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee.

(92) Sealed source - Radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions that are likely to be encountered in normal use and handling.

(93) Shallow-dose equivalent (H_s) (which applies to the external exposure of the skin or an extremity) - The dose equivalent at a tissue depth of 0.007 centimeter (7 milligrams/square centimeter) averaged over an area of 1 square centimeter.

(94) SI - The abbreviation for the International System of Units.

(95) Sievert (Sv) - See §336.3 of this title.

(96) Site boundary - That line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.

(97) Source material -

(A) Uranium or thorium, or any combination thereof, in any physical or chemical form; or

(B) Ores that contain, by weight, 0.05% or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.

[Source material recovery - Uranium or thorium recovery as defined in this section:]

(98) Special form radioactive material - Radioactive material which is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule and which has at least one dimension not less than 5 millimeters and which

satisfies the test requirements of 10 CFR 71.75 as amended through September 28, 1995 (60 FedReg 50264) (relating to Transportation of License Material).

(99) Special nuclear material -

(A) Plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the USNRC, under the provisions of the Atomic Energy Act of 1954, §51, as amended through November 2, 1994 (Pub.L. 103-437), determines to be special nuclear material, but does not include source material; or

(B) Any material artificially enriched by any of the foregoing, but does not include source material.

(100) Special nuclear material in quantities not sufficient to form a critical mass - uranium enriched in the isotope 235 in quantities not exceeding 350 grams of contained uranium-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of these in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed 1. For example, the following quantities in combination would not exceed the limitation: (175 grams contained U-235/350 grams) + (50 grams U-233/200 grams) + (50 grams Pu/200 grams) = 1.

(101) Specific license - A licensing document issued by an agency upon an application filed under its rules. For purposes of the rules in this chapter, "radioactive material license" is an equivalent term. Unless stated otherwise, "license" as used in this chapter means a "specific license."

(102) State - The State of Texas.

(103) Stochastic effect - A health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of the rules in this chapter, "probabilistic effect" is an equivalent term.

(104) Survey - An evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, and/or presence of radioactive materials or other sources of radiation. When appropriate, this evaluation includes, but is not limited to, physical examination of the location of radioactive material and measurements or calculations of levels of radiation or concentrations or quantities of radioactive material present.

(105) Termination - As applied to a license, a release by the commission of the obligations and authorizations of the licensee under the terms of the license. It does not relieve a person of duties and responsibilities imposed by law.

[Thorium recovery - Any activity that results in the production of byproduct material as defined in subparagraph (B) of the definition of "byproduct material" of this section, excluding other tailings having similar radiological characteristics. As used in this definition, "thorium recovery" has the same meaning as "uranium milling" in 10 CFR 40.4 as amended through July 15, 1994 (59 FedReg 36035) (relating to Definitions).]

(106) Total effective dose equivalent (TEDE) - The sum of the deep-dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

(107) Total organ dose equivalent (TODE) - The sum of the deep-dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in §336.346(a)(6) of this title (relating to Records of Individual Monitoring Results).

(108) Type A quantity (for packaging) - A quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material or A_2 for normal form radioactive material, where A_1 and A_2 are given in or may be determined by procedures in Appendix A to 10 CFR Part 71 as amended through September 28, 1995 (60 FedReg 50264) (relating to Packaging and Transportation of Radioactive Material).

(109) Type B quantity (for packaging) - A quantity of radioactive material greater than a Type A quantity.

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

(111) Unrestricted area - Any area that is not a restricted area.

[Uranium recovery - Any activity that results in the production of byproduct material as defined in subparagraph (B) of the definition of "byproduct material" of this section, excluding other tailings having similar radiological characteristics. As used in this definition, "uranium recovery" has the same meaning as "uranium milling" in 10 CFR 40.4 as amended through July 15, 1994 (59 FedReg 36035) (relating to Definitions).]

(112) Very high radiation area - An area, accessible to individuals, in which radiation levels could result in an individual receiving an absorbed dose in excess of 500 rads (5 grays) in 1 hour at 1 meter from a source of radiation or from any surface that the radiation penetrates. (At very high doses received at high dose rates, units of absorbed dose (rad and gray) are appropriate, rather than units of dose equivalent (rem and sievert).)

(113) Violation - An infringement of any provision of the TRCA or of any rule, order, or license condition of the commission issued under the TRCA or this chapter.

(114) Week - Seven consecutive days starting on Sunday.

(115) Weighting factor (w_r) for an organ or tissue (T) - The proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_r are:
Figure: 30 TAC §336.2(115)—(No change.)

(116) Whole body - For purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

(117) Worker - An individual engaged in activities under a license issued by the commission and controlled by a licensee, but does not include the licensee.

(118) Working level (WL) - Any combination of short-lived radon daughters in 1 liter of air that will result in the ultimate emission of 1.3×10^5 million electron volts (MeV) of potential alpha particle energy. The short-lived radon daughters are: for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212.

(119) Working level month (WLM) - An exposure to 1 working level for 170 hours (2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month).

(120) Year - The period of time beginning in January used to determine compliance with the provisions of the rules in this chapter. The licensee may change the starting date of the year used to determine compliance by the licensee provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

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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Kevin McCalla

Director, Legal Division

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For further information, please call: (512) 239-6087

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Subchapter B. Radioactive Substance Fees

30 TAC §§336.101, 336.102, 336.107

STATUTORY AUTHORITY

These amendments are proposed under the Texas Radiation Control Act (TRCA), Texas Health and Safety Code, §§401.011, 401.051, and 401.412, and Texas Water Code, §5.103, which give the commission the authority to adopt rules necessary to carry out its responsibilities to regulate and license the disposal of radioactive substances.

These amendments implement Health and Safety Code, Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation).

§336.101. Purpose and Scope.

(a) (No change.)

(b) Except as otherwise specifically provided, this subchapter applies to any person who is:

(1) an applicant for or holder of a radioactive material license issued under this chapter [~~Subchapter F of Chapter 336 of this title (relating to Licensing of Alternative Methods of Disposal of Radioactive Material); Subchapter G of Chapter 336 of this title (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities); or Subchapter H of Chapter 336 of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste)~~]; or

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

§336.102. Definitions.

Terms used in this subchapter are defined in §336.2 of this title (relating to Definitions). Additional terms used in this subchapter have the following definitions:

(1) Emergency response - The application of those capabilities necessary for the protection of the public and the environment from the effects of an accidental or uncontrolled release of radioactive materials, including the equipping, training, and periodic retraining of response personnel.

(2) Fixed nuclear facility -

(A) Any nuclear reactor(s) at a single site;

(B) Any facility designed or used for the assembly or disassembly of nuclear weapons; or

(C) Any other facility using special nuclear material for which emergency response activities, including training, are conducted to protect the public health and safety or the environment.

[Post-closure - The period of time following completion of closure of a uranium mill tailings impoundment or byproduct material disposal site by a licensee under Subchapter G of Chapter 336 of this title (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities) and before transfer of land ownership to the State or the United States government and termination of the license.]

§336.107. *Annual License Fee Due Date and Period Covered.*

(a) Payment for annual fees set forth in [§336.104(b) and (e) of this title (relating to Schedule of Fees for Subchapter G Licenses) and] §336.105(b) of this title (relating to Schedule of Fees for Subchapter F Licenses) shall be due in full each year on or before the last day of the expiration month of the license. As an example, if the license expires on May 31, 1999, annual fees are due on or before May 31 of each year.

(b) The period covered by each annual fee set forth in [§336.104(b) and (e) of this title and] §336.105(b) of this title shall be the 12 months preceding the fee payment due 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.

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30 TAC §336.104, §336.108

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

These repeals are proposed under the Texas Radiation Control Act, Texas Health and Safety Code, §§401.011, 401.051, and 401.412, and Texas Water Code, §5.103, which give the commission the authority to adopt rules necessary to carry out its responsibilities to regulate and license the disposal of radioactive substances.

These repeals implement Health and Safety Code, Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation).

§336.104. *Schedule of Fees for Subchapter G Licenses.*

§336.108. *Proration of Annual Fee Adjustments.*

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. Additional Application, Operation, and License Requirements

30 TAC §§336.201, 336.203, 336.209, 336.211, 336.213

STATUTORY AUTHORITY

These amendments are proposed under the Texas Radiation Control Act (TRCA), Texas Health and Safety Code §§401.011, 401.051, and 401.412, and Texas Water Code §5.103, which give the commission the authority to adopt rules necessary to carry out its responsibilities to regulate and license the disposal of radioactive substances.

These amendments implement Health and Safety Code Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation).

§336.201. *Additional Application Requirements.*

(a)-(c) (No change.)

(d) Applicants for licenses other than renewals, after August 20, 1997, shall describe in the application how facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practicable, the generation of radioactive waste.

§336.203. *Environmental Analysis.*

(a) ~~When the executive director is considering an application under Subchapter G of Chapter 336 of this title (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities) and determines that the licensed activity may have a significant impact on the human environment, the executive director shall prepare or have prepared a written environmental analysis.~~

(a) [(b)] When the executive director is considering an application under Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste) and determines that the licensed activity may have a significant effect on the human environment, the executive director shall prepare or have prepared a written analysis of the effect on the environment.

(b) [(e)] An environmental analysis, if prepared, shall be included as part of the record of the commission's proceedings.

§336.209. *Records and Reports.*

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

(e) The executive director may require the licensee to provide the commission with copies of all records prior to termination of the license. [For licenses issued under Subchapter G of Chapter 336 of this title (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities), each licensee shall submit a report to the executive director within 60 days after January 1 and July 1 of each year specifying the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents during the previous 6 months of operation;

and other information the executive director may require to estimate maximum potential annual radiation doses to the public resulting from effluent releases. If quantities of radioactive materials released during the reporting period are significantly above the licensee's design objectives previously reviewed as part of the licensing action, the report shall cover this specifically. On the basis of those reports and any additional information the executive director may obtain from the licensee or others, the executive director or commission may from time to time require the licensee to take such action as the executive director or commission deems appropriate.]

(f) (No change.)

§336.211. *Reporting Requirements for Incidents.*

[(a)] This section [subsection] sets forth the incident reporting requirements for licenses issued under Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material).

(1) Immediate report. Each licensee shall notify the executive director or staff as soon as possible but not later than 4 hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits or releases of radioactive materials that could exceed limits (e.g., events may include fires, explosions, toxic gas releases, etc.).

(2) Twenty-four hour report. Each licensee shall notify the executive director or staff within 24 hours after the discovery of any of the following events involving licensed material:

(A) an unplanned contamination event that:

(i) requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;

(ii) involves a quantity of material greater than five times the lowest annual limit on intake specified in §336.359, Appendix B, of this title (relating to Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage); and

(iii) has access to the area restricted for a reason other than to allow isotopes with a half-life of less than 24 hours to decay prior to decontamination;

(B) an event in which equipment is disabled or fails to function as designed when:

(i) the equipment is required by rule or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;

(ii) the equipment is required to be available and operable when it is disabled or fails to function; and

(iii) no redundant equipment is available and operable to perform the required safety function;

(C) an event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body; or

(D) an unplanned fire or explosion damaging any radioactive material or any device, container, or equipment containing radioactive material when:

(i) the quantity of material involved is greater than five times the lowest annual limit on intake specified in §336.359, Appendix B, of this title; and

(ii) the damage affects the integrity of the radioactive material or its container.

(3) Preparation and submission of reports. Reports made by licensees in response to the requirements of this section must be made as follows:

(A) Telephone report. Licensees shall make reports required by paragraphs (1) and (2) of this subsection by telephone, accompanied by a facsimile, to the executive director or staff. To the extent that the information is available at the time of notification, the information provided in these reports must include:

(i) the caller's name and telephone number;

(ii) a description of the event, including date and time;

(iii) the exact location of the event;

(iv) the isotopes, quantities, and chemical and physical form of the radioactive material involved; and

(v) any personnel radiation exposure data available.

(B) Written report. Each licensee who makes a report required by paragraphs (1) and (2) of this subsection shall submit a written follow-up report to the executive director within 30 days of the initial report. Written reports prepared under other regulations may be submitted to fulfill this requirement if the reports contain all of the necessary information. These written reports must be sent to the executive director or staff. The reports must include the following:

(i) a description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;

(ii) the exact location of the event;

(iii) the isotopes, quantities, and chemical and physical form of the radioactive material involved;

(iv) date and time of the event;

(v) corrective actions taken or planned and the results of any evaluations or assessments; and

(vi) the extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name.

[(b)] This subsection sets forth the incident reporting requirements for licenses issued under Subchapter G of Chapter 336 of this title (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities):]

[(1)] Immediate report. Each licensee shall notify the executive director or staff as soon as possible but not later than 4 hours after the discovery of:]

[(A)] any failure in a tailings or waste retention system which results in a release of tailings or waste into unrestricted areas or of any unusual conditions which if not corrected could indicate the potential for or lead to failure of the system and result in a release of tailings or waste into unrestricted areas;]

[(B)] any release of radioactive material which exceeds the concentrations for water listed in §336.359, Appendix B, Table

H, Column 2, of this title and which extends beyond the licensed boundary;]

[(C) any spill which exceeds 20,000 gallons and which exceeds the concentrations for water listed in §336.359, Appendix B, Table H, Column 2, of this title;]

[(D) any release of solids which exceeds the contamination limits in §336.356 of this title (relating to Soil and Vegetation Contamination Limits) and which extends beyond the licensed boundary; or]

[(E) an event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits or releases of licensed materials that could exceed regulatory limits (e.g., events may include fires, explosions, toxic gas releases, etc.);]

[(2) Twenty-four hour report. Each licensee shall notify the executive director or staff within 24 hours after the discovery of any of the following events involving licensed material:]

[(A) any spill that extends:]

[(i) beyond the wellfield monitor well ring;]

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

[(iii) more than 200 feet from a recovery plant;]

[(B) any spill which exceeds 2,000 gallons and which exceeds the concentrations for water listed in §336.359, Appendix B, Table H, Column 2, of this title;]

[(C) an unplanned contamination event that:]

[(i) requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;]

[(ii) involves a quantity of material greater than five times the lowest annual limit on intake specified in §336.359, Appendix B, of this title; and]

[(iii) has access to the area restricted for a reason other than to allow isotopes with a half-life of less than 24 hours to decay prior to decontamination;]

[(D) an event in which equipment is disabled or fails to function as designed when:]

[(i) the equipment is required by rule or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;]

[(ii) the equipment is required to be available and operable when it is disabled or fails to function; and]

[(iii) no redundant equipment is available and operable to perform the required safety function;]

[(E) an event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body; or]

[(F) an unplanned fire or explosion damaging any licensed material or any device, container, or equipment containing licensed material when:]

[(i) the quantity of material involved is greater than five times the lowest annual limit on intake specified in §336.359, Appendix B, of this title; and]

[(ii) the damage affects the integrity of the licensed material or its container;]

[(3) Preparation and submission of reports. Reports made by licensees in response to the requirements of this section must be made as follows:]

[(A) Telephone report. Licensees shall make reports required by paragraphs (1) and (2) of this subsection by telephone to the executive director or staff. To the extent that the information is available at the time of notification, the information provided in these reports must include:]

[(i) the caller's name and telephone number;]

[(ii) a description of the event, including date and time;]

[(iii) the exact location of the event;]

[(iv) the isotopes, quantities, and chemical and physical form of the licensed material involved; and]

[(v) any personnel radiation exposure data available;]

[(B) Written report. Each licensee who makes a report required by paragraphs (1) and (2) of this subsection shall submit a written follow-up report to the executive director within 30 days of the initial report. Written reports prepared under other regulations may be submitted to fulfill this requirement if the reports contain all of the necessary information. The reports must include the following:]

[(i) a description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;]

[(ii) the exact location of the event;]

[(iii) the isotopes, quantities, and chemical and physical form of the licensed material involved;]

[(iv) date and time of the event;]

[(v) corrective actions taken or planned and the results of any evaluations or assessments; and]

[(vi) the extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name.]

§336.213. Tests.

(a) Each licensee shall perform, upon instructions from the executive director, or shall permit the executive director to perform such [reasonable] tests as the executive director deems appropriate or necessary for the administration of the rules in this chapter, including, but not limited to, tests of:

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

(b) (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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30 TAC §336.217

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STATUTORY AUTHORITY

The repeal is proposed under the Texas Radiation Control Act, Texas Health and Safety Code §§401.011, 401.051, and 401.412, and Texas Water Code §5.103, which give the commission the authority to adopt rules necessary to carry out its responsibilities to regulate and license the disposal of radioactive substances.

The repeal implements Health and Safety Code Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation).

§336.217. Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas.

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. Standards for Protection Against Radiation

30 TAC §§336.304, 336.331, 336.332, 336.334, 336.341, 336.348, 336.352, 336.356

STATUTORY AUTHORITY

These amendments are proposed under the Texas Radiation Control Act (TRCA), Texas Health and Safety Code, §§401.011, 401.051, and 401.412, and Texas Water Code, §5.103, which give the commission the authority to adopt rules necessary to carry out its responsibilities to regulate and license the disposal of radioactive substances.

These amendments implement Health and Safety Code, Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation).

§336.304. Radiation Protection Programs.

(a)-(c) (No change.)

(d) To implement the ALARA requirement of subsection (b) of this section, and notwithstanding the requirements in §336.313 of this title (relating to Dose Limits for Individual Members of the Public), a constraint on air emissions of radioactive material to

the environment, excluding Radon-222 and its daughters, shall be established by licensees other than nuclear power reactors, such that the individual member of the public likely to receive the highest dose will not be expected to receive a total effective dose equivalent in excess of 10 mrem (0.1 mSv) per year from these emissions. If a licensee subject to this requirement exceeds this dose constraint, the licensee shall report the exceedence as provided in §336.352 of this title (relating to Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Limits) and promptly take appropriate corrective action to ensure against recurrence.

§336.331. General Requirements for Waste Disposal.

(a) Unless otherwise exempted, a licensee shall dispose of licensed material, as appropriate to the type of licensed material, only:

(1) by transfer to an authorized recipient as provided in §336.338 of this title (relating to Transfer for Disposal at Licensed Land Disposal Facility and Manifests) or in Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste);

[(2) by transfer to a recipient authorized by commission license for receipt and disposal of byproduct material, as defined in §336.2, subparagraph (B), of this title (relating to Definitions), under Subchapter G of Chapter 336 of this title (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities);]

(2) [(3)] by transfer to a recipient authorized in another state by license issued by the United States Nuclear Regulatory Commission or an Agreement State or to the United States Department of Energy;

(3) [(4)] by decay in storage;

(4) [(5)] by release in effluents within the limits specified in §336.313 of this title (relating to Dose Limits for Individual Members of the Public);

(5) [(6)] as authorized under §336.332 of this title (relating to Method of Obtaining Approval of Proposed Disposal Procedures), §336.333 of this title (relating to Disposal by Release into Sanitary Sewerage), or §336.337 of this title (relating to Disposal of Specific Wastes); or

(6) [(7)] as specifically authorized by commission license issued under this chapter [Subchapter F of Chapter 336 of this title (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), or Subchapters G or H of Chapter 336 of this title.]

(b) (No change.)

(c) Processing or storage of waste containing licensed material from other persons at a disposal facility by a person licensed for disposal under Subchapter [Subchapters G or] H of this chapter shall be regulated in accordance with the provisions of §336.11, Appendix A, of this title (relating to Memorandum of Understanding Between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions).

§336.332. Method of Obtaining Approval of Proposed Disposal Procedures.

(a) (No change.)

(b) A person holding a license issued under [Subchapter F of] this chapter [(relating to Licensing of Alternative Methods of Disposal of Radioactive Material), Subchapter G of Chapter

336 of this title (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities), or Subchapter H of Chapter 336 of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste)] may apply for approval of proposed disposal procedures in accordance with subsection (a) of this section by requesting amendment of the license.

(c) A person applying for a license to be issued under [Subchapter F, Subchapter G, or Subchapter H of] this chapter may request approval of proposed disposal procedures in accordance with subsection (a) of this section as part of the license application.

(d) A person not subject to licensing under [Subchapter G or] Subchapter H of this chapter may request approval of proposed disposal procedures in accordance with subsection (a) of this section either by filing an application for a license under Subchapter F of this chapter or by requesting approval without a license. In some cases, approval of a limited disposal which meets the standards of this subchapter may be granted by the executive director to a person without a license, as authorized by law. Requests for approval without a license must be reviewed by the executive director on a case-by-case basis.

~~[(e) Notwithstanding the provisions of this section, the commission shall not approve any application for a license to dispose of byproduct material on land that does not meet the transfer of land requirements under Subchapter G of Chapter 336 of this title.]~~

(e) [(f)] Notwithstanding the provisions of this section, the commission shall not approve any application for a license to receive radioactive waste from other persons for disposal on land not owned by the state or the federal government. The commission shall not issue a license to dispose of radioactive waste received from others except to a public entity specifically authorized by law for radioactive waste disposal.

§336.334. Disposal by Burial in Soil.

No licensee may dispose of radioactive material by burial in soil except as provided by §336.337 of this title (relating to Disposal of Specific Wastes) or by specific license authorization by the commission under §336.332 of this title (relating to Method of Obtaining Approval of Proposed Disposal Procedures), Subchapter F of Chapter 336 of this title (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), [Subchapter G of Chapter 336 of this title (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities),] or Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste).

§336.341. General Requirements for Recordkeeping.

(a) Each licensee shall use the units curie, rad, and rem, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this subchapter. Disintegrations per minute may be indicated on records of surveys performed to determine compliance with §336.605 [~~§336.357~~] of this title (relating to Surface Contamination Limits for Facilities, ~~and~~ Equipment, and Materials) and §336.364, Appendix G, of this title (relating to Acceptable Surface Contamination Levels).

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

§336.348. Records of Waste Disposal.

(a) Each licensee shall maintain records of the disposal of licensed materials made under §336.332 of this title (relating to Method of Obtaining Approval of Proposed Disposal Procedures), §336.333 of this title (relating to Disposal by Release into Sanitary Sewerage), §336.336 of this title (relating to Treatment or Disposal

by Incineration), §336.337 of this title (relating to Disposal of Specific Wastes); made by transfer to an authorized recipient under §336.331(a)(1) and (2) [- ~~(3)~~] of this title (relating to General Requirements for Waste Disposal); or made under license authorization issued under this chapter [Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), Subchapter G of this chapter (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities), or Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste)]. Each licensee shall also maintain records of the disposal of licensed materials by burial in soil, including burials authorized by Texas Department of Health rules before May 1977.

(b) (No change.)

§336.352. Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Limits.

(a) Reportable events. In addition to the notification required by §336.351 of this title (relating to Notification of Incidents), each licensee shall submit a written report to the executive director within 30 days after learning of any of the following occurrences:

(1) (No change.)

(2) doses in excess of any of the following:

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

(F) the ALARA constraints for air emissions established under §336.304(d); or

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

(b) Contents of reports.

(1) Each report required by subsection (a) of this section shall describe the extent of exposure of individuals to radiation and radioactive material, including, as appropriate:

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

(D) corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, ALARA constraints, generally applicable environmental standards, and associated license conditions.

(2) Each report filed under subsection (a) of this section shall include for each occupationally overexposed individual : [exposed] the name, social security number, and date of birth. With respect to the limit for the embryo/fetus in §336.312 of this title, the identifiers should be those of the declared pregnant woman. The report shall be prepared so that this information is stated in a separate and detachable part of the report.

§336.356. Soil and Vegetation Contamination Limits.

(a) No licensee may possess, receive, use, or transfer licensed radioactive material in such a manner as to cause contamination of soil or vegetation in unrestricted areas that causes a member of the public to receive a total effective dose equivalent in excess of 25 mrem/year from all pathways (excluding radium and its decay products) and to the extent that the contamination exceeds the background level by more than:

~~[(1) the concentration limits, based on dry weight, specified in §336.366, Appendix I, of this title (relating to Soil and Vegetation Contamination Limits for Selected Radionuclides);]~~

~~[(2) the concentration limits, based on dry weight, taken from the concentrations in Table III of §336.359, Appendix B, of this title (relating to Annual Limits on Intake (ALI) and Derived Air~~

Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage) with the units converted from microcuries per milliliter ($\mu\text{Ci}/\text{ml}$) to microcuries per gram ($\mu\text{Ci}/\text{g}$), for radionuclides not specified in §336.366, Appendix I, of this title, except as provided in paragraphs (3) and (4) of this subsection;]

(1) [(3)] for radium-226 or radium-228 in soil, the following limits, based on dry weight, averaged over any 100 square meters of area:

(A) 5 picocuries/gram (pCi/g), averaged over the first 15 centimeters of soil below the surface;

(B) 15 pCi/g, averaged over each 15-centimeter thick layer [layers] of soil below the first [more than] 15 centimeters below the surface; and

(2) [(4)] for radium-226 or radium-228 in vegetation, 5 pCi/g, based on dry weight.

[(b) Where combinations of radionuclides are involved, the sum of the ratios between the concentrations present and the limits specified in subsection (a) of this section shall not exceed 1-]

(b) [(e)] Notwithstanding the limits set forth in subsection (a) of this section, each licensee shall make every reasonable effort to maintain any contamination of soil or vegetation as low as is reasonably achievable (ALARA).

(c) [(d)] If contamination caused by the licensee is detected in an unrestricted area, the licensee shall decontaminate any unrestricted area which is contaminated above the limits specified in subsection (a) of this section.

[(e) Notwithstanding the limits set forth in subsection (a) of this section, contamination levels must be maintained in unrestricted areas so that no individual member of the public will receive an effective dose equivalent in excess of 0.1 rem above background (100 mrem/year) in a year.]

[(f) A licensee shall decommission its licensed facilities and land for release for unrestricted use. No licensee shall vacate a facility or land, or release a facility or land for unrestricted use, until the annual total effective dose equivalent to a member of the public resulting from radioactive material remaining from licensed activities (excluding radium and its decay products) does not exceed 0.025 rem/year (25 mrem/year) above background. The concentration for radium in soil shall be equivalent to or below the limits set forth in subsection (a) of this section. Notwithstanding the limits set forth in this subsection, each licensee shall make every reasonable effort to maintain any contamination of soil or vegetation ALARA. The licensee shall conduct all necessary radiation surveys and modeling and shall provide reports and documentation to demonstrate that the requirements for release for unrestricted use have been met. The executive director may require the licensee to provide any other information necessary to demonstrate that the facilities and land are suitable for release for unrestricted use.]

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

STATUTORY AUTHORITY

These repeals are proposed under the Texas Radiation Control Act, Texas Health and Safety Code, §§401.011, 401.051, and 401.412, and Texas Water Code, §5.103, which give the commission the authority to adopt rules necessary to carry out its responsibilities to regulate and license the disposal of radioactive substances.

These repeals implement Health and Safety Code, Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation).

§336.357. *Surface Contamination Limits for Facilities and Equipment.*

§336.366. *Appendix I. Soil and Vegetation Contamination Limits for Selected Radionuclides.*

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 April 13, 1998.

TRD-9805163

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-6087

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Subchapter F. Licensing of Alternative Methods of Disposal of Radioactive Material

30 TAC §§336.501-336.503, 336.512-336.515, 336.517, 336.519

STATUTORY AUTHORITY

These new and amended sections are proposed under the Texas Radiation Control Act (TRCA), Texas Health and Safety Code, §§401.011, 401.051, and 401.412, and Texas Water Code, §5.103, which give the commission the authority to adopt rules necessary to carry out its responsibilities to regulate and license the disposal of radioactive substances.

These new and amended sections implement Health and Safety Code, Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation).

§336.501. *Scope and General Provisions.*

(a) This subchapter establishes the criteria, terms and conditions under which the commission may issue, amend or renew a license for on-site disposal of radioactive material or waste or to decommission an inactive disposal site. This subchapter does not apply to disposal of diffuse NORM waste having concentrations of radium-226 or radium-228 of less than 2,000 pCi/g. [Subject to the

limitations provided in this subchapter, the commission may issue a new license, or amend or renew an existing license, for the on-site disposal of radioactive material or waste.]

(b) (No change.)

(c) Any person who owns, operates, controls, or possesses an inactive disposal site ~~[on which disposed radioactive material or waste is located]~~ and who does not hold a current radioactive material license for the inactive disposal site shall apply for a license to decommission by January 1, 2000 ~~[by January 1, 1999]~~. Any decommissioning performed to fulfill this provision shall be performed by an individual who is qualified and licensed to perform the activities, ensuring that all appropriate radiation protection standards for workers and the public are met, including the maintenance of records.

(1) If the site meets the requirements for unrestricted use of §336.603 of this title, (relating to Radiological Criteria for Unrestricted Use), the owner shall submit to the executive director the information required by §336.603(c) of this title before January 1, 2000. Once the executive director verifies that the criteria have been met, the executive director will certify in writing that the owner is in compliance with the regulations and will not require any further cleanup, unless there is new evidence that the decommissioning standards for unrestricted use were not met and that residual radioactivity remaining at the site could result in significant threat to public health and safety.

(2) If a site is decommissioned for unrestricted use under §336.603 of this title before January 1, 2000, a license is not required. If decommissioning is completed before January 1, 2000, proof of decommissioning must be submitted to the agency before January 1, 2000, or the owner shall submit an application for license by that date. Once the executive director verifies that the criteria have been met, the executive director will certify in writing that the owner is in compliance with the regulations and will not require any further cleanup, unless there is new evidence that the decommissioning standards for unrestricted use were not met and that residual radioactivity remaining at the site could result in significant threat to public health and safety.

(3) If a site does not meet the requirements for unrestricted use and the owner does not decommission before January 1, 2000, or if the owner plans to decommission under §336.607 of this title (relating to Criteria for License Termination under Restricted Conditions) or §336.609 of this title (relating to Alternate Criteria for License Termination), the owner shall apply for a license to decommission by January 1, 2000. The applicant shall provide the information required by this subchapter using a form provided by the agency.

(d) Any person whose possession of disposed radioactive material is authorized by the Texas Department of Health is exempt from the requirements of this subchapter. This subchapter does not apply to persons licensed or subject to licensing under ~~[Subchapter G of Chapter 336 of this title (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities) or]~~ Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste). ~~[This subchapter also does not apply to sites that meet commission requirements for release for unrestricted use in accordance with the rules of this chapter.]~~

(e) (No change.)

§336.502. *Definitions.*

Terms used in this subchapter are defined in §336.2 of this title (relating to Definitions). Additional terms used in this subchapter have the following definitions:

(1) Inactive disposal site - A site or facility that:

(A) contains radioactive material or waste disposed of below the surface, or soils or structures contaminated with radioactive material or waste; and

(B) no longer disposes or will dispose of, or accepts or will accept for the purpose of disposal, additional radioactive material or waste.

(2) Funding plan - a plan, equivalent to the decommissioning funding plan of 10 Code of Federal Regulations §30.35 (relating to Financial assurance and recordkeeping for decommissioning) and §40.36 (relating to Financial assurance and recordkeeping for decommissioning), submitted by the holder of an existing license before the development of a detailed decommissioning plan. The funding plan includes:

(A) an initial cost estimate for decommissioning;

(B) a description of the financial mechanism(s) utilized; and

(C) a certification by the licensee that a signed original of the financial assurance mechanism for decommissioning was submitted to the executive director.

(3) On-site - The same or geographically contiguous property that may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing, as opposed to going along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way that the property owner controls and to which the public does not have access, is also considered on-site property.

§336.503. *Filing of Application.*

(a) (No change.)

(b) An application for a license, or amendment of a license shall be accompanied by the appropriate fee as specified in §336.105 of this title (relating to Schedule of Fees for Subchapter F Licenses). [As provided in §336.514 of this title (relating to Financial Assurance and Recordkeeping for Decommissioning); an application may be required to include a proposed decommissioning funding plan or a certification of financial assurance for decommissioning.]

§336.512. *Technical Requirements for Inactive Disposal Sites.*

(a) Content of license application. An applicant for a license to authorize possession of disposed radioactive material and subsequent decommissioning of [in] an inactive disposal site ~~[which was formerly used]~~ shall submit the following using the application form provided by the agency:

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

(4) the technical qualifications and identity of personnel responsible for radiation safety functions at the site;

(5) (No change.)

(6) information on land ownership and any covenants on land use imposed by recorded title documents; [and]

(7) a decommissioning plan that meets the standards in Subchapter G of this chapter (relating to Decommissioning Standards), including an evaluation of the alternative of [decommission-

ing the site and] disposing of the radioactive material at a licensed disposal facility;[-]

(8) information regarding financial assurance for decommissioning as provided for in §336.514 of this title (relating to Financial Assurance for Decommissioning); and

(9) for license applications other than renewals, a description of how facility design and procedures for operation minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practicable, the generation of radioactive wastes.

(b) Content of application for renewal of license.

(1) An applicant for renewal of a license authorizing possession of disposed radioactive material in an inactive disposal site or to decommission an inactive disposal site [which was formerly used] shall submit information using the application form provided by the agency on:

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

(C) the methods of restricting access to the site; [and]

(D) any changes in or additions to the procedures or information contained in previous applications;[-]

(E) the technical qualifications and identity of personnel responsible for radiation safety functions at the site;

(F) a decommissioning plan that meets the standards in Subchapter G of this chapter, if not previously submitted, including an evaluation of the alternative of disposing of the radioactive material at a licensed disposal facility; and

(G) financial assurance for decommissioning as provided for in §336.514 of this title (relating to Financial Assurance for Decommissioning).

(2) The executive director may request additional information, such as that required by subsection (a) of this section, if this information was not previously provided for the site or is not current.

(c) Performance objectives. The applicant's submittal shall include sufficient information to enable the executive director to assess the potential hazard to public health and safety and to determine whether the disposal site will have a significant impact on the environment. The executive director shall evaluate existing inactive disposal sites on a case-by-case basis and may consider the following general criteria and performance objectives in making the evaluation:

(1) Radiation exposure and release of radioactive materials from a disposal site shall be maintained as low as is reasonably achievable. Reasonable assurance must be provided that the potential dose to an individual on or near the site will be within acceptable limits. The estimated committed effective dose equivalent resulting from a radiological assessment of a site will usually be the determining factor in the granting of authorization for a disposal site. If the projected dose to a member of the public exceeds 25 millirems [a few millirems] per year, the executive director shall [may] consider other factors in determining whether to grant authorization for the site, including, but not limited to, the use of institutional controls to restrict access for a specified period of time.

(2)-(9) (No change.)

§336.513. *Technical Requirements for Active Disposal Sites.*

(a) Content of license application. An applicant for a license to authorize disposal of radioactive material shall submit the following:

(1)-(18) (No change.)

(19) the applicant's justification for the proposed disposal method; [and]

(20) an evaluation of other disposal alternatives, including [such as] disposal of the radioactive material at a licensed disposal facility; and[-]

(21) financial assurance for decommissioning as provided for in §336.514 of this title (relating to Financial Assurance for Decommissioning).

(b) Content of application for renewal of license.

(1) An applicant for renewal of a license authorizing disposal of radioactive material shall submit information on:

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

(F) the results of any radiological monitoring performed at the site;[and]

(G) any changes in or additions to the procedures or information contained in previous applications;[-]

(H) financial assurance for decommissioning as provided for in §336.514 of this title (relating to Financial Assurance for Decommissioning); and

(I) an evaluation of the alternative of disposing of the radioactive material at a licensed disposal facility.

(2) The executive director may request additional information, such as that required by subsection (a) of this section, if that information was not previously provided for the site or is not current.

(c) Performance objectives. The applicant's submittal shall include sufficient information to enable the executive director to assess the potential hazard to public health and safety and to determine whether the disposal site will have a significant impact on the environment. General criteria and performance objectives which the executive director shall apply in the evaluation of a proposed disposal site include the following:

(1) Radiation exposure and release of radioactive materials from a disposal site shall be maintained as low as is reasonably achievable. Reasonable assurance must be provided that the potential dose to an individual on or near the site will be within acceptable limits. The estimated committed effective dose equivalent resulting from a radiological assessment of a site will usually be the determining factor in the granting of authorization for a disposal site. If the projected dose to a member of the public exceeds 25 millirems [a few millirems] per year, the executive director shall [may] consider other factors in determining whether to grant authorization for the site, including, but not limited to, the use of institutional controls to restrict access for a specified period of time.

(2)-(9) (No change.)

§336.514. *Financial Assurance for Decommissioning.*

(a) A financial assurance mechanism or combination of mechanisms in accordance with Subchapter I of this chapter (relating to Financial Assurance) is required for all entities currently licensed or proposed to be licensed. Federal, State or local government licensees may submit a statement of intent containing a cost estimate for decommissioning based upon the appropriate criteria listed below

and indicating that funds for decommissioning will be obtained when necessary.

(b) Applicants for a new license to decommission an inactive disposal site shall submit with the application a signed statement regarding how the applicant will provide financial assurance for decommissioning using one or more of the mechanisms specified in Subchapter I of this chapter. The amount of financial assurance shall be based upon the detailed cost estimate included in the decommissioning plan submitted with the application. The financial assurance for decommissioning shall be provided at least 30 days prior to license issuance and be effective upon license issuance.

(c) Holders of licenses issued before January 1, 1998 shall submit a funding plan before January 1, 1998. Each funding plan must contain:

(1) a cost estimate for decommissioning;

(A) Each holder of a license authorizing the disposal of unsealed radioactive material with a half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities set forth in §336.521, Appendix A, of this title (relating to Radionuclide Quantities for Use in Determining Financial Assurance for Decommissioning) or when a combination of isotopes is involved if R divided by 10^5 is greater than 1 (unity rule), where R is defined as the sum of the ratios of the quantity of each isotope to the applicable value in §336.521, Appendix A of this title, shall submit a certification of financial assurance for decommissioning in an amount at least equal to \$750,000, in accordance with the criteria set forth in this subchapter and Subchapter I of this chapter; or

(B) Each holder of a license authorizing disposal of radioactive material with a half-life greater than 120 days shall provide certification of financial assurance for decommissioning based on the quantity of material as follows:

(i) \$750,000—greater than 10^4 but less than or equal to 10^5 times the applicable quantities in §336.521, Appendix A, of this title, in unsealed form. (For a combination of isotopes, if R , as defined in subsection (c)(1)(A), divided by 10^4 is greater than 1 but R divided by 10^5 is less than or equal to 1.); or

(ii) \$150,000—greater than 10^3 but less than or equal to 10^4 times the applicable quantities in §336.521, Appendix A of this title in unsealed form. (For a combination of isotopes, if R , as defined in subsection (c)(1)(A) of this section, divided by 10^3 is greater than 1 but R divided by 10^4 is less than or equal to 1.).

(C) Notwithstanding the requirements of subparagraph (A) and (B) of this paragraph,

(i) each holder for a license authorizing the disposal of more than 100 millicuries of source material in a readily dispersible form shall submit certification that financial assurance has been provided in the amount of \$750,000.

(ii) each holder for a license authorizing the disposal of quantities of source material greater than 10 millicuries but less than or equal to 100 millicuries in a readily dispersible form shall submit certification that financial assurance has been provided in the amount of \$150,000;

(2) a description of the financial assurance mechanism of assuring funds for decommissioning as specified in Subchapter I of this chapter, including means for adjusting cost estimates and associated funding levels annually over the life of the facility; and

(3) a certification by the licensee that a signed original of the financial assurance mechanism for decommissioning, in

accordance with criteria set forth in this section and Subchapter I of this chapter, has been submitted to the executive director in the amount specified in paragraph (1) of this subsection.

(d) Holders of existing licenses for inactive disposal sites shall, as part of the license renewal process, submit a signed statement adjusting the amount of financial assurance based upon the detailed cost estimate included in the decommissioning plan submitted with the renewal application. The adjusted amount of financial assurance for decommissioning shall be effective upon license renewal.

(e) Holders of licenses for active disposal sites shall submit a signed statement adjusting the amount of financial assurance based upon the detailed cost estimate included in the decommissioning plan submitted no later than the date specified in §336.519(e) of this title (relating to Expiration and Termination of Licenses).

§336.515. *Recordkeeping for Decommissioning.*

Each person licensed under this subchapter shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the commission. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information important to decommissioning consists of:

(1) records of spills or other unusual occurrences involving the spread of contamination in and around the disposal facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas, as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms, and concentrations.

(2) as-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are disposed of and of locations of possible inaccessible contamination (e.g., buried pipes) that may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

(3) except for areas containing only radioactive materials having half-lives of less than 65 days, a list contained in a single document and updated every two years of the following:

(A) all areas designated as restricted areas, as defined in §336.2 of this title (relating to Definitions), and all areas formerly designated as restricted areas under rules in effect before January 1, 1994;

(B) all areas outside of restricted areas that require documentation under paragraph (1) of this subsection;

(C) all areas outside of restricted areas where current and previous wastes have been buried as documented under §336.348 of this title (relating to Records of Waste Disposal); and

(D) all areas outside of restricted areas which contain material such that, if the license expired, the licensee must be required to either decontaminate the area to unrestricted release levels or apply for approval for disposal under §336.332 of this title (relating to Method of Obtaining Approval of Proposed Disposal Procedures).

(4) records of the cost estimate performed for the funding plan or of the amount certified for decommissioning, and records of the financial assurance mechanism used for assuring funds.

§336.517. *Financial Assurance for Control and Maintenance.*

(a) An applicant or licensee required to demonstrate financial assurance for control and maintenance of a site shall maintain financial assurance for control and maintenance upon license issuance and during the decommissioning period. The applicant or licensee shall provide sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site. The financial assurance mechanism(s) for control and maintenance shall comply with Subchapter I of this chapter (relating to Financial Assurance) including increasing annually the financial assurance amount for inflation or whenever modifications to the control and maintenance activities or changes to the amount being demonstrated causes the amounts for control and maintenance to increase.

(b) Prior to license termination, the licensee shall deposit a sum of cash acceptable to the executive director into the Texas Treasury Safekeeping Control and Maintenance account to assume and carry out responsibilities for any necessary surveillance, monitoring, control, maintenance and other care of the decommissioned disposal site on a continual basis during the institutional control period. Upon receipt of the deposit, the executive director shall release the existing financial assurance mechanism(s) for control and maintenance. If a deposit is not made into the Control and Maintenance account, the executive director shall draw on the existing financial assurance mechanism(s) and deposit the cash into the Texas Safekeeping Treasury Control and Maintenance account.

§336.519. Expiration and Termination of Licenses.

(a) Each license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal not less than 30 days before the expiration date stated in the existing license. If an application for renewal in proper form has been filed at least 30 days before to the expiration date stated in the existing license, the existing license shall not expire until the application has been finally determined by the commission. For the purposes of this section, "proper form" shall mean that the application includes the information required by §336.512 of this title (relating to Technical Requirements for Inactive Disposal Sites) or §336.513 of this title (relating to Technical Requirements for Active Disposal Sites). The existing license expires at the end of the day on which the commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

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

(c) Each license continues in effect, beyond the expiration date if necessary, with respect to possession of source material, byproduct material, or other radioactive material until the commission notifies the licensee in writing that the license is terminated. During this time, the licensee shall:

(1) limit actions involving source material, byproduct material, or other radioactive material to those related to decommissioning; and

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

(d) Within 60 days of the occurrence of any of the following, each licensee of an active disposal site shall provide written notification to the executive director:

(1) The license has expired under subsection (a) or (b) of this section; or

(2) The licensee has decided to permanently cease principal activities at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for unrestricted release in accordance with commission requirements; or

(3) No principal activities under the license have been conducted for a period of 24 months; or

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

(e) The licensee of an active disposal site shall either:

(1) within 60 days of the occurrence for which notification is required by subsection (d) of this section, begin decommissioning its site or any separate building or outdoor area that contains residual radioactivity, according to an approved decommissioning plan, so that the building or outdoor area is suitable for release in accordance with commission requirements; or

(2) if no decommissioning plan has been submitted, submit a decommissioning plan to the executive director, including a signed statement adjusting the amount of financial assurance based upon the detailed cost estimate included in the decommissioning plan, within 12 months of the notification required by subsection (d) of this section and request an amendment of the license to incorporate the plan into the license; and

(3) begin decommissioning within 60 days of the approval of that plan by the commission.

(f) The licensee of an inactive disposal site licensed under §336.501(c) of this title (relating to Scope and General Provisions), shall provide notice of and begin decommissioning within 90 days of license renewal. The owner or operator of an unlicensed inactive disposal site must apply for a license to decommission the site and begin decommissioning with 90 days of license approval.

(g) All licensees shall follow a commission-approved closure plan for decontamination, decommissioning, restoration, and reclamation of buildings and the site.

(1) Coincident with the notification required by subsections (d) or (f) of this section, the licensee shall continue to maintain in effect all decommissioning financial assurance until the license is terminated by the commission.

(2) The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established under §336.613(f)(5) of this title (relating to Additional Requirements).

(3) Any licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so on or before January 1, 1998.

(4) Following approval of the decommissioning plan, with the approval of the executive director, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site.

(h) The executive director may grant in writing a request to extend the time periods established in subsections (d), (e) or (f) of this section, or to delay or postpone the decommissioning process, if the executive director determines that this relief is not detrimental to

the public health and safety and is otherwise in the public interest. The request must be submitted in writing no later than 30 days before notification under subsection (d) or (f) of this section. The schedule for decommissioning set forth in subsection (e) or (f) of this section may not commence until the executive director has made a determination on the request.

(i) Licenses, including expired licenses, will be terminated by the commission by written notice to the licensee when the executive director determines that:

(1) Source material, byproduct material, and other radioactive material has been properly disposed;

(2) Reasonable effort has been made to eliminate residual radioactive contamination, if present;

(3) The site is suitable for release.

(A) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with commission requirements; or

(B) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with commission requirements;

(4) The licensee has paid any outstanding fees required by Subchapter B of this chapter (relating to Radioactive Substance Fees) and has resolved any outstanding notice(s) of violation issued to the licensee; and

(5) The licensee has complied with all other applicable decommissioning criteria required by Subchapter G of this chapter (relating to Decommissioning Standards).

(j) A licensee may request that a subsite or a portion of a licensed area be released for unrestricted use before full license termination as long as release of the area of concern will not adversely impact the remaining unaffected areas and will not be recontaminated by ongoing authorized activities. When the licensee is confident that the area of concern will be acceptable to the state for release for unrestricted use, a written request for release for unrestricted use and agency confirmation of close-out work performed must be submitted to the executive director. The request should include a comprehensive report, accompanied by survey and sample results which show contamination is less than the limits specified in §336.603 of this title (relating to Radiological Criteria for Unrestricted Use), and an explanation of how ongoing authorized activities will not adversely affect the area proposed to be released. Upon confirmation by the executive director that the area of concern is indeed releasable for unrestricted use, the licensee may apply for a license amendment, if 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.

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Kevin McCalla

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Texas Natural Resource Conservation Commission

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30 TAC §336.514

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

STATUTORY AUTHORITY

The repeal is proposed under the Texas Radiation Control Act, Texas Health and Safety Code, §§401.011, 401.051, and 401.412, and Texas Water Code, §5.103, which give the commission the authority to adopt rules necessary to carry out its responsibilities to regulate and license the disposal of radioactive substances.

The repeal implements Health and Safety Code, Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation).

§336.514. *Financial Assurance and Recordkeeping for Decommissioning.*

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 G. Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities

30 TAC §§336.601-336.606, 336.613-336.629, 336.636

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

STATUTORY AUTHORITY

These repeals are proposed under the Texas Radiation Control Act, Texas Health and Safety Code, §§401.011, 401.051, and 401.412, and Texas Water Code, §5.103, which give the commission the authority to adopt rules necessary to carry out its responsibilities to regulate and license the disposal of radioactive substances.

These repeals implement Health and Safety Code, Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation).

§336.601. *Scope and General Provisions.*

§336.602. *Definitions.*

§336.603. *Filing of Application.*

§336.604. *General Requirements for Issuance of a License.*

§336.605. *Special Requirements for Issuance of a License.*

§336.606. *Issuance of License.*

- §336.613. *Site and Design Requirements.*
- §336.614. *Groundwater Protection.*
- §336.615. *Secondary Groundwater Protection.*
- §336.616. *Corrective Action Program.*
- §336.617. *Other Considerations for Groundwater Protection.*
- §336.618. *Seepage Control Systems.*
- §336.619. *Tailings or Waste Disposal System.*
- §336.620. *Ore Stockpiling.*
- §336.621. *Disposal Area Cover and Closure.*
- §336.622. *Closure Completion Milestones and Schedule.*
- §336.623. *Monitoring Requirements.*
- §336.624. *Airborne Emission and Discharge Control Requirements.*
- §336.625. *Daily Inspections of Tailings or Waste Retention Systems.*
- §336.626. *Requirement Alternatives.*
- §336.627. *Financial Assurance Requirements.*
- §336.628. *Long-Term Care and Surveillance Requirements.*
- §336.629. *Land Ownership of Tailings or Waste Disposal Sites.*
- §336.636. *Appendix A. Maximum Concentrations for Groundwater Protection.*

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 G. Decommissioning Standards

30 TAC §§336.601, 336.603, 336.605, 336.607, 336.609, 336.611, 336.613

STATUTORY AUTHORITY

These new sections are proposed under the Texas Radiation Control Act (TRCA), Texas Health and Safety Code, §§401.011, 401.051, and 401.412, and Texas Water Code, §5.103, which give the commission the authority to adopt rules necessary to carry out its responsibilities to regulate and license the disposal of radioactive substances.

These new sections implement Health and Safety Code, Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation).

§336.601. Applicability.

(a) The criteria in this subchapter apply to the decommissioning of facilities regulated under Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material) and to the ancillary surface facilities that support radioactive waste disposal activities at facilities licensed under Subchapter H of this chapter (relating to Licensing Requirements for Near-surface Land Disposal of Radioactive Waste).

(b) Licensees who have submitted a decommissioning plan to the commission and have received commission approval of the plan before the effective date of these criteria may decommission according to the regulations in place at the time of filing of the plan or according to these criteria.

(c) After a site has been decommissioned and the license terminated in accordance with the criteria in this subchapter, the commission may require additional cleanup only if, based on new information, it determines that the criteria of this subchapter have not been met and residual radioactivity remaining at the site could result in significant threat to public health and safety.

(d) When calculating the total effective dose equivalent (TEDE) to the average member of the critical group, the licensee shall determine the peak annual TEDE expected within the first 1000 years after decommissioning.

§336.603. Radiological Criteria for Unrestricted Use.

(a) A site will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a total effective dose equivalent (TEDE) to an average member of the critical group that does not exceed 25 mrem (0.25 mSv) per year (excluding radium and its decay products), including that from groundwater sources of drinking water, and the residual radioactivity has been reduced to levels that are as low as reasonably achievable (ALARA). The concentration for radium in soil shall be equivalent to or below the limits set forth in §336.356(a) of this title (relating to Soil and Vegetation Contamination Limits).

(b) Determination of the levels which are ALARA must take into account consideration of any detriments expected to potentially result from decontamination and waste disposal (e.g. deaths from transportation accidents).

(c) The licensee shall conduct all necessary radiation surveys and modeling, and shall provide reports and documentation to demonstrate that the requirements for release for unrestricted use have been met.

§336.605. Surface Contamination Limits for Facilities, Equipment, and Materials.

(a) Before vacating any facility or releasing any facility, equipment, or materials for unrestricted use, each licensee shall ensure that radioactive contamination has been removed to levels as low as is reasonably achievable.

(b) No licensee may vacate a facility or release a facility, equipment, or materials for unrestricted use until radioactive surface contamination levels are below the limits specified in §336.364, Appendix G, of this title (relating to Acceptable Surface Contamination Levels). The licensee shall conduct radiation surveys and provide reports and documentation to demonstrate that the requirements for release have been met. The executive director may also require the licensee to provide other information as may be necessary to demonstrate that the facilities and equipment are suitable for release.

(c) In addition to meeting the surface contamination limits of subsection (b) of this section, porous materials (e.g., concrete), which are to be released for unrestricted use, shall be evaluated to determine whether radioactive materials have penetrated to the interior of the material. If radioactive contamination has penetrated into the material, analysis of the average concentration, in picocuries per gram, shall be made. The material may be released for unrestricted use if the radionuclide concentrations do not exceed the limits specified for soil in §336.356(a) of this title (relating to Soil and Vegetation Contamination Limits) and §336.603 of this title (relating to Radiological Criteria for Unrestricted Use).

§336.607. Criteria for License.

Termination under Restricted Conditions. A site will be considered acceptable for license termination under restricted conditions if all of the following conditions are met:

(1) The licensee can demonstrate that further reductions in residual radioactivity would result in net public or environmental harm or were not being made because the residual levels associated with restricted conditions are as low as reasonably achievable (ALARA). Determination of the levels which are ALARA must take into account consideration of any detriments expected to potentially result from decontamination and waste disposal (e.g. traffic accidents);

(2) The licensee has made provisions for legally enforceable institutional controls that provide reasonable assurance that the total effective dose equivalent (TEDE) from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 25 mrem (0.25mSv) per year;

(3) The licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site. Acceptable financial assurance mechanisms are listed in Subchapter I of this chapter (relating to Financial Assurance);

(4) The licensee has submitted a decommissioning plan to the commission indicating the licensee's intent to decommission and specifying that the licensee intends to decommission by restricting use of the site. The licensee shall document in the decommissioning plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and incorporated, as appropriate, following analysis of that advice.

(A) Licensees proposing to decommission by restricting use of the site shall seek advice from affected parties regarding the following matters concerning the proposed decommissioning.

(i) Whether provisions for institutional controls proposed by the licensee:

(I) will provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 25 mrem (0.25 mSv) TEDE per year;

(II) will be enforceable; and

(III) will not impose undue burdens on the local community or other affected parties.

(ii) Whether the licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume control and maintenance of the site.

(B) In seeking advice on the issues identified in subparagraph (A) of this paragraph, the licensee shall provide for:

(i) participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(ii) an opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(iii) a publicly available summary of the results of all discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues; and

(5) Residual radioactivity at the site has been reduced so that if the institution controls were no longer in effect, there is reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group is ALARA and would not exceed either:

(A) 100 mrem (1 mSv) per year; or

(B) 500 mrem (5 mSv) per year provided the licensee:

(i) demonstrates that further reductions in residual radioactivity necessary to comply with the 100 mrem/y (1 mSv/y) value of subparagraph (A) of this paragraph are not technically achievable, would be prohibitively expensive, or would result in net public or environmental harm;

(ii) makes provisions for durable institutional controls; and

(iii) provides sufficient financial assurance to enable a responsible government entity or independent third party, including a governmental custodian of a site, both to carry out periodic rechecks of the site no less frequently than every 5 years to assure that the criteria of §336.603(a) of this title (relating to Radiological Criteria for Unrestricted Use) are met and to assume and carry out responsibilities for any necessary control and maintenance of those controls. Acceptable financial assurance mechanisms are those in Subchapter I of this chapter.

§336.609. Alternate Criteria for License Termination.

(a) The commission may terminate a license using alternate criteria greater than the dose criterion of §§336.603 of this title (relating to Radiological Criteria for Unrestricted Use) and 336.607(2) and (4)(A)(i)(I) of this title (relating to Criteria for License Termination under Restricted Conditions), if the licensee:

(1) provides assurance that public health and safety would continue to be protected, and that it is unlikely that the dose from all manmade sources combined, other than medical, would be more than the 1 mSv/y (100 mrem/y) limit of §§336.314-315 of this title (relating to Compliance with Dose Limits for Individual Members of the Public and General Requirements for Surveys and Monitoring, respectively), by submitting an analysis of possible sources of exposure;

(2) has employed, to the extent practical, restrictions on site use according to the provisions of §336.607 of this title in minimizing exposures at the site;

(3) reduces doses to ALARA levels, taking into consideration any detriments such as traffic accidents expected to potentially result from decontamination and waste disposal; and

(4) has submitted a decommissioning plan to the commission indicating the licensee's intent to decommission the facility, and specifying that the licensee proposes to decommission by use of alternate criteria. The licensee shall document in the decommissioning plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and addressed, as appropriate, following analysis of that advice. In seeking such advice, the licensee shall provide for:

(A) participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(B) an opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(C) a publicly available summary of the results of all discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues.

(b) The use of alternate criteria to terminate a license requires approval of the commission after consideration of the executive director's recommendations that will address any comments provided by the Environmental Protection Agency and any other public comments submitted under §336.611 of this title (relating to Public Notification and Public Participation).

§336.611. Public Notification and Public Participation.

Upon the receipt of a decommissioning plan from the licensee, or a proposal by the licensee for release of a site under §336.607 of this title (relating to Criteria for License Termination under Restricted Conditions) or 336.609 of this title (relating to Alternate Criteria for License Termination), or whenever the commission deems notice to be in the public interest, the commission shall publish notice in accordance with §39.313 of this title (relating to Public Notification and Public Participation).

§336.613. Additional Requirements.

(a) The requirements of this section apply only to licenses issued under Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material).

(b) A decommissioning plan shall be submitted with the license application required by §336.501(c) of this title (relating to Scope and General Provisions). Holders of licenses of inactive disposal sites shall submit a decommissioning plan with the renewal application. Holders of licenses of active disposal sites shall submit a decommissioning plan no later than the date specified in §336.519(e)(2) of this title (relating to Expiration and Termination of Licenses).

(c) The executive director may approve an alternate schedule for submittal of a decommissioning plan required under §336.519(e)(2) of this title if the executive director determines that:

(1) the alternative schedule is necessary for the effective conduct of decommissioning operations; and

(2) presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(d) A licensee shall request a license amendment to amend a decommissioning plan if revised procedures could increase potential health and safety impacts to workers or to the public. Examples of procedures that require a license amendment include, but are not limited to:

(1) procedures that involve techniques not applied routinely during cleanup or maintenance operations;

(2) workers entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(3) procedures that could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

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

(e) Procedures with potential health and safety impacts, such as those listed in subsection (d) of this section, may not be carried out prior to approval by the commission of the decommissioning plan.

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

(1) a description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(2) a description of planned decommissioning activities;

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

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

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

(6) for decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, a justification for the delay based on the criteria in subsection (h) of this section; and

(7) a description of the quality assurance/quality control program.

(g) The proposed decommissioning plan may be approved by the commission by license amendment if the information demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of workers and the public will be protected.

(h) Except as provided in subsection (j) of this section, the licensee shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

(i) Except as provided in subsection (j) of this section, when decommissioning involves the entire site, the licensee shall request license termination as the final step in decommissioning, which shall be as soon as practicable but no later than 24 months following the initiation of decommissioning.

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

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

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

(3) whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(4) whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

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

(k) As the final steps in decommissioning, the licensee shall:

(1) certify the disposition of all licensed material, including accumulated wastes;

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

(A) report levels of gamma radiation in units of microroentgens (millisieverts) per hour at 1 meter from surfaces, and report levels of radioactivity (removable and fixed), including alpha and beta, in units of disintegrations per minute or microcuries (megabecquerels) per 100 square centimeters for surfaces, microcuries (megabecquerels) per milliliter for water, and picocuries (becquerels) per gram for solids such as soils or concrete; and

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

(3) submit a request for license termination, which includes, but is not limited to, the information required by paragraphs (1) and (2) of this subsection.

(l) The executive director may require the licensee to provide any other information necessary to demonstrate that the facilities and land are suitable for release.

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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Director, Legal Division

Texas Natural Resource Conservation Commission

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Subchapter H. Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste

30 TAC §336.701, §336.702

STATUTORY AUTHORITY

These amendments are proposed under the Texas Radiation Control Act (TRCA), Texas Health and Safety Code §§401.011, 401.051, and 401.412, and Texas Water Code §5.103, which give the commission the authority to adopt rules necessary to carry out its responsibilities to regulate and license the disposal of radioactive substances.

The amendments implement Health and Safety Code Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation).

§336.701. *Scope and General Provisions.*

(a)-(c) (No change.)

(d) In addition to the requirements of this subchapter, all licensees, unless otherwise specified, are subject to the requirements of Subchapters A-E and G of this chapter (relating to General Provisions; Radioactive Substance Fees; Additional Application, Operation, and License Requirements; Standards for Protection

Against Radiation; [and] Notices, Instructions, and Reports to Workers and Inspections; and Decommissioning Standards) .

(e) Requirements for disposal of radioactive waste by an individual waste generator are set forth in Subchapter D of this chapter and Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), and this disposal is not subject to licensing under this subchapter. [Requirements for disposal of byproduct material as defined in §336.2, subparagraph (B) of this title, are set forth in Subchapter G of Chapter 336 of this title (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities), and this disposal is not subject to licensing under this subchapter, except as provided in subsection (e) of this section.]

§336.702. *Definitions.*

Terms used in this subchapter are defined in §336.2 of this title (relating to Definitions). Additional terms used in this subchapter have the following definitions:

(1) **Active maintenance** - Any significant remedial activity needed during the period of institutional control to maintain a reasonable assurance that the performance objectives in §336.724 of this title (relating to Protection of the General Population from Releases of Radioactivity) and §336.725 of this title (relating to Protection of Individuals from Inadvertent Intrusion) are met. Active maintenance includes ongoing activities such as the pumping and treatment of water from a disposal unit or one-time measures such as replacement of a disposal unit cover. Active maintenance does not include custodial activities such as repair of fencing, repair or replacement of monitoring equipment, revegetation, minor additions to soil cover, minor repair of disposal unit covers, and general disposal site upkeep such as mowing grass.

(2) **Buffer zone** - A portion of the disposal site that is controlled by the licensee and that lies under the disposal units and between the disposal units and the boundary of the site.

(3) **Chelating agent** - A chemical or complex which causes an ion, usually a metal, to be joined in the same molecule by relatively stable bonding, e.g., amine polycarboxylic acids (e.g., EDTA, DTPA), hydroxycarboxylic acids, and polycarboxylic acids (e.g., citric acid, carboic acid, and gluconic acid).

(4) **Commencement of major construction** - Any clearing of land, excavation, or other substantial action that would adversely affect the environment of a land disposal facility. The term does not mean disposal site exploration, necessary roads for disposal site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the disposal site or the protection of environmental values.

(5) **Custodial agency** - A government agency designated to act on behalf of the government owner of the disposal site.

(6) **Disposal** - The isolation of radioactive waste from the biosphere inhabited by man and containing his food chains by emplacement in a land disposal facility.

(7) **Disposal site** - That portion of a land disposal facility which is used for disposal of waste. It consists of disposal units and a buffer zone.

(8) **Disposal unit** - A discrete portion of the disposal site into which waste is placed for disposal. For near-surface disposal, the disposal unit is usually a trench.

(9) Engineered barrier - A man-made structure or device that is intended to improve the land disposal facility's ability to meet the performance objectives in this subchapter.

(10) Explosive material - Any chemical compound, mixture, or device which produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

(11) Government agency - Any executive department, commission, independent establishment, or corporation, wholly or partly owned by the United States of America or the State of Texas and which is an instrumentality of the United States or the State of Texas; or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the government.

(12) Hazardous wastes - Those wastes designated as hazardous by United States Environmental Protection Agency rules in 40 CFR Part 261 as amended through July 1, 1996 (61 FedReg 34278) (relating to Identification and Listing of Hazardous Waste).

(13) Hydrogeologic unit - Any soil or rock unit or zone which by virtue of its porosity or permeability, or lack thereof, has a distinct influence on the storage or movement of groundwater.

(14) Inadvertent intruder - A person who might occupy the disposal site after closure and engage in normal activities, such as agriculture, dwelling construction, or other pursuits in which the person might be unknowingly exposed to radiation from the waste.

(15) Intruder barrier - A sufficient depth of cover over the waste that inhibits contact with waste and helps to ensure that radiation exposures to an inadvertent intruder meet the performance objectives set forth in this subchapter, or engineered structures that provide equivalent protection to the inadvertent intruder.

(16) Monitoring - Observing and making measurements to provide data to evaluate the performance and characteristics of the disposal site.

(17) Pyrophoric material -

(A) Any liquid that ignites spontaneously in dry or moist air at or below 130 degrees Fahrenheit (54.5 degrees Celsius); or

(B) Any solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited readily and when ignited burns so vigorously and persistently as to create a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

(18) Reconnaissance-level information - Any information or analysis that can be retrieved or generated without the performance of new comprehensive site-specific investigations. Reconnaissance-level information includes but is not limited to relevant published scientific literature; drilling records required by the commission or other state agencies, such as the Railroad Commission of Texas and the Texas Natural Resources Information System; and reports of governmental agencies.

(19) Site closure and stabilization - Those actions that are taken upon completion of operations that prepare the disposal site for custodial care and that assure that the disposal site remain stable and not need ongoing active maintenance.

(20) Stability - Structural stability.

(21) Surveillance - Observation of the disposal site for purposes of visual detection of need for maintenance, custodial care, evidence of intrusion, and compliance with other license and regulatory requirements.

(22) Waste - Radioactive waste, or low-level radioactive waste, as defined in §336.2 of this title (relating to Definitions) which is acceptable for disposal in a land disposal facility. Notwithstanding the definitions in §336.2 of this title, the term "waste" as used in this subchapter includes transuranics in concentrations less than 10 nanocuries per gram, as provided in §336.701(b)(3) of this title (relating to Scope and General Provisions), and byproduct material which meets the limitations of §336.701(c) 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.

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Subchapter I. Financial Assurance

30 TAC §§336.802-336.807

STATUTORY AUTHORITY

These amendments are proposed under the Texas Radiation Control Act (TRCA), Texas Health and Safety Code, §§401.011, 401.051, and 401.412, and Texas Water Code, §5.103, which give the commission the authority to adopt rules necessary to carry out its responsibilities to regulate and license the disposal of radioactive substances.

These amendments implement Health and Safety Code, Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation).

§336.802. Definitions.

Terms used in this subchapter are defined in §§336.2, 336.502, [336.602,] and 336.702 of this title (relating to Definitions), except where terms used in this subchapter have the following definitions:

(1) Annual review - Conducted on the anniversary date of the license.

(2) Assets - All existing and all probable future economic benefits obtained or controlled by a particular entity.

(3) Closure - Any one or combination of the following: closure, dismantlement, decontamination, decommissioning, reclamation, disposal, restoration, stabilization, monitoring, or post-closure, excluding long-term care.

(4) Current assets - Cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(5) Current cost estimate - The most recent estimates prepared in accordance with this chapter and approved by the executive director for the purpose of demonstrating financial assurance for closure and, if applicable, long-term care.

(6) Current liabilities - Obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(7) Independently audited - An audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(8) Liabilities - Probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(9) Long-term care - Shall mean the same [as long-term care and surveillance as used in Subchapter G of this chapter (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities) and the same] as institutional control as used in Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste).

(10) Net working capital - Current assets minus current liabilities.

(11) Net worth - Total assets minus total liabilities and is equivalent to owner's equity.

(12) Parent corporation - A corporation which directly owns at least 50% of the voting stock of the corporation which is the licensee; the latter corporation is deemed a "subsidiary" of the parent corporation.

(13) Tangible net worth - The tangible assets that remain after deducting liabilities; such assets would not include intangibles, such as goodwill and rights to patents or royalties. Requirements.

§336.803. *Financial Assurance.*

(a) This subchapter applies to licensees with closure and, if applicable, long-term care requirements. The licensee must choose from one or more of the mechanisms as specified in §336.804 of this title (relating to Financial Assurance Mechanisms). The mechanisms available to licensees under Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material) include cash deposit, certificate of deposit, deposit of government securities, trust fund, surety bond, letter of credit, insurance, financial test and corporate guarantee, or external sinking fund. [The mechanisms available to licensees under Subchapter G of Chapter 336 of this title (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities) include cash deposit, certificate of deposit, deposit of government securities, trust fund, surety bond, letter of credit, financial test and corporate guarantee, or external sinking fund.] The mechanisms available to licensees under Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste) include cash deposit, certificate of deposit, deposit of government securities, trust fund, surety bond, letter of credit, or external sinking fund.

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

(4) The current cost estimate is subject to annual review by the executive director in accordance with [§336.627 of this title (relating to Financial Assurance Requirements) and] §336.736 of this title (relating to Funding for Disposal Site Closure and Stabilization). Whenever the required financial assurance amount increases to an amount greater than the amount being provided in the financial assurance mechanism, the licensee must either cause the amount of the mechanism to be increased or obtain additional financial assurance to cover the increase. The licensee shall submit evidence of such increase to the executive director.

(5)-(7) (No change.)

(8) For Subchapter [Subchapters G and] H of this chapter, the executive director may accept financial assurance established to meet requirements of other federal or state agencies and/or local governing bodies for closure, and if applicable long-term care, provided such mechanism complies with the requirements of this subchapter and the full amount of financial assurance required for the specific license is clearly identified and committed for use for the purposes of Subchapter [Subchapters G and] H of this chapter.

(9)-(13) (No change.)

(b) A licensee [under Subchapters G or H of Chapter 336 of this title] must adjust the current cost estimate for inflation at least 60 days before the anniversary date of the license. The adjustment must be made as specified in paragraphs (1) and (2) of this subsection, using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the United States Department of Commerce in its *Survey of Current Business*. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

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

[(e) A licensee under Subchapter G of Chapter 336 of this title may not use self-insurance, or any arrangement which essentially constitutes self insurance (e.g., a contract with a state or federal agency) will not satisfy the financial assurance requirement as specified in this subchapter since this provides no additional assurance other than that which already exists through license requirements.]

(c) [(d)] On a case-by-case basis, the executive director may approve other alternative financial assurance mechanisms.

§336.804. *Financial Assurance Mechanisms.*

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

[(g) Financial test and corporate guarantee for Subchapter G of Chapter 336 of this title (relating to Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities).]

[(1) A parent company of a licensee under Subchapter G of Chapter 336 of this title may satisfy the requirements of financial assurance by demonstrating that it passes a financial test as specified in this subsection, in addition to the requirements specified in §336.803 of this title. To pass the test the parent company must meet the criteria of either paragraph (2) or (3) of this subsection.]

[(2) The parent company must have:]

[(A) two of the following three ratios:]

[(i) a ratio of total liabilities to net worth less than 2.0;]

[(ii) a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and]

[(iii) a ratio of current assets to current liabilities greater than 1.5; and]

[(B) net working capital and tangible net worth each at least six times the current cost estimate; and]

[(C) tangible net worth of at least \$20 million; and]

[(D) assets located in the United States amounting to at least 90% of total assets or at least six times the current cost estimates.]

[(3) The parent company must have:]

[(A) a current rating for its most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and]

[(B) tangible net worth at least six times the sum of the current cost estimates; and]

[(C) tangible net worth of at least \$20 million; and]

[(D) assets located in the United States amounting to at least 90% of total assets or at least six times the current cost estimates.]

[(4) To demonstrate that it meets the test, the parent company must submit the following items to the executive director:]

[(A) a letter signed by the parent company's chief financial officer and worded identical to the wording specified in §336.806(h) of this title; and]

[(B) a copy of the independent certified public accountant's report on examination of its financial statements for the latest completed fiscal year; and]

[(C) a special report from its independent certified public accountant stating that:]

[(i) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and]

[(ii) In connection with that procedure, he found such amounts to be in agreement.]

[(5) After the initial submission of items specified in paragraph (4) of this subsection, the licensee or parent company must send updated information to the executive director within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in paragraph (4) of this subsection.]

[(6) If the parent company no longer meets the requirements of paragraph (2) or (3) of this subsection, he must send notice to the executive director of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the parent company no longer meets the requirements. The licensee shall provide the alternate financial assurance within 120 days after the end of such fiscal year.]

[(7) The executive director may, based on a reasonable belief that the parent company may no longer meet the requirements of paragraph (2) or (3) of this subsection, require reports of financial condition at any time from the parent company in addition to those specified in paragraph (4) of this subsection. If the executive director finds, on the basis of such reports or other information, that the parent company no longer meets the requirements of paragraph (2) or (3) of this subsection, the licensee must provide alternate financial assurance as specified in this subchapter within 30 days after notification of such a finding.]

[(8) The executive director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the parent company's financial statements. An adverse opinion or disclaimer of opinion will be cause for disallowance. The executive director will evaluate other qualifications on an individual basis. The

licensee shall provide alternate financial assurance as specified in this subchapter within 30 days after notification of the disallowance.]

[(9) The licensee must obtain a written guarantee, hereafter referred to as "corporate guarantee," from its parent company, hereafter referred to as "guarantor." The guarantor must meet the requirements in paragraphs (1)-(11) of this subsection and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in §336.806(i) of this title. The corporate guarantee must accompany the items sent to the executive director as specified in paragraph (4) of this subsection. The terms of the corporate guarantee must provide that:]

[(A) If the licensee fails to perform final closure of the facility or site covered by the corporate guarantee in accordance with the license, the guarantor will do so or establish a trust fund as specified in subsection (a) of this section in the name of the licensee.]

[(B) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and to the executive director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the executive director, as evidenced by the return receipts.]

[(C) If the licensee fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the executive director within 90 days after receipt by both the licensee and the executive director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the licensee.]

[(10) Two officers of the licensee and two officers of the guarantor who are authorized to bind the respective entity should sign the corporate guarantee. A copy of such authorization for each persons signing should be attached to the corporate guarantee. The corporate seal should be affixed.]

[(11) The guarantor should certify and demonstrate that it has full authority under the laws of the state of its incorporation, its articles of incorporation and bylaws to enter into this corporate guarantee; and, that the guarantor has full approval from its board of directors to enter into this guarantee.]

(g) [(h)] External sinking fund.

(1) The licensee may satisfy the requirements of financial assurance by establishing an external sinking fund.

(2) An external sinking fund is an account segregated from the licensee's assets and outside the licensee's administrative control.

(3) An external sinking fund, such as a trust, is combined with a financial assurance mechanism as specified in subsections (b)-(e) of this section.

(4) The external sinking fund is established and maintained by setting aside funds periodically. Deposits are made at least annually.

(5) The value of the external sinking fund and the combined financial assurance mechanism, is equal to the current cost estimate.

(6) As the value of the sinking fund increases, the value of the combined financial assurance mechanism decreases. When the external sinking fund is equal to the current cost estimate, the

combined financial assurance mechanism will no longer be required to be maintained.

§336.805. Long-Term Care Requirements.

The long-term care requirements of this chapter shall apply to the [those] licensees [as] specified under Subchapter [Subchapters G and] H of this chapter (relating to [Licensing Requirements for Source Material (Uranium or Thorium) Recovery and Processing Facilities, and] Licensing for Near-Surface Land Disposal of Radioactive Waste) whose ownership of the site is subject to being transferred to the state or federal government.

§336.806. Wording of Financial Assurance Mechanisms.

(a)-(g) (No change.)

[(h) A letter from the chief financial officer for the parent company, as specified in §336.804(g) of this title, must be worded as specified in §336.807(h), Appendix A of this title, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.]

[(i) A corporate guarantee, as specified in §336.804(g) of this title, must be worded as specified in §336.807(i), Appendix A of this title, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.]

§336.807. Appendix A. Wording of Financial Assurance Instruments.

(a)-(g) (No change.)

[(h) Letter from chief financial officer.]
[Figure: 30 TAC 336.807(h)]

[(i) Corporate guarantee.]
[Figure: 30 TAC 336.807(i)]

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 April 13, 1998.

TRD-9805157

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 24, 1998

For further information, please call: (512) 239-6087

◆ ◆ ◆
TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 19. Breath Alcohol Testing Regulations

Subchapter A. Breath Alcohol Testing Regulations

37 TAC §§19.1-19.5, 19.7

The Texas Department of Public Safety proposes amendments to §§19.1 - 19.5, 19.7, concerning breath alcohol testing regulations. Amendments to these sections include the renumbering of paragraphs and subsections in order to delete and add language and further alphabetize the sections relating to the explanation of terms and actions. The amendments are necessary due to technological advances in instrumentation software

and hardware. The amendments also bring the regulations into compliance with statutory changes that were effected during the 74th Legislature, 1995, which moved the Driving While Intoxicated (DWI) laws from Texas Civil Statutes to the Texas Transportation Code and recodified these laws.

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 no fiscal implications for state or local government as a result of enforcing or administering the rule.

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 clarification in the state courts as to the interpretation of these regulations concerning contested cases of driving while intoxicated, other statutory related cases, and compliance with legislative changes. The anticipated cost to small and large businesses who are required to comply with the rules as proposed will be the \$500 nonrefundable processing fee required to be submitted along with the request for approval of the breath test instrument, as well as instrument mailing and shipping cost(s). There are no anticipated economic costs to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Duncan R. Fox, Senior Assistant General Counsel, 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, §724.003 which authorizes the department and the State Office of Administrative Hearings to adopt rules to administer this chapter; and Texas Transportation Code, §724.016.

Texas Transportation Code, §724.003 and §724.016 are affected by this proposal.

§19.1 Instrument Certification.

(a) All breath testing instruments to be used for evidential purposes must have the approval of and/or be certified by brand and/or model by the office of the Scientific Director, Alcohol Testing Program, Texas Department of Public Safety (hereinafter referred to as the scientific director).

(1) (No Change.)

(2) If application is made for approval or certification of an instrument by brand and/or model not on the approved list, the scientific director shall examine and evaluate the instrument to determine if it meets the criteria for approval or certification. A manufacturer or designated manufacturer's representative requesting approval of an instrument must submit a production model of the instrument, along with a written request for approval. It shall be the responsibility of the manufacturer or the designated manufacturer's representative to incur costs of mailing or shipping of the instrument to and from the department. It shall also be the responsibility of the manufacturer or the designated manufacturer's representative to submit a certified check or money order in the amount of \$500 payable to the Texas Department of Public Safety (this is an administrative approval processing fee and is nonrefundable).

(b) In order to be certified each brand and/or model of breath testing instrument must meet the following criteria:

[(1) The quantity of breath analyzed for its alcohol content shall be established only by direct volumetric measurement, by collection and analysis of a fixed breath volume, or any method approved by the scientific director.]

(1) ~~[(2)]~~ Breath specimens collected for analysis shall be essentially alveolar in composition.

(2) ~~[(3)]~~ The instrument shall analyze a reference sample, such as headspace gas from a mixture of water and a known weight of alcohol ~~[held]~~ at a ~~known~~~~[constant]~~ temperature, the result of which must agree with the reference sample predicted value within plus or minus 0.01g/210L or such limits as set by the scientific director.

(3) ~~[(4)]~~ The specificity of the procedure shall be adequate and appropriate for the analyses of breath specimens for the determination of alcohol concentration for law enforcement.

(4) ~~[(5)]~~ Any other tests deemed necessary by the scientific director to correctly and adequately evaluate the instrument to give correct results in routine breath alcohol testing and be practical and reliable for traffic law enforcement purposes.

(c) Upon proof of compliance with subsection (b) of this section an instrument will be certified by brand and/or model and placed on the list of certified instruments.

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

(d) The technical supervisor, as the field agent of the scientific director, shall determine if the individual instrument by serial number is the same brand and/or model that is shown on the scientific director's approved list and meets the criteria for certification as stated in subsection ~~(b)(2)~~~~[(b) (3)]~~ of this section and when required, shall provide direct testimony or written affidavit of this information in accordance with ~~§19.7(y)(7)~~~~[\$19.7(x)(7)]~~ of this title (relating to Explanation of Terms and Actions).

(e) After approval and/or certification if it is determined by the scientific director, or a designated representative or technical supervisor, that a specific instrument is unreliable and unserviceable, the specific instrument will be removed from service and certification and/or approval may be withdrawn.

§19.2 Approval of Reference Sample Devices.

(a) All reference sample devices as defined in ~~§19.7(o)~~~~[\$19.7(e)]~~ of this title (relating to Explanation of Terms and Actions) used in conjunction with evidential breath alcohol testing must be approved by the scientific director.

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

(b) (No Change.)

(c) (No Change.)

(d) The technical supervisor, as the field agent of the scientific director, shall determine if the individual reference sample device meets the requirements of subsection (b) of this section and when required, shall provide direct testimony or written affidavit in accordance with ~~§19.7(y)(7)~~~~[\$19.7(x)(7)]~~ of this title (relating to Explanation of Terms and Actions).

(e) (No Change.)

§19.3 Certification of Techniques, Methods, and Programs.

(a)-(b) (No Change.)

(c) All breath alcohol testing techniques, in order to be approved, shall meet, but not be limited to, the following:

(1) a period during which ~~an~~~~[the]~~ operator is required to remain in the presence of the subject. An operator shall remain in the presence of the subject at least 15 minutes before the test and should exercise reasonable care to ensure that the subject does not place any substances in the mouth. Direct observation is no longer necessary to ensure the validity or accuracy of the test result;

(2)-(3) (No Change.)

(4) the analysis of a reference sample, prepared by the technical supervisor or a designee of the scientific director, such as headspace gas from a mixture of water and a known weight of alcohol at ~~known~~~~[constant]~~ temperature, the results of which must agree with the reference sample predicted value within plus or minus 0.01g/210L, or such limits as set by the scientific director. This reference analysis shall be performed in conjunction with subject analyses;

(5) all analytical results shall be expressed in grams of alcohol per 210 liters of breath ~~(g/210L)~~~~[(gms/210L)];~~

(6)-(7) (No Change.)

(8) designation that the instrumentation will be used only:

(A) for testing subjects that are suspected of violating any statute or rule that defines intoxication in terms of alcohol concentration; and ~~and~~ ~~;~~

~~[(i) driving while intoxicated;~~

~~[(ii) involuntary manslaughter;~~

~~[(iii) boating while intoxicated;~~

~~[(iv) a violation of Vernon's Civil Statutes, Article 6687b-2 (Texas Commercial Driver's License Act);~~

~~[(v) a violation of a rule or regulation adopted under the authority of Vernon's Civil Statutes, Article 6701d, Section 139; or~~

~~[(vi) any other statute or rule that defines intoxication in terms of alcohol concentration; and]~~

(B) (No Change.)

(d)-(f) (No Change.)

(g) Certification of a breath alcohol testing program may be denied or withdrawn by the scientific director if, based on information obtained by the scientific director, a designated representative of the scientific director, or a technical supervisor, the certified agency or laboratory fails to meet all criteria stated in ~~[subsections (a)-(e)]~~ of this section.

(h) Technical supervisors, when required, shall provide expert testimony verifying the certification of techniques, methods, and programs under their supervision in accordance with ~~§19.7(y)(7)~~~~[\$19.7(x)(7)]~~ of this title (relating to Explanation of Terms and Actions).

~~[(i) Subsection (e)(1) of this section requires an operator to remain in the presence of the subject. An operator shall remain in the presence of the subject at least 15 minutes before the test and should exercise reasonable care to ensure that the subject does not place any substances in the mouth. Direct observation is no longer necessary to ensure the validity or accuracy of the test result.]~~

§19.4 Operator Certification.

(a) Initial certification.

(1) In order to apply for certification as an operator of a breath alcohol testing instrument, an applicant must successfully complete a course of instruction approved by the scientific director which must include as a minimum the following:

(A)-(C) (No Change.)

(D) three hours of instruction on supplemental information ~~;~~ which is to include nomenclature appropriate ~~[in]~~ to the field of breath alcohol testing;

(E) 10 hours of laboratory participation using appropriate equipment. Laboratory practice will include the analysis of reference alcohol samples, as stated in §19.3(c)(4) of this title (relating to Certification of Techniques, Methods [;] and Programs), as well as the analysis of breath samples from actual drinking subjects and completion of all required records and reports needed for documentation;

(F)-(G) (No Change.)

(2) Prior to initial certification as an operator of a breath alcohol testing instrument, an applicant must satisfactorily complete examinations, to be prepared and given by the scientific director or a designated representative, which shall include the following:

(A) (No Change.)

(B) a practical examination that shall encompass actual operation of the instrument and reference sample device on which the operator is to be certified. The examination will consist of analyzing[unknown] reference samples and obtaining results on all samples within limits as set by the scientific director, plus proper completion of all required records and/or reports. If the correct value is not obtained within the prescribed limits on all of the samples and/or there is an error on any of the required records and/or reports, then the operator will be given a second set of test samples. If the correct value is not obtained on all of the second test samples within the prescribed limits and/or there is an error on any of the required records or reports the applicant has failed the examination;

(C) (No Change.)

(3) Prior to certification an applicant must establish proof of participation in a breath testing program that meets the requirements set forth in [øf] §19.3 of this title (relating to Certification of Techniques, Methods, and Programs) and has been approved by the scientific director.

(4) Persons who have been convicted of a felony, theft, or a crime of moral turpitude shall not be eligible to become a certified operator.

(5) [(4)] Upon successful completion of the requirements for initial certification, the scientific director will issue the individual an operator's certificate valid for a period of time designated by the scientific director or until the next examination for renewal unless inactivated, suspended, or revoked.

(b) Renewal of current certification. The operator is required to renew certification prior to its expiration date. The minimum requirement for renewal of operator certification will be:

(1) An annual[a] demonstration by the operator of competence to perform satisfactory reference analyses as stated in §19.3(c)(4) of this title (relating to Certification of Techniques, Methods, and Programs). The practical examination as stated in subsection (a)(2)(B) of this section will be conducted under the supervision of a technical supervisor. The operator will be evaluated on the basis of ability to:

(A)-(C) (No Change.)

(2) the satisfactory biennial completion of a course of instruction at least four hours in duration, the contents of which should include, but not be limited to, topics such as:

(A)-(E) (No Change.)

(3) [The] Renewal of certification [the certificate] will be denied and [the operator's] current certification will be inactivated in accordance with subsection (d) of this section when the operator:

(A)-(B) (No Change.)

(C) fails the practical examination[laboratory examination as stated in subsection (a)(2)(B) of this section]; or

(D) (No Change.)

(4)-(5) (No Change.)

(c) Proficiency requirements.

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

(3) Failure to pass a proficiency test as defined in §19.7(1)[~~§19.7(m)~~] of this title (relating to Explanation of Terms and Actions) will result in the operator's certification being suspended for 30 days.

(d) Certification inactivation, suspension[;]and revocation.

(1) Inactivation of certification will be utilized for [in conjunction with] administrative program control pursuant to §19.7(g)[~~§19.7(h)~~] of this title (relating to Explanation of Terms and Actions).

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

(e) Recertification.

(1) Certification that has been inactivated, suspended, or revoked must be regained before evidential analyses can be administered. It will be the responsibility of the inactivated, suspended, or revoked operator to notify the scientific director in writing of such intent. This notification shall be submitted in close proximity to the completion of any mandatory waiting period imposed under certification cancellation. Recertification shall take place pursuant to the following:

(A) Recertification after voluntary inactivation [~~or for nonproficiency~~] (and the period of inactivation is less than six months) will be pursuant to subsection (a)(2)(B) of this section[~~or §19.7(m) of this title (relating to Explanation of Terms and Actions)]~~.

(B)-(D) (No Change.)

(2) (No Change.)

(f) (No Change.)

(g) Verification. The technical supervisor, when required, shall provide testimony in accordance with§19.7(y)(7)[~~§19.7(x)(7)~~] of this title (relating to Explanation of Terms and Actions) verifying all aspects of certification of operators within an assigned area.

§19.5 Technical Supervisor Certification.

(a) The minimum qualifications for certification as a technical supervisor are:

(1) a baccalaureate degree from an accredited college or university with a major in chemistry, or as an alternative, a major in another scientific field with sufficient semester hours in chemistry or other qualifications as determined by the scientific director. (For the purposes of these regulations, sufficient hours in chemistry shall be defined as successful completion of the equivalent of a minimum of 18 semester hours of chemistry , no more than 8 of which may be freshman level.);

(2)-(5) (No Change.)

(6) Persons who have been convicted of a felony, theft, or a crime of moral turpitude shall not be eligible to become a certified technical supervisor.

(b)-(c) (No Change.)

§19.7 Explanation of Terms and Actions.

(a)-(b) (No Change.)

(c) Certification.

(1) Certification refers to meeting and maintaining the requirements set forth in these regulations. Under the provisions of these regulations, certification is granted to:

(A)-(D) (No Change.)

(E) courses of instruction~~training~~.

(2) (No Change.)

(3) Certificates are issued to operators, technical supervisors, breath alcohol test instruments, courses of instructionand breath alcohol test programs. Certificates are not issued for ~~[breath alcohol test instruments,] reference sample devices[; or courses of instruction]~~.

(d) (No Change.)

~~[(e) Certified operator. Certified operator refers to an individual who has successfully completed the requirements stated in these regulations and has received certification from the scientific director to operate a specific instrument(s). Operator certification is contingent upon compliance with all provisions stated in §19.4 of this title (relating to Operator Certification).]~~

~~(e) [(f)] Certified course of instruction. Refers to any school, college, agency, institution, or laboratory which meets the requirements stated in §19.6 of this title (relating to Certification of Courses of Instructions) for certification of courses of training. Operator schools will be certified for instruction on specific instrument(s). Applications for school certification must be approved by the scientific director prior to the school's commencement. Certification of operators successfully completing a certified school can only be made by the office of the scientific director through the administration of appropriate examinations. The scientific director has the authority to limit enrollment of any school or deny individual enrollment if, in the opinion of the scientific director, such enrollment would not be in the best interest of the scientific integrity of the breath alcohol test program; for example, if enrollment in a certified operator school would produce more operators than could be supervised by the number of available technical supervisors.~~

~~(f) Certified operator. Certified operator refers to an individual who has successfully completed the requirements stated in these regulations and has received certification from the scientific director to operate a specific instrument(s). Operator certification is contingent upon compliance with all provisions stated in §19.4 of this title (relating to Operator Certification).~~

~~[(g) Expendable supplies. Expendable supplies are those items that are used or consumed in the process of performing an analysis on the instrumentation and cannot be used again. Expendable supplies are supplies such as mouthpieces, test records, etc., that are used one time only in performing breath alcohol analyses.]~~

~~(g) [(h)] Inactivation.~~

(1) Inactivation refers to the voluntary or temporary discontinuance of certification. Unless specifically stated otherwise, this loss of certification will be an administrative program control as opposed to suspension or revocation for violation of these regulations or for unreliability or incompetence. Inactivation may be initiated by anyone having authority to suspend or revoke, by the certified operator in case of voluntary surrender of certification, or by the technical supervisor in case of voluntary surrender of technical supervisor

certification. In questionable cases, the decision to accept inactivation or invoke suspension or revocation will be determined by the scientific director. Recertification of an inactivated certificate will require a written request from the applicant to the scientific director and successful completion of the requirements outlined in §19.4(e) of this title (relating to Operator Certification) for recertification and/or other requirements determined by the scientific director. Inactivation will be used in, but not limited to, the following situations:

(A) an operator or technical supervisor transfers to a position where certification as a breath test operator or technical supervisor is no longer needed;

(B) an operator temporarily becomes physically incapable to perform tests for either medical or administrative reasons;

(C) an operator fails to renew current certification and reverts to an inactive status;

(D) an operator terminates employment under which certification was acquired and new employment does not require certification as an operator, or the new location of the operator cannot be ascertained; or

(E) a technical supervisor resigns from an approved or certified program, or is no longer supervising a certified program.

(2) Inactivation will not be considered by the office of the scientific director as a disciplinary action. It is for administrative program control to safeguard the scientific integrity of the breath alcohol test program.

~~(h) [(i)] Instruments. Instruments are defined as the device(s) which measure or quantitate the breath alcohol concentration pursuant to §19.1 of this title (relating to Instrument Certification). Certification of instruments is only in conjunction with breath alcohol analysis for evidential purposes as stated in Texas Transportation Code, §724 [Civil Statutes, Article 67011-5]. Approval of breath alcohol test instruments will be made by brand and/or model by the scientific director.~~

~~(i) [(j)] Office of the scientific director. Refers to the scientific director or his staff.~~

~~(j) [(k)] Practice test. Practice test refers to a properly conducted reference analysis by the operator on a certified breath alcohol test instrument using an approved reference sample device. Analyses must be conducted in accordance with provisions stated in §19.3(c)(4) of this title (relating to Certification of Techniques, Methods, and Programs).~~

~~(k) [(l)] Predicted value. The predicted value refers to the known value of the reference sample. It is the result, within plus or minus 0.01 gms/210 Liters [within tolerance], which should be obtained in analyzing the reference sample.~~

~~(l) [(m)] Proficiency test. A test administered by, and in the presence of, a technical supervisor to establish and/or ascertain the competency of an operator to obtain valid results on breath testing instrumentation.~~

~~(m) [(n)] Public information and demonstration. Public information and demonstration refers to public demonstrations of certified evidential breath testing equipment. Certified evidential instruments should not ordinarily be used for public information programs and/or demonstrations. To utilize the equipment in this manner could violate the scientific integrity and validity of the analytical result in evidential subject analyses. When necessary, public information programs and demonstrations of certified equipment should only be performed by a certified technical supervisor ~~on noncertified, nonevidential equip-~~~~

ment and then only under the supervision of a technically qualified and/or certified individual].

(n) Recertification. Recertification refers to the renewal of lost certification; for example, certification loss by inactivation, suspension, or revocation. Unless provided for by specific provision in these regulations, application for recertification requires a written request from the applicant to the scientific director. Upon receipt of the request, the applicant will be advised of the necessary procedure to regain certification. Recertification requires the successful completion of requirements stated in §19.4(e) of this title (relating to Operator Certification) and/or additional requirements as stated by the scientific director.

(o) Reference Sample Device (simulator). A device that contains and delivers a temperature controlled headspace alcohol/water gas sample to a breath testing instrument, a device that artificially simulates the alveolar breath of a human being.

(p) [(+) Renewal of current certification. Renewal of current certification is referred to as certification renewal. Renewal of certification refers to the continuance of active certification by meeting the requirements stated in §19.4(b) of this title (relating to Operator Certification). Operator certificates have an expiration date and in order to be kept current require renewal. Failure or inability to renew current certification will result in inactivation or suspension. It is the responsibility of the certificate holder to renew certification. The scientific director, through the technical supervisor, will make available opportunities for certification renewal on a mass basis but cannot accept responsibility for individual renewal.

(q) [(+) Reports and records. Reports and records refer to all documents and reports required in breath alcohol testing. The scientific director, through the technical supervisor, supervises all reports and records of analyses conducted and/or documents relating to instruments and reference sample devices. Each specific brand and/or model of instrument requires specific records and forms which are explained in detail in the basic course of instruction for the specific instrument and which should be approved by the scientific director. Certification of a breath alcohol test program requires the completion and proper filing of certain documents relating to arrest. The scientific director, through the technical supervisor, is responsible to see that such documents are completed and filed but does not supervise these documents in regard to content. In addition to any forms, records, or documents required in the breath alcohol test program, the scientific director may require additional specific reports from the technical supervisors or other reports and records in regard to certifications and compliance with program regulations.

[(q) Recertification. Recertification refers to the renewal of lost certification; for example, certification loss by inactivation, suspension, or revocation. Unless provided for by specific provision in these regulations, application for recertification requires a written request from the applicant to the scientific director. Upon receipt of the request, the applicant will be advised of the necessary procedure to regain certification. Recertification requires the successful completion of requirements stated in §19.4(e) of this title (relating to Operator Certification) and/or additional requirements as stated by the scientific director.]

(r) Revisions. The changes which are adopted with the revision of these regulations apply only to breath tests that are done after the date of this revision. Previous revisions of these regulations are not nullified and nothing herein should be construed as limiting or canceling the effect of old regulations on tests done under these previous regulations.

[(t) Reference Sample Device (simulator). A device that contains and delivers a temperature controlled headspace alcohol/water gas sample to a breath testing instrument, a device that artificially simulates the alveolar breath of a human being.]

(s)-(w) (No Change.)

(x) System blank analysis (Sample Chamber Purge). An analysis of ambient air, free of alcohol and other interfering substances, that yields a result of 0.00.

(y) [(x)] Technical supervisor and technical supervision. This term refers to an individual meeting the minimum requirements set forth in §19.5 of this title (relating to Technical Supervisor Certification) and certified by the scientific director. Technical supervisor certification, like operator certification, is limited to specific instrumentation. Technical supervisors have the responsibility and the authority to inactivate, suspend, or recommend revocation of any certification under their supervision. Inactivation, suspension, or recommended revocation by the technical supervisor will not be considered a disciplinary action, but a means to enforce these regulations and safeguard the scientific integrity of the breath alcohol testing program. Certification as a technical supervisor does not in itself imply disciplinary control or administrative in-line supervision over certified operators. However, technical supervisors must exercise complete technical supervisory authority over all operators in their assigned areas in all matters pertaining to breath alcohol testing and in enforcement of all provisions stated in these regulations. Certification of the technical supervisor and the program in which the technical supervisor operates is contingent upon the technical supervisor's ability to communicate directly with the office of the scientific director in accordance with the provisions stated in these regulations and by directives issued by the scientific director. The primary function of the technical supervisor is to provide the technical, administrative, and supervisory expertise in safeguarding the scientific integrity of the breath alcohol testing program and to assure the breath alcohol testing program's acceptability for evidential purposes. The technical supervisor, in matters pertaining to breath alcohol testing, is the field agent of the scientific director. Supervision by the technical supervisor in accordance with the provisions stated in these regulations shall include, but not be limited to:

(1) supervision of certified operators in performance of breath alcohol test operations, including the proper completion of forms and records, and operator's compliance with the provisions stated in these regulations;

(2) supervision of data gathered for initial certification and/or approval of individual instruments and reference sample devices in an assigned area;

(3) supervision of techniques of testing, maintaining scientific integrity and upholding these regulations as they apply to the certification of a total testing program;

(4) selection and supervision of a testing location as it applies to security and technical suitability for testing;

(5) supervision of compliance with the policy of public information and/or demonstrations of breath alcohol testing instruments and equipment;

(6) all technical, administrative, and regulatory aspects of breath alcohol testing within a designated area; and

(7) expert testimony by direct testimony or by written affidavit concerning all aspects of breath alcohol testing within an assigned area.

[(y) Tolerance. Refers to the difference between the predicted value and the actual reference analysis results, established by the scientific director, to be acceptable for evidential purposes or for purposes of 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 April 9, 1998.

TRD-9805055

Dudley M. Thomas

Director

Texas Department of Public Safety

Earliest possible date of adoption: May 24, 1998

For further information, please call: (512) 424-2890



Part XI. Texas Juvenile Probation Commission

Chapter 346. Case Management Standards

Subchapter A. Case Planning and Supervision

37 TAC §§346.1-346.5

The Texas Juvenile Probation Commission proposes new §§346.1-346.5, concerning case management standards for juvenile justice practitioners. The standards provide uniform procedures for planning and managing probation caseloads.

Lisa Capers, Deputy Executive Director and General Counsel, has determined that for the first five year period the standards are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new standards.

Ms. Capers has also determined that for each year of the first five years the new standards are in effect, the public benefit anticipated as a result of enforcement will be to ensure the delivery, quality, and uniformity of probation services throughout the state. There are no anticipated economic costs to persons who are required to comply with these standards as proposed. There will be no effect on small businesses.

Comments on the proposed standards may be submitted to Maribeth Powers at the Texas Juvenile Probation Commission, P. O. Box 13547, Austin, Texas 78711.

The standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules, including those which provide uniform procedures for caseload management and which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§346.1. Definitions.

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

(1) Assessment. Assessment is the process by which relevant and valid information is compiled in order to determine the juvenile's needs, risk of offending, strengths, and weaknesses. The

assessment process is intended to assist the supervising juvenile probation field officer in developing and implementing an effective case plan, appropriate level of supervision, and utilization of appropriate resources.

(2) Case Planning. Case planning involves the process of determining the post-adjudication needs of a juvenile. This includes all appropriate and available assessment and intake information, SJS findings, preliminary investigation information, family dynamics, school history, and victim impact statements. A written case plan outlines services to be provided during the juvenile's term of court ordered probation. Case planning also includes the reassessment, reevaluation, and review of the juvenile's risks, needs and initial case plan, in order to make any subsequent changes necessary to best meet the juvenile's status and circumstances over time.

(3) Comprehensive Assessment Instrument (COMPASS). An instrument developed by the Texas Juvenile Probation Commission that assesses the juvenile's needs in the areas of mental health, education and family domains and the juvenile's risk of reoffending.

(4) Formal Intake Interview. The interview with the juvenile who is the subject of the referral and the juvenile's parent, guardian or custodian wherein the intake officer or juvenile probation officer develops a dispositional recommendation for the juvenile's case. The formal intake interview occurs subsequent to the formal referral.

(5) Formal Referral. A referral of a juvenile to the juvenile court for conduct defined in Texas Family Code Section 51.03 that results in a face to face interview between the juvenile and the authorized staff of the juvenile probation department.

(6) Progressive Sanctions Assigned Level. The level of sanctions actually assigned to a juvenile by the juvenile court that corresponds with the progressive sanctions guidelines contained in Chapter 59, Texas Family Code.

(7) Release Plan. The release plan is the written document developed for each juvenile that identifies the juvenile's needs for post-supervision reintegration and specifies the community resources available to meet those needs. The purpose of the release plan is to facilitate a continuum of community services to the juvenile and the juvenile's family after probation supervision ends.

(8) Strategies in Juvenile Supervision (SJS)©. SJS is a case assessment and correctional management process designed to provide a structured method for gathering and organizing information about the juvenile and translating that information into appropriate case management strategies.

(9) Supervision. Supervision involves the case management of a juvenile by the assigned juvenile probation supervising field officer or designee through contacts (face to face, telephone, office, home, collateral) with the juvenile, juvenile's family, and other case planning participants.

(10) Title IV-E Standards. Standards promulgated by the Texas Juvenile Probation Commission related to the federal foster care reimbursement program as detailed in Chapter 347 of this title (relating to Title IV-E Federal Foster Care Program).

§346.2. Assessment.

(a) A TJPC Comprehensive Assessment Instrument (COMPASS), or an assessment tool approved by TJPC, shall be completed for all juveniles who receive a disposition from the juvenile court or juvenile probation department. If the COMPASS (or a comparable instrument approved by TJPC) has been completed within the

previous six months and contained in the juvenile's case record, the department is not required to complete an additional assessment.

(1) Time of Assessment. The assessment instrument shall be administered at the formal intake interview.

(2) Administration of Instrument. The instrument shall be administered by a certified juvenile probation officer who conducts the formal intake interview.

(b) A Strategies in Juvenile Supervision (SJS)© worksheet shall be completed on all juveniles under court ordered supervision who are assigned to Progressive Sanctions levels two through five. The SJS worksheet shall be completed subsequent to the disposition of the juvenile's case but prior to the formulation of the written case plan. The juvenile probation supervising field officer should administer the SJS worksheet. Mandatory timelines for compliance with this standard are:

(1) Beginning September 1, 1998, a SJS worksheet shall be completed on all juveniles assigned to Progressive Sanctions Level Four and Five;

(2) Beginning September 1, 1999, a SJS worksheet shall be completed on all juveniles assigned to Progressive Sanctions Level Three;

(3) Beginning September 1, 2000, a SJS worksheet shall be completed on all juveniles court-ordered to Progressive Sanctions Level Two.

§346.3. Case Planning and Review.

(a) Case Plan. A written case plan shall be developed and implemented for juveniles assigned to court-ordered Progressive Sanctions levels two through five. The written case plan shall be developed with all appropriate and available parties present and participating including, but not limited to, the juvenile; any parent, guardian, or custodian of the child; the supervising juvenile probation field officer; and the Community Resource Coordination Group Liaison. A written case plan for each juvenile assigned to court-ordered Progressive Sanctions level two shall be developed within 30 calendar days of the juvenile's disposition. Written case plans for juveniles assigned to Progressive Sanctions levels three through five shall be developed within 60 calendar days of the disposition. The original case plan shall be maintained in the juvenile's case file. Copies of the written case plan shall be provided to the juvenile and the juvenile's parent, guardian, or custodian. Mandatory timelines for compliance with this standard are:

(1) Beginning September 1, 1998, a SJS worksheet and case plan shall be completed on all juveniles assigned to Progressive Sanctions Levels four and five;

(2) Beginning September 1, 1999, a SJS worksheet and case plan shall be completed on all juveniles assigned to Progressive Sanctions Level three ;

(3) Beginning September 1, 2000, a SJS worksheet and case plan shall be completed on all juveniles court-ordered to Progressive Sanctions Level two cases.

(b) Case Review. Written case plans shall be reviewed every 90 days after implementation of the initial case plan or at any time when significant changes take place in the juvenile's situation. The juvenile and at least one parent, guardian or custodian shall be present for the case review. The written case plan shall be revised to

address any changes in risks and needs identified during the review process. Upon acceptance a juvenile's case from other county for courtesy supervision, a review of the current written case plan shall be conducted by the receiving county in accordance with this section. All original revised case plans shall be maintained in the juvenile's case file. Copies of the revised written case plan shall be provided to the juvenile and the juvenile's parent, guardian, or custodian. This does not apply to Title IV-E cases, which shall comply with Title IV-E standards. The case review, with appropriate documentation in the case file, shall discuss and consider the following:

(1) Appropriateness of the juvenile's current level of supervision and services;

(2) Extent of compliance with the individualized case plan;

(3) Extent of compliance with the conditions of probation;

(4) Extent of progress made with the juvenile and family toward solving or reducing the factors that necessitated the juvenile's placement on probation;

(5) A projection of a likely date by which the juvenile may be ready for court-ordered release from probation supervision; and

(6) Services accessed, offered or provided to the juvenile and family to address risks and needs identified on the COMPASS or equivalent assessment tool.

§346.4. Supervision.

The level of supervision provided to a juvenile by the probation department shall be defined by the results of the COMPASS (or other approved assessment tool), SJS, and the juvenile's written case plan. A minimum of one face to face contact per month with the juvenile is mandatory unless otherwise noted in the case plan.

§346.5. Release Plan.

A release plan is to be provided following the successful completion of a juvenile's probation period. A written release plan shall be developed within 30 days prior to the juvenile's scheduled release from probation. The written release plan shall be formulated by all involved and available parties. The original release plan shall be maintained in the juvenile's case file. Copies of the release plan shall be provided to the juvenile and the juvenile's parent, guardian, or custodian. The release plan shall include a copy of the notification of the juvenile of his/her sealing rights as required by the Texas Family Code, §58.003(i)

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 April 13, 1998.

TRD-9805145

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: May 24, 1998

For further information, please call: (512) 424-6681



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 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 7. Pesticides

Subchapter C. Licensing

4 TAC §7.21

The Texas Department of Agriculture has withdrawn from consideration for permanent adoption the proposed amendment to §7.21, which appeared in the February 27, 1998, issue of the *Texas Register* (23 TexReg 1761).

Filed with the Office of the Secretary of State on April 6, 1998.

TRD-9804801

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: April 6, 1998

For further information, please call: (512) 463-7541



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part XIX. Texas Department of Protective and Regulatory Services

Chapter 700. Child Protective Services

Subchapter A. Administration

40 TAC §700.110, §700.112

The Texas Department of Protective and Regulatory Services (TDPRS) has withdrawn from consideration its proposed amendments to §700.110 and §700.112, concerning retention of closed-after-investigation/ruled out/case records and case records not involving abuse/neglect or conservatorship, in its Child Protective Services chapter. The text of the proposed amendments appeared in the December 19, 1997, issue of the *Texas Register* (22 TexReg 12451). The effective date of the withdrawal is April 13, 1998.

Filed with the Office of the Secretary of State on April 13, 1998.

TRD-9805184

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Effective date: April 13, 1998

For further information, please call: (512) 438-3765



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 1. ADMINISTRATION

Part III. Office of the Attorney General

Chapter 51. State Employees–Workers’ Compensation

1 TAC Chapter 51

(House Bill 2133, 75th Legislature abolished the Workers’ Compensation Division of the Office of the Attorney General effective August 31, 1997, and created the State Office of Risk Management effective September 1, 1997. The administrative rules for the State Employees Workers’ Compensation Program, 1 TAC Chapter 51, are being transferred to the State Office of Risk Management, 28 TAC Chapter 251.)

(The Texas Register is administratively transferring the following rules listed in the conversion chart published in this issue under the Tables and Graphics section.)

Figure: 28 TAC Chapter 251



Part X. Department of Information Resources

Chapter 201. Planning and Management of Information Resources Technologies

1 TAC §201.5

The Department of Information Resources adopts an amendment to §201.5, concerning agency planning, with changes to the proposed text as published in the February 27, 1998, issue of the *Texas Register* (23 TexReg 1756).

The effect of the amendment is to revise the due date for the department to distribute instructions for agency strategic plans for information resources management to agencies; revise the due date for agencies to submit agency strategic plans for information resources management to the department; revise the deadline by which the department must review and approve or disapprove agency strategic plans; establish a due date for amendments to biennial operating plans that reflect significant new or changed technology initiatives in agencies’ legislative appropriations requests; and make other changes to conform the rule to current provisions in the Information Resources Management Act (Texas Government Code Chapter 2054).

The department received one comment regarding the proposed rule. The comment suggested that the department should

publish instructions for preparation of agency strategic plans for information resources at least 120 days before the date such plans must be submitted to the department. The rule as proposed had specified that the department would publish instructions at least 60 days before the due date for submission of the plans; see subsection (a)(1)(C) of this section. The comment stated that the additional time was necessary to allow adequate time for the Health and Human Services Commission to review the plan prior to its submission to the department. The department agrees that additional time may be necessary under these circumstances, but disagrees that 120 days is necessary. The department has therefore modified the language of the rule to require the department to publish its instructions at least 90 days before the date the agency strategic plans must be submitted to the department.

The comment also indicated that the language contained in subsection (c)(1)(B) of this section was confusing and should be clarified. The department agrees with this comment and has therefore modified the language of this subsection, which pertains to circumstances in which a biennial operating plan is not required to be amended.

Names of groups or associations making comments for and against the rule:

For: Texas Department of Human Services

Against: None

The amendment is adopted pursuant to the provisions of Texas Government Code §2054.095(d), §2054.097(a), and §2054.100(c), which authorize the department to adopt rules as necessary to carry out its responsibilities described in those portions of the Information Resources Management Act.

§201.5. *Agency Planning.*

(a) Agency strategic plans.

(1) Submittal procedures.

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

(C) The format and content of the agency strategic plan must comply with paragraph (2) of this subsection, and with instructions published by the department and distributed to each state agency at least 90 days before the date the plan is required to be submitted to the department. These instructions are adopted by reference. Copies may be obtained in person or in writing at the Department of Information Resources, P.O. Box 13564, Austin, Texas 78711. The instructions may also be obtained electronically via the department’s Internet web page at <http://www.dir.state.tx.us/>.

(D) Each agency must submit the agency strategic plan to the department on the same date that the strategic plan for operations required by Texas Government Code Chapter 2056 is scheduled to be submitted to the Legislative Budget Board and the Governor's Office of Budget and Planning or by July 1 of each even-numbered year, whichever is earlier.

(2) Contents. Each agency strategic plan must be consistent with the State Strategic Plan for Information Resources Management and must include:

(A)-(D) (No change.)

(E) a statement of the strategic objectives of the agency relating to information resources management for the next five fiscal years, beginning with the fiscal year in which the plan is submitted, with a description of how those objectives help achieve the agency's programs and goals and support the goals and policies of the state strategic plan; and

(F) (No change.)

(3) Review procedures.

(A) (No change.)

(B) The department will review and approve or disapprove each agency strategic plan in writing not later than the 90th calendar day after the date the department receives the plan. If the department disapproves an agency's plan, it shall notify the agency's information resources manager and executive director in writing of the reasons for disapproval. The agency may appeal the department's disapproval at the next regularly scheduled board meeting.

(b) Biennial operating plans.

(1) Submittal procedures.

(A) (No change.)

(B) Format of the biennial operating plan and any amendments must comply with instructions, based on paragraph (2) of this subsection, published by the department and distributed to each state agency.

(C) The information resources manager or the agency head must sign the biennial operating plan.

(D) (No change.)

(E) An agency may request an extension of the deadline for submitting its biennial operating plan. The request should describe the agency's need for additional time, and must be received by the department on or before the agency's due date.

(2) Contents. An agency's biennial operating plan must include:

(A) (No change.)

(B) information in the format specified by the department in the operating plan instructions. These instructions are adopted by reference. Copies may be obtained in person, or by writing to the Department of Information Resources, P.O. Box 13564, Austin, Texas 78711. The instructions also be obtained electronically via the department's Internet web page at <http://www.dir.state.tx.us/>.

(3) Review procedures.

(A) The department will evaluate biennial operating plans:

(i) for consistency with the General Appropriations Act and other legislation;

(ii)-(vii) (No change.)

(B) (No change.)

(C) The department may not approve an agency's biennial operating plan unless the agency has submitted, and the department has approved, a current agency strategic plan for information resources management.

(D) (No change.)

(c) Plan amendments.

(1) Submittal procedures.

(A) A state agency shall amend its strategic plan and/or biennial operating plan when necessary during a biennium. At a minimum, an agency shall amend its biennial operating plan to reflect significant new or changed information resources initiatives or information resources technologies initiatives contained in the agency's legislative appropriation request. Such amendment shall be submitted to the department not later than the date the agency is required to submit its legislative appropriations request to the Legislative Budget Board. Additional information on when to submit an amendment shall be included in the instructions described in of subsection (b)(2)(B) of this section.

(B) A state agency that does not have any significant new or changed information resources initiatives or information resources technologies initiatives is not required to amend its biennial operating plan, but shall send written notification to the department stating that an amendment is not required and the reasons why an amendment is not required. Such written notification shall be submitted to the department not later than the date the agency is required to submit its legislative appropriation request to the Legislative Budget Board.

(C) A state agency must submit proposed plan amendments to the department for approval.

(2) Review procedures. The department will review and approve or disapprove all or part of each proposed plan amendment no later than 30 working days after it is received. Instructions for the format and content of plan amendments and criteria for review of these amendments are included in the instructions described in subsection (b)(2)(B) of this section.

(d) Appeal procedures.

(1) Submittal procedures. A state agency that disagrees with the department's disapproval of a plan, part of a plan, or plan amendment, may submit a written request to the department for special review no later than 30 days after notification of department disapproval.

(2) (No change.)

(e) Implementation of approved plans.

(1) (No change.)

(2) The department will identify the additional information required under this subsection with reasonable specificity at the time it completes its evaluation of a plan. Any stipulations or conditions applied to plan approval must be satisfied prior to implementing the affected portions of the plan.

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 April 9, 1998.

TRD-9805035
C.J. Brandt, Jr.
General Counsel
Department of Information Resources
Effective date: April 29, 1998
Proposal publication date: February 27, 1998
For further information, please call: (512) 475-2153

◆ ◆ ◆
TITLE 16. ECONOMIC REGULATION

Part VIII. Texas Racing Commission

Chapter 303. General Provisions

Subchapter A. Organization of the Commission

16 TAC §303.4

The Texas Racing Commission adopts an amendment to §303.4, concerning Commission meetings, without changes to the proposed text as published in the January 30, 1998, issue of the *Texas Register* (23 TexReg 701). The amendment is adopted to ensure that that the Commission's rules are consistent with Texas Civil Statutes, Article 179e, and that the public has ample notice and opportunity to be involved in the Commission's policy making and rulemaking procedures.

No comments were received regarding the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §2.11, which requires the Commission to adopt rules providing the public with an opportunity to appear before the Commission and address the Commission; and §3.02, which requires the Commission to post notice of a meeting involving rulemaking at each racetrack.

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 April 6, 1998.

TRD-9804767
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Effective date: April 26, 1998
Proposal publication date: January 30, 1998
For further information, please call: (512) 833-6699

◆ ◆ ◆
Chapter 305. Licenses for Pari-mutuel Racing

Subchapter D. Suspension and Revocation of Licenses

16 TAC §305.244

The Texas Racing Commission adopts an amendment to §305.244, concerning failure to disclose, without changes to the proposed text as published in the January 30, 1998, issue of the *Texas Register* (23 TexReg 702). The amendment is adopted to ensure the Commission's rules are consistent with

the applicable state law and that the state's licensed racetracks will be owned and operated in accordance with the law.

The Texas Racing Act was revised by sunset legislation effective September 1, 1997, and in that legislation, the Commission is authorized to revoke, suspend, or deny a racetrack license if the applicant has failed to fully disclose the true owners of all interests in the racetrack facility.

No comments were received regarding the proposal.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.06 which authorizes the Commission to adopt rules regarding racetrack license applications.

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 April 6, 1998.

TRD-9804766
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Effective date: April 26, 1998
Proposal publication date: January 30, 1998
For further information, please call: (512) 833-6699

◆ ◆ ◆
Subchapter F. Other Licenses

16 TAC §305.301

The Texas Racing Commission adopts an amendment to §305.301, concerning interim licenses to conduct race meetings, without changes to the proposed text as published in the December 12, 1997, issue of the *Texas Register* (22 TexReg 12202). The amendment is adopted to ensure that the Commission's rules are clear and easy to understand and that the Commission generates the necessary revenue to offset its regulatory costs.

The amendment clarifies the types of debtholders who are eligible to apply for the interim license. The amendment also clarifies the documents required to be submitted for an application for an interim license and the fees an applicant is required to pay for the license.

No comments were received regarding the proposal.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §7.02, which authorizes the Commission to adopt various categories of licenses for persons who participate in pari-mutuel racing; and §7.05, which authorizes the Commission to set the amount of the license fees required for various categories of licenses.

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 April 6, 1998.

TRD-9804765
Paula C. Flowerday

Executive Secretary
Texas Racing Commission
Effective date: April 26, 1998
Proposal publication date: January 30, 1998
For further information, please call: (512) 833-6699

◆ ◆ ◆
Chapter 307. Practice and Procedure

Subchapter D. Rulemaking

16 TAC §307.302

The Texas Racing Commission adopts an amendment to §307.302, concerning the Commission's rulemaking procedure, without changes to the proposed text as published in the January 30, 1998, issue of the *Texas Register* (23 TexReg 702). The amendment is adopted to ensure that the Commission's rules are consistent with applicable state law and that the racetracks and occupational licensees will have notice of the Commission's rulemaking processes.

The Texas Racing Act was revised by sunset legislation effective September 1, 1997, and in that legislation, the Commission is required to distribute a copy of each proposed rule to each racetrack location. This amendment implements that requirement.

No comments were received regarding the proposal.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act and which requires the posting of proposed rules at each racetrack location.

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 April 6, 1998.

TRD-9804764
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Effective date: April 26, 1998
Proposal publication date: January 30, 1998
For further information, please call: (512) 833-6699

◆ ◆ ◆
Chapter 309. Operation of Racetracks

Subchapter A. General Provisions

Division 2. Facilities and Equipment

16 TAC §309.18

The Texas Racing Commission adopts an amendment to §309.18, concerning first aid at pari-mutuel racetracks, without changes to the proposed text as published in the January 30, 1998, issue of the *Texas Register* (23 TexReg 703). The amendment is adopted to ensure that pari-mutuel racing will be safe for the patrons and participants without being overly burdensome to the racetracks.

The amendment clarifies the requirements for first aid personnel and eliminates the requirement of having first aid personnel on the grounds of a racetrack when no live racing or exercising is occurring.

No comments were received regarding the proposal.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks.

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 April 6, 1998.

TRD-9804763
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Effective date: April 26, 1998
Proposal publication date: January 30, 1998
For further information, please call: (512) 833-6699

◆ ◆ ◆
Chapter 323. Disciplinary Action and Enforcement

Subchapter A. General Provisions

16 TAC §323.2

The Texas Racing Commission adopts an amendment to §323.2, concerning complaints, without changes to the proposed text as published in the January 30, 1998, issue of the *Texas Register* (23 TexReg 704). The amendment is adopted to ensure that the public has notice of the process for complaining about the activities or operations of pari-mutuel racetracks.

The Texas Racing Act was revised by sunset legislation effective September 1, 1997, and in that legislation, the Commission is required to establish methods by which racetrack patrons are notified of the name, mailing address, and telephone number for the commission for the purpose of directing complaints to the Commission. This amendment implements that requirement.

No comments were received regarding the proposal.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §2.23, which requires the Commission to adopt rules which establish methods by which racetrack patrons are notified of the name, mailing address, and telephone number for the commission for the purpose of directing complaints to the Commission.

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 April 6, 1998.

TRD-9804762

Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Effective date: April 26, 1998
Proposal publication date: January 30, 1998
For further information, please call: (512) 833-6699

◆ ◆ ◆
TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 409. Medicaid Programs

Subchapter J. Reimbursement for Services in Institutions for Mental Diseases (IMD)

25 TAC §§409.373-409.375

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts amendments to §§409.373-409.375 of Chapter 409, Subchapter J, governing Reimbursement for Services in Institutions for Mental Diseases (IMD). The amendments to §§409.373-409.375 are adopted without changes to the proposed text as published in the January 23, 1998, issue of the *Texas Register* (23 TexReg 497).

In accordance with the Federal Balanced Budget Act of 1997, the adopted amendments remove the requirement for a periodic inspection of care (IOC) in IMDs. Additionally, two minor revisions are made regarding the definitions of terms and the deletion of an unnecessary reference to an initial time period which was pertinent when the rule was initially promulgated.

There was no oral or written testimony offered at a public hearing conducted on February 19, 1998. The department received no oral or written comment during the required 30-day public comment period.

The amended sections are adopted under the Texas Health and Safety Code, §532.015(a), which provides TDMHMR with broad rulemaking authority; and Human Resource Code, Chapter 32, §32.021, and Government Code, Chapter 531, §531.021, which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer federal medical assistance funds and administer the state's medical assistance program. Senate Bill 509 of the 74th Texas Legislature clarifies THHSC's authority to delegate the operation of all or part of a Medicaid program to a health and human service agency. THHSC has designated TDMHMR as the operating agency for the IMD program.

The section affects Texas Human Resources Code, Chapter 32, Texas Government Code, Chapter 531, §531.021, and Texas Health and Safety Code, §532.015(a).

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 April 13, 1998.

TRD-9805144
Charles M. Cooper
Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation
Effective date: May 3, 1998
Proposal publication date: January 23, 1998
For further information, please call: (512) 206-4516

◆ ◆ ◆
Part VI. Statewide Health Coordinating Council

Chapter 571. Health Planning and Resource Development

25 TAC §§571.2, 571.4, 571.5

The Statewide Health Coordinating Council (council) by majority vote on March 31, 1998, enters this order finally adopting amendments to §§571.2, 571.4, and 571.5, concerning conflict of interest, meetings, and committees, without changes to the proposed text as published in the February 27, 1998, issue of the *Texas Register* (23 TexReg 1894), and therefore the section will not be republished.

In accordance with the Texas Health and Safety Code, Chapter 104, the composition of the council has been revised. The council adopts these amendments to reflect the new structure of the council.

Section 571.2 defines "conflict of interest" as specified in the Government Code, §572.058. Section 571.4 provides for notification of the appointing authority if a member of the council is unable to discharge his or her duties as prescribed, defines the number for a quorum, and revises the number of members who can request a called meeting. Section 571.5 provides revised minimum sizes for the plan development committee, the legislative committee, and the nominating committee.

No comments were received during the comment period.

The amendments are adopted under the Health and Safety Code, §104.012 which provides the council with the authority to adopt rules concerning the development and implementation of the state health plan.

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 April 13, 1998.

TRD-9805111
Ben G. Raimer, M.D.
Chair
Statewide Health Coordinating Council
Effective date: May 3, 1998
Proposal publication date: February 27, 1998
For further information, please call: (512) 458-7236

◆ ◆ ◆
TITLE 28. INSURANCE

Part II. Texas Workers' Compensation Commission

Chapter 170. State Risk Management

28 TAC Chapter 170

(House Bill 2133, 75th Legislature abolished the Risk Management Division of the Texas Workers' Compensation Commission effective August 31, 1997, and created the State Office of Risk Management effective September 1, 1997. The administrative rules for the State Risk Management Program, 28 TAC Chapter 170, are being transferred to the State Office of Risk Management, 28 TAC Chapter 252.)

(The Texas Register is administratively transferring the following rules listed in the conversion chart published in this issue under the Tables and Graphics section.)

Figure: 28 TAC Chapter 251



Part IV. State Office of Risk Management

Chapter

28 TAC Chapters 251–252

(House Bill 2133, 75th Legislature abolished the Workers' Compensation Division of the Office of the Attorney General and the Risk Management Division of the Texas Workers' Compensation Commission effective August 31, 1997, and merged the two to form the State Office of Risk Management effective September 1, 1997. The administrative rules for the the State Employees Workers' Compensation Program, 1 TAC Chapter 51, are being transferred to the State Office of Risk Management, 28 TAC Chapter 251. The administrative rules for the State Risk Management Program, 28 TAC Chapter 170, are being transferred to the State Office of Risk Management, 28 TAC Chapter 252.)

(The Texas Register is administratively transferring the following rules listed in the conversion chart published in this issue under the Tables and Graphics section.)

Figure: 28 TAC Chapter 251



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VI. Texas Department of Criminal Justice

Chapter 159. Special Programs

37 TAC §159.9

The Texas Department of Criminal Justice adopts new §159.9, concerning a memorandum of understanding between the Department and the Texas Commission on Law Enforcement Officer Standards and Education regarding firearms proficiency training for supervision officers, without changes to the proposed text as published in the February 13, 1998, issue of the *Texas Register* (23 TexReg 1267). House Bill 2909, passed by the 75th Legislature, requires the two agencies to enter into the agreement. The new section adopts by reference new 37 TAC §211.33 proposed by the Texas Commission on Law Enforcement Officer Standards and Education in the December 26, 1997, issue of the *Texas Register* (22 TexReg 12708).

The Texas Department of Criminal Justice will require individual parole officers to bear the costs of training, certification, and equipment if the officer chooses to carry a weapon in the course of his or her duties. The Department will allow

community supervision and corrections department (CSCD) directors, at their discretion, to use state funds to pay for community supervision officers (CSOs) firearms certification training and requalification firearms training. CSCDs may also use state funds to pay for ammunition used in those trainings, but CSOs will pay for all other ammunition, and the weapons they use in the line of duty. Local community supervision and corrections departments will decide independently as to whether the program will be allowed or required, see 37 TAC §163.34 adopted in the February 13, 1998, issue of the *Texas Register* (23 TexReg 1314). There are approximately 3,500 probation and community supervision officers in the state. It has been estimated by the Texas Commission on Law Enforcement Officer Standards and Education that an authorized firearms training program will cost between \$750 and \$1,200 and the Texas Commission on Law Enforcement Officer Standards and Education will charge \$20 for issuance of a Firearms Proficiency Certificate.

The adoption will enable adequate training and certification for supervision officers who choose to or are required to carry weapons in the course of their duties.

No comments were received regarding adoption of the new section.

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

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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Carl Reynolds

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 90. Intermediate Care Facilities for Persons with Mental Retardation or a Related Condition

The Texas Department of Human Services (DHS) adopts the repeal of §§90.142, 90.193, 90.211, 90.212, 90.301, 90.302, 90.303, 90.304, and 90.322; amendments to §§90.2, 90.3, 90.11, 90.12, 90.13, 90.14, 90.16, 90.17, 90.19, 90.20, 90.42, 90.60, 90.61, 90.65, 90.66, 90.68, 90.191, 90.192, 90.213, 90.217, 90.281, 90.282, 90.283, 90.287, 90.321, and 90.323; and new 90.211, 90.212, 90.324, and 90.325. The amendments to §§90.3, 90.42, 90.61, and 90.323, and new 90.211

and 90.212 are adopted with changes to the proposed text. The repeal of §§90.142, 90.193, 90.211, 90.212, 90.301, 90.302, 90.303, 90.304, and 90.322; amendments to §§90.2, 90.11, 90.12, 90.13, 90.14, 90.16, 90.17, 90.19, 90.20, 90.60, 90.65, 90.66, 90.68, 90.191, 90.192, 90.213, 90.217, 90.281, 90.282, 90.283, 90.287, and 90.321; and new 90.324, and 90.325 are adopted without changes to the proposed text published in the November 21, 1997, issue of the *Texas Register* (22 TexReg 11312), and the text will not be republished.

Justification for the repeals, amendments, and new sections is that Intermediate Care Facilities for Persons with Mental Retardation (ICF-MR) providers will have licensing rules separate from nursing home providers and to provide facility investigators with guidelines on conducting abuse and neglect investigations.

The repeals, amendments, and new sections will function by complying with recent state legislation that created a new licensing chapter in the Health and Safety Code, Chapter 252, and adding procedures to be used when conducting an investigation in a private ICF-MR/RC facility. The chapter provides for the development and enforcement of standards for services to individuals residing in ICFMR/RC facilities.

During the public comment period, DHS received comments from Educare, Concept Six, the Private Providers Association of Texas (PPAT), and the Texas Council of Community Mental Health and Mental Retardation Centers, Inc. A summary of all the comments received and DHS's responses follow:

Comment: All commenters stated that requiring at least one staff person per shift and on duty be certified in cardiopulmonary resuscitation (CPR) would be costly to the small provider.

Response: The department does not concur. According to the Texas Department of Mental Health and Mental Retardation (TDMHMR), the current Medicaid rate covers five days of training, so that any training required by the rule is covered by the current Medicaid reimbursement rate. All ICFMR/RC providers participate in Medicaid. Also, it is important for the protection of the facility's residents that staff be trained in CPR. There have been several deaths in ICFMR/RC facilities due to the staff's inability to perform CPR.

Comment: All commenters requested Subchapter D. General Requirements for Facility Construction, 40 TAC Section 90.61 (e) (5) be deleted or clarified. Providers contend that this law or regulation does not apply to them, as small ICFMR/RC facilities are not public accommodations or commercial facilities.

Response: The department does not concur. The only change made to §90.61(e)(5) is not a substantive change. Providers must comply with all federal, state, and local laws. The state agency charged with administering the state Architectural Barriers Act (ABA), the Texas Department of Licensing and Regulation (TDLR), has determined that the ABA does apply to ICFMR/RC facilities. The TDLR utilizes the Texas Accessibility Standards (TAS) for the purposes of administering the state Architectural Barriers Act, Article 9102, Texas Civil Statutes. TAS Section 6.1, General, states that medical care facilities included in this section are those in which people receive physical or medical treatment or care and where persons may need assistance in responding to an emergency or where the period of stay may exceed 24 hours. Section 6.1(3) identifies ICFMR/RC facilities as one of the long term care facilities that fall under medical care facilities. In order for the department to change this rule, the Texas Department of Licensing and

Regulation (TDLR) must amend their standards to meet the needs of the small ICFMR/RC facilities.

Comment: Two commenters stated that the preamble stated there was no effect on small businesses and no anticipated economic cost to the provider. The requirement for CPR, the cost to facilities to be in compliance with ABA and abuse neglect investigator training indicate there will be an economic impact on the providers.

Response: The department has determined that there is no fiscal impact on small businesses. According to the Texas Department of Mental Health and Mental Retardation, the current Medicaid reimbursement rate covers five days of training, so that the abuse and neglect investigator training and any CPR training required by the rule amendments is covered by the current Medicaid rate. All ICFMR/RC providers participate in Medicaid. Compliance with the state ABA is not a new requirement and is not controlled by the department.

DHS has made several nonsubstantive changes to the proposed rule language. DHS has made a change to §90.3 to add the phrase "with at least a bachelor's degree" to the definition of "qualified mental retardation professional." In §90.42 DHS has included the current address of the Long-Term Care Regulatory office. Section §90.61(e)(5) was also changed to read, "The facility must meet all applicable provisions..." In §90.211 "an" replaces "a" to modify "individual" in the definition of "misappropriation of property." Section 90.212(d)(1)(E)(viii) now reads, "use of experts or consultants as needed." DHS changed §90.323(e)(2)(B)(i) to read, "be signed and dated within six months..."

Subchapter A. Introduction

40 TAC §§90.2, 90.3

The amendments are adopted under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; and under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs.

The amendments implement the Health and Safety Code, §§252.001 - 252.186, and the Human Resources Code, §§22.001 - 22.030.

§ 90.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Individual subchapters may have definitions which are specific to the subchapter.

Addition - The addition of floor space to a facility.

Administrator - The administrator of a facility.

Applicant - A person applying for a license under Health and Safety Code, Chapter 252.

APA - The Administrative Procedure Act, Texas Government Code, §2001.

Attendant personnel - All persons who are responsible for direct and non-nursing services to residents of a facility. (Nonattendant personnel are all persons who are not responsible for direct personal services to residents.) Attendant personnel come within the categories of: administration, dietitians, medical records, activities, housekeeping, laundry, and maintenance.

Change of ownership - A change of 50% or more in the ownership of the business organization that is licensed to operate the facility, or a change in the federal tax payer identification number.

Designee - A state agency or entity with which the department contracts to perform specific, identified duties related to the fulfillment of a responsibility prescribed by this chapter.

Facility - A facility serving persons with mental retardation or related conditions licensed under this chapter as described in <*>90.2 of this title (relating to Scope) and required to be licensed under the Health and Safety Code, Chapter 252.

Hearing - A contested case hearing held in accordance with the Administrative Procedure Act, Government Code, Chapter 2001, and the department's formal hearing procedures adopted in Chapter 79 of this title (relating to Legal Services).

Immediate and serious threat - A situation in which there is a high probability that serious harm or injury to residents could occur at any time or has already occurred and may occur again if residents are not protected effectively from the harm or if the threat is not removed.

Inspection - Any on-site visit to or survey of a facility by the Texas Department of Human Services for the purpose of inspection of care, licensing, monitoring, complaint investigation, architectural review, or similar purpose.

Large facility - Facilities with 17 or more resident beds.

Legal guardian- A person who is appointed guardian under §693 of the Probate Code.

License - Approval from the Texas Department of Human Services to establish or operate a facility.

Person with a disclosable interest - Any person who owns 5.0% interest in any corporation, partnership, or other business entity that is required to be licensed under Health and Safety Code, Chapter 252. 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.

Qualified mental retardation professional - A person with at least a bachelor's degree who has at least one year of experience working with persons with mental retardation or related conditions.

Qualified surveyor - A member of the survey team who is a qualified mental retardation professional.

Small facilities - Facilities with 16 or fewer resident beds.

Well-recognized church or religious denomination - An organization which has been granted a tax-exempt status as a religious association from the state or federal government.

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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Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

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Subchapter B. Application Procedures

40 TAC §§90.11-90.14, 90.16, 90.17, 90.19, 90.20

The amendments are adopted under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; and under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs.

The amendments implement the Health and Safety Code, §§252.001 - 252.186, and the Human Resources Code, §§22.001 - 22.030.

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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Glenn Scott

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Subchapter C. Standards for Licensure

40 TAC §90.42

The amendment is adopted under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; and under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs.

The amendment implements the Health and Safety Code, §§252.001 - 252.186, and the Human Resources Code, §§22.001 - 22.030.

§90.42. *Standards for Facilities for Persons with Mental Retardation or Related Conditions.*

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

(c) Standards. Each facility serving persons with mental retardation or related conditions shall comply with regulations promulgated by the United States Department of Health and Human Services in Title 42, Code of Federal Regulations, Part 483, Subpart I, §§483.400-483.480, titled, "Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded."

(d) (No change.)

(e) Additional requirements.

(1) The facility must develop and implement policies and procedures regarding injuries, accidents, and unusual incidents which involve or affect residents. These policies and procedures must include the following provisions.

(A) An investigation and report must be completed and maintained as a separate record which describes the circumstances of the injury, accident, or incident and its cause, the results of the investigation, and recommended actions. Serious injuries, ac-

cidents, or unusual incidents must be reported to the resident's responsible parties and to the department, as described in §90.212 of this title (relating to Incidents of Abuse and Neglect Investigated and Reported by Facilities to the Texas Department of Human Services (DHS)).

(B) The provider or facility must conduct a criminal history check, as outlined in §90.321 of this title (relating to Investigation of Facility Employees), in compliance with the Health and Safety Code, Title 4, Chapter 250, which requires DHS to perform criminal history checks on persons employed by certain types of facilities.

(2) In the area of cardiopulmonary resuscitation (CPR), at least one staff person per shift and on duty must be certified in CPR.

(3) In the area of behavior management, seclusion of residents may not be used. Seclusion is defined as placement of a resident in a room without staff present from which egress is prevented by a locked door.

(4) In the area of physical restraints, the following applies.

(A) When physical restraints (mechanical and/or manual) are used as an integral part of an individual program plan that is intended to lead to less restrictive means of managing and eliminating the behavior for which the restraint is applied, a physician must participate on the interdisciplinary team that authorizes the use of restraint and must concur with the team's decision concerning its use.

(B) When physical restraints are used as an emergency measure to protect the resident or others from injury, a physician must authorize its use or the extension of its use.

(5) In the area of pharmacy services, the following applies.

(A) All pharmacy services must comply with the Texas State Board of Pharmacy requirements, the Texas Pharmacy Act, and rules adopted thereunder, the Texas Controlled Substances Act, and Health and Safety Code, Chapter 483 (relating to Dangerous Drugs).

(B) All medications must be ordered in writing by a physician, dentist, or podiatrist. Verbal orders may be taken only by a licensed nurse, pharmacist, or another physician, and must be immediately transcribed and signed by the individual taking the order. Verbal orders must be signed by the physician, dentist, or podiatrist within seven working days.

(C) The facility, with input from the consultant pharmacist and physician, must develop and implement policies and procedures regarding automatic stop orders for medications. These procedures must be utilized when the order for a medication does not specify the number of doses to be given or the time for discontinuance or re-order.

(6) Specialized nutrition support (delivery of parenteral nutrients and enteral feedings by nasogastric, gastrostomy, or jejunostomy tubes, etc.) must be given in accordance with physician's orders by a registered or licensed nurse. Proper technique must be utilized when giving nutritional support.

(7) In the area of administration of medication, the following applies.

(A) Medications may be administered only by physicians, licensed nursing personnel, permitted medication aides, or persons who are exempt from licensure or permit requirements pursuant to the Health and Safety Code, §242.1511. These persons must function in accordance with the memorandum of understanding (MOU) between DHS and the Board of Nurse Examiners. DHS adopts the MOU by reference and copies are available for review at DHS's Long-Term Care Regulatory, 701 West 51st Street, Austin, Texas 78714-9030.

(i) The licensed or certified individual who removes the medication dose from the container in which it was dispensed must administer the dose.

(ii) The individual who administers the medication must record the dose after it is administered and during the shift in which it was given.

(B) Residents who have demonstrated the competency for self-administration of medications must have access to and maintain their own medications. They must have an individual storage space that permits them to store their medications under lock and key.

(C) Residents may participate in a self-administration of medication habilitation training program if the interdisciplinary team determines that self-administration of medications is an appropriate objective. Residents participating in a self-administration of medication habilitation training program must have training in coordination with and as part of the resident's total active treatment program. The resident's training plan must be evaluated as necessary by a licensed nurse. The supervision and implementation of a self-administration of medication habilitation program may be conducted by nonlicensed personnel and is not limited to personnel who have completed an approved training program in medication administration.

(D) A facility may maintain a supply of controlled substances in an emergency medication kit for a resident's emergency medication needs, as outlined under §§90.324 and 90.325 of this title (relating to Emergency Medication Kit and Controlled Substances).

(8) In the area of communicable diseases, the facility must have written policies and procedures for the control of communicable diseases in employees and residents. When any reportable communicable disease becomes evident, the facility must report in accordance with Communicable Disease and Prevention Act, Health and Safety Code, Chapter 81, or as specified in 25 TAC §§97.1-97.13 (relating to Control of Communicable Diseases) and 25 TAC §§97.131-97.136 (relating to Sexually Transmitted Diseases) and in the publication titled, "Reportable Diseases in Texas," Publication 6-101a (Revised 1987). The local health authority should be contacted to assist the facility in determining the transmissibility of the disease and, in the case of employees, the ability of the employee to continue performing his duties. The facility must have written policies and procedures for infection control, which include implementation of universal precautions as recommended by the Centers for Disease Control (CDC).

(9) In the area of water activities, the facility must assure the safety of all individuals who participate in facility-sponsored events. For the purpose of this section, a water activity is defined as an activity which occurs in or on water that is knee deep or deeper on the majority of individuals participating in the event. To assure the safety of all individuals who participate, the requirements in subparagraphs (A)-(F) apply.

(A) The facility must develop a policy statement regarding the water sites utilized by the facility. Water sites include, but are not limited to, lakes, amusement parks, and pools.

(B) A minimum of one staff person with demonstrated proficiency in cardiopulmonary resuscitation (CPR) must be on duty and at the site when individuals are involved in water activities.

(C) A minimum of one person with demonstrated proficiency in water life saving skills must be on duty and at the site when activities take place in or on water that is deep enough to require swimming for life saving retrieval. This person must maintain supervision of the activity for its duration.

(D) A sufficient number of staff or a combination of staff and volunteers must be available to meet the safety requirements of the group and/or specific individuals.

(E) Each individual's program plan must address each person's needs for safety when participating in water activities including, but not necessarily limited to, medical conditions; physical disabilities and/or behavioral needs which could pose a threat to safety; the ability to follow directions and instructions pertaining to water safety; the ability to swim independently; and, when called for, special precautions.

(F) If the interdisciplinary team recommends the use of a flotation device as a precaution for any individual to engage in water activities, it must be identified and precautions outlined in the individual program plan. The device must be approved by the United States Coast Guard or be a specialized therapy flotation device utilized in the individual's therapy program.

(10) In the area of communication, a facility may not prohibit a resident or employee from communicating in the person's native language with another resident or employee for the purpose of acquiring or providing care, training, or treatment.

(11) In the area of physical exams, a facility shall ensure that a resident is given at least one physical exam on a yearly basis by a medical doctor.

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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Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

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Subchapter D. General Requirements for Facility Construction

40 TAC §§90.60, 90.61, 90.65, 90.66, 90.68

The amendments are adopted under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; and under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs.

The amendments implement the Health and Safety Code, §§252.001 - 252.186, and the Human Resources Code, §§22.001 - 22.030.

§90.61. *Introduction, Application, and General Requirements for Facilities for Persons with Mental Retardation or Related Conditions.*

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

(e) Applicable codes and standards. Facilities must meet the requirements of NFPA 101, 1985 edition, and any other codes and standards of NFPA listed in this section, except as may be otherwise approved or required by DHS.

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

(5) The facility must meet all applicable provisions and requirements concerning accessibility for individuals with disabilities in the following laws and regulations: 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 be submitted to the Texas Department of Licensing and Regulation (Attention: Elimination of Architectural Barriers Program) for accessibility approval under Article 9102.

(f) (No change.)

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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Glenn Scott

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40 TAC §90.142

The repeal is adopted under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; and under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs.

The repeal implements the Health and Safety Code, §§252.001 - 252.186, and the Human Resources Code, §§22.001 - 22.030.

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

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Subchapter F. Inspections, Surveys, and Visits

40 TAC §§90.191–90.192

The amendments are adopted under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; and under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs.

The amendments implement the Health and Safety Code, §§252.001 - 252.186, and the Human Resources Code, §§22.001 - 22.030.

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

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40 TAC §90.193

The repeal is adopted under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; and under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs.

The repeal implements the Health and Safety Code, §§252.001 - 252.186, and the Human Resources Code, §§22.001 - 22.030.

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

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Subchapter G. Abuse, Neglect, and Exploitation; Complaint and Incident Reports and Investigations

40 TAC §§90.211–90.213, 90.217

The amendments and new sections are adopted under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; and under the Human Resources Code, Title 2,

Chapter 22, which provides the department with the authority to administer its programs.

The amendments and new sections implement the Health and Safety Code, §§252.001 - 252.186, and the Human Resources Code, §§22.001-22.030.

§90.211. Definitions.

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

Abuse - Any of the following actions:

(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 this section; and

(E) any act or use of verbal or other communication including gestures to curse, vilify, or degrade a person served or threaten a person served with physical or emotional harm.

Abuse of a child - The following acts or omissions by any person:

(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 conduct harmful to a child’s mental, emotional, or physical welfare;

(F) failure to make a reasonable effort to prevent sexual conduct harmful to a child;

(G) compelling or encouraging the child to engage in sexual conduct as defined by the Texas Penal Code, §43.01; or

(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 §43.21 of the Texas Penal Code, §43.21) or pornographic.

Administrator - The director of the facility.

Allegation - A report by a person believing or having knowledge that a person receiving services has been or is in a state of abuse, neglect, or exploitation.

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.

Complaint- An allegation of abuse, neglect, misappropriation of property, or any other allegation of a regulatory violation which is reported by individuals, family members, or any other person.

Confirmed - A finding that an allegation of abuse, neglect, or exploitation is supported by the preponderance of the evidence.

Department - Texas Department of Human Services.

Designee- A staff member immediately available who is temporarily or permanently appointed to assume designated responsibilities delegated by the administrator.

Exploitation - 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.

Facility - The management, administrator, or other person involved in the provision of care and services to individuals/clients, also including the physical building.

Frequency - The incidence or extent of the occurrence of an identified situation in the facility. The situation can affect a single individual or multiple individuals.

Immediate and serious threat - A situation or set of circumstances in which a high probability exists that serious harm or injury to individuals could occur at any time or already has occurred and may occur again if individuals are not protected from harm or the threat is not removed.

Incident - An allegation of abuse or neglect reported by facility staff to the Texas Department of Human Services state office as required by law.

Incitement - To spur to action or instigate into activity; implies responsibility for initiating another's actions.

Misappropriation of property - The taking, secretion (concealing), misapplication, deprivation, transfer or attempted transfer to any person not entitled to receive any property, real or personal, or any other thing of value belonging to or under the legal control of an individual without the effective consent of the individual or other appropriate legal authority or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of an individual.

Neglect - A negligent act or omission by any individual responsible for providing services in a facility rendering care or treatment which caused or may have caused physical or emotional injury or death to an individual with mental illness or mental retardation, or which placed an individual with mental illness or mental retardation at risk of physical or emotional injury or death, and includes an act or omission such as the failure to establish or carry out an appropriate individual program plan or treatment plan for a person served, the failure to provide adequate nutrition, clothing, or health care to a person served, or the failure to provide a safe environment for a person served, including the failure to maintain adequate numbers of appropriately trained staff.

Neglect of a child - Any of the following:

(A) an act which leaves a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and a demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of a child;

(B) 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; or

(C) the following acts or omissions by any person:

(i) placing a 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;

(ii) the failure to seek, obtain, or follow through with medical care for a 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;

(iii) the failure to provide a 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; or

(iv) 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. Nonserious physical injury - Any injury determined not to be serious by the examining physician. Examples of nonserious injury may include the following: superficial laceration, contusion, abrasion.

Person responsible for a child's care, custody, or welfare - A person who traditionally is responsible for a child's care, custody, or welfare, including:

(A) a parent, guardian, managing or possessory conservator, or foster parent of the child;

(B) a member of the child's family or household as defined by the Texas Family Code, Chapter 71;

(C) a person with whom the child's parent cohabits;

(D) school personnel or a volunteer at the child's school;

or
(E) personnel or a volunteer at a public or private child-care facility that provides services for the child or at a public or private residential institution or facility where the child resides.

Perpetrator - The person who has committed an act of abuse, neglect, or exploitation.

Reporter - The person filing a report of alleged abuse, neglect, or exploitation, whether the victim of alleged abuse, neglect, or exploitation, a third party filing a report on behalf of the alleged victim, or both.

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 inch in diameter, concussion, second or third degree burns.

Severity - The seriousness of the identified situation; the degree to which a problem compromises residents' health and safety, or fails to achieve the highest practicable level of physical, mental and psychosocial well-being.

Sexual abuse- Any sexual activity, including sexual exploitation as defined in the Texas Penal Code, involving an employee, agent, or

contractor and a person served. Sexual activity includes, but is not limited to, kissing with sexual intent, stroking with sexual intent, or fondling with sexual intent; oral sex or sexual intercourse; request or suggestion or encouragement by staff for performance of sex with the employee himself/herself or with another person served.

Sexual exploitation - A coercive, manipulative, or otherwise exploitative 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.

Sexually transmitted disease - Any infection of a person served, 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.

Unconfirmed - Term used to describe an allegation of abuse, neglect, or exploitation which is not supported by the preponderance of the evidence.

Unfounded - A finding that an allegation of abuse, neglect, or exploitation is spurious or patently without factual basis.

§90.212. Incidents of Abuse and Neglect Investigated and Reported by Facilities to the Texas Department of Human Services (DHS).

(a) Purpose; duty of facility to investigate. The purpose of this section is to define and prohibit abuse, neglect, and exploitation of any person receiving services from a facility licensed as an Intermediate Care Facility for Persons with Mental Retardation or Related Conditions under the Health and Safety Code, Chapter 252, or facility contractor; and to prescribe procedures that a facility must use in reporting abuse, neglect, and exploitation in conducting its own investigations and in training provided on conducting investigations. The facility must investigate reports of abuse, neglect, and exploitation.

(b) Reporting responsibilities of employees; failure to report.

(1) Any employee who suspects or has knowledge of, or who is involved in an allegation of abuse, neglect, or exploitation, shall make a verbal report to DHS, if possible, but in no case more than one hour after the incident. A facility may require its employees to make a verbal report to the facility administrator, if possible, but no later than one hour after the incident.

(2) Each employee of a facility must sign a statement that the employee realizes that the employee may be criminally liable for failure to report abuses and that the employee understands his rights under the Health and Safety Code §252.132, such as that the employee has a cause of action against a facility, its owner(s), or employees if he is suspended, terminated, disciplined or discriminated against as a result of reporting abuse or neglect of a resident. These statements must be available for inspection by DHS.

(3) If the person making the allegation is not an employee, such as a person receiving services or a guest, staff shall assist the individual in making the report, if necessary.

(4) The facility owner, administrator, designee, or employee of the facility who has cause to believe that the physical or mental health or welfare of a resident has been, or may be adversely affected by abuse or neglect caused by another person, must report the abuse or neglect to the DHS, at 1-800-292-2065, any day or hour. The following incidents, for example, must be reported to DHS's state office, regardless of the time of day: death; missing resident; abuse or neglect allegations; sexual abuse; misappropriation of resident property; accidental injuries or injuries of unknown origin, if

there is reason to believe they were the result of abuse or neglect or if they resulted in serious physical injury; and resident-to-resident abuse if a resident is killed, taken to the hospital, or the physician has ordered treatment other than observation when there is a serious injury.

(c) Qualifications of the facility investigator.

(1) The investigator may be an employee of the licensed facility or an independent party who has been trained by an organization that specializes in procedures and techniques for the investigation of abuse and neglect in the area of mental retardation and related conditions.

(2) The investigator cannot be the alleged perpetrator or involved in the allegation of abuse or neglect, the administrator or designee, owner, part owner, legal successor or anyone with a controlling interest in the facility/corporation.

(3) The investigator must receive and provide evidence, upon request, that he received training on investigation procedures. The documentation of the training content and proof of attendance must be maintained in the facility files.

(4) The training must include at a minimum:

(A) definitions and threshold questions regarding what is an investigation, what are facts, what is evidence, evidence and findings of fact and conclusions.

(B) organizing and conducting an investigation—the half life of evidence, assigning responsibility, early stages in an investigation, order of witness interviews and relationship to criminal investigations.

(C) collecting testimonial evidence—identifying witnesses, preparing for an interview, conducting the interview (investigator demeanor), questioning the witness, interviewing uncooperative witnesses and targets and the right to representation.

(D) documentary evidence/taking statements—how to take a statement, special problems in taking statements, and collecting business records.

(E) collecting and preserving physical evidence—injuries, locations in which incidents occur and substances and objects.

(F) drawing conclusions and reporting investigative findings—evaluating evidence and writing investigative reports.

(d) Responsibility of the facility investigator.

(1) Within 24 hours of receipt of an allegation, the investigator will begin to conduct an investigation. The investigator will:

(A) immediately notify the law enforcement agency of any sexual incident, physical abuse that results in an injury, drug diversions, burglary, and theft, for investigation and evidence collection. The investigator will record the date and time of the allegation, name of law enforcement employee contacted, and the police case number;

(B) interview all witnesses, the alleged victim, and the alleged perpetrator as soon as possible after the initial report of the allegation;

(C) obtain a written and signed statement regarding the allegation following each interview. The statement(s) may be written by the investigator, but shall be signed and dated by those giving the statement, if possible, and by the investigator;

(D) ensure that appropriate medical treatment was obtained, if warranted, for the alleged victim and the treatment was documented; and

(E) review and evaluate all physical, circumstantial and direct evidence, in order to determine whether there is sufficient evidence to confirm the allegation, through:

- (i) interviews;
- (ii) statements;
- (iii) physical exam and medical treatment rendered;
- (iv) photographs;
- (v) diagrams;
- (vi) visits to the site of the incident;
- (vii) other physical evidence; and
- (viii) use of experts or consultants as needed.

(2) The investigator will write a report and it will contain the following information:

(A) a brief description of the allegation;

(B) a detailed description of the investigation from its initiation to completion, including date, time, and location of the alleged incident; location of the alleged victim, witnesses, and the suspect; description of injuries to the alleged victim; how the incident was discovered; how the alleged perpetrator was identified; description of any other evidence; and how the evidence was collected and protected;

(C) summary of the evidence;

(D) analysis of the evidence;

(E) determination as to whether the abuse, neglect, or exploitation occurred; and

(F) recommendations regarding corrective actions.

(3) The report should include all witness statements and supporting documentation.

(4) The investigator will provide a copy of the report to the facility administrator or designee.

(5) The administrator or designee will accept or reject the recommendations and document justification in areas of disagreement, which will be attached to the facility investigator's report.

(6) The written investigation report must be sent to DHS no later than the fifth calendar day after the oral report.

(7) If law enforcement was notified, the investigator or administrator or designee will submit the report to the law enforcement agency.

(e) Responsibilities of the facility administrator or designee.

(1) Immediately, but in no case more than one hour, after notification of an allegation of abuse, neglect, or exploitation, the facility administrator or designee shall ensure that adequate medical and psychological care have been provided to the alleged victim, and shall take measures to ensure the safety of the person, including the following actions.

(A) If the accused is an employee, including a contracted provider of service, the facility administrator or designee will determine whether action should be taken regarding the employee, which could include termination of employment, reassigning the em-

ployee to non-client contact, or granting the employee leave pending an investigation. An employee accused of client abuse should be immediately separated from contact with residents.

(B) If an allegation involves client to client aggression, the facility administrator or designee will take immediate appropriate action to protect the alleged victim and other residents, such as one-on-one observation of the alleged perpetrator or the alleged victim, or separation.

(C) If the accused is another person who is known but who is neither a staff person or resident, such as a family member or friend, and the alleged incident occurred away from the facility, interdisciplinary team (IDT) and client will address the alleged perpetrator's access to the alleged victim pending an investigation. The restriction and justification shall be documented in the resident's record. The facility administrator or designee will contact the Texas Department of Protective and Regulatory Services at 1-800-252-5400 for investigation, in addition to notifying the local law enforcement agency and DHS.

(D) The facility administrator or designee, with the consent of the alleged victim or his legal guardian, shall immediately, but in no case later than 24 hours after notification of an allegation of abuse, neglect or exploitation, notify the parents, spouse, or other appropriate relative of the alleged victim. If oral contact cannot be made, the administrator will provide notification by certified mail with a return receipt requested.

(E) The facility administrator or designee will ensure that the resident's medical and psychological needs are met immediately and on an ongoing basis.

(2) The facility administrator or designee will notify the facility investigator immediately, but in no case more than one hour after notification of the incident, of the alleged abuse, neglect, or exploitation.

(3) The facility administrator or designee will assist the investigator in whatever way possible to make staff who are relevant to the investigation available in an expeditious manner and ensure all evidence is preserved and safe guarded to protect the chain of evidence.

(f) Confidentiality of the investigative process.

(1) The administrator or designee will advise the resident of the outcome in a language or process which the resident understands and in writing. The legal guardian or parent of a minor and reporter(s) shall be informed in writing of the outcome of the investigation.

(2) The perpetrator will be informed, in writing, of the outcome of the investigation and any disciplinary action.

(g) Facility responsibility.

(1) The facility administrator or designee must ensure that resident rights and protection are upheld at all times.

(2) If resident-to-resident abuse is substantiated, the facility IDT will determine if the victim understands the situation and is able to make informed decisions. If the IDT determines that the victim is unable to make informed decisions, the IDT will determine if the perpetrator's behavior is dangerous and ongoing. If it is determined that the behavior is dangerous and ongoing, the facility will take immediate action to protect all residents in the facility. In addition, the IDT will consider program changes and/or discharge planning for the perpetrator. If the behavior of the perpetrator is not dangerous and ongoing, the IDT will determine what the needs of

the perpetrator are, such as behavior program or specialized training, and take appropriate action.

(3) If abuse by an outside person, not facility or contract staff, is substantiated, the facility IDT will determine if the victim is able to make an informed decision regarding any interaction with the perpetrator. If the IDT determines that the client is unable to make informed decisions, the IDT will determine the degree of restrictions on visitation.

(h) Disciplinary action.

(1) The facility administrator or designee will be responsible for taking prompt and proper disciplinary action when a charge of abuse, neglect, or exploitation is confirmed by the investigator.

(2) If a provider continues to employ an employee who has a history of abuse neglect, or exploitation, DHS may impose a sanction of license revocation, denial of license renewal, or civil penalties under Health and Safety Code §252.064.

(3) If anyone is dissatisfied with the investigation, they may contact DHS.

(i) Failure to report. Failure to report and/or conduct investigations in accordance with this section may result in license revocation, denial of license renewal, or civil penalties under Health and Safety Code §252.064.

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 April 9, 1998.

TRD-9804997

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: May 1, 1998

Proposal publication date: November 21, 1997

For further information, please call: (512) 438-3765

40 TAC §§90.211, 90.212

The repeals are adopted under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; and under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs.

The repeals implement the Health and Safety Code, §§252.001 - 252.186, and the Human Resources Code, §§22.001 - 22.030.

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-9804996

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

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For further information, please call: (512) 438-3765

Subchapter J. Respite Care

40 TAC §§90.281-90.283, 90.287

The amendments are adopted under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; and under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs.

The amendments implement the Health and Safety Code, §§252.001 - 252.186, and the Human Resources Code, §§22.001 - 22.030.

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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Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

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For further information, please call: (512) 438-3765

Subchapter K. Certification of Facilities for Care of Persons with Alzheimer's Disease and Related Disorders

40 TAC §§90.301-90.304

The repeals are adopted under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; and under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs.

The repeals implement the Health and Safety Code, §§252.001 - 252.186, and the Human Resources Code, §§22.001 - 22.030.

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 April 9, 1998.

TRD-9804999

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

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Proposal publication date: November 21, 1997

For further information, please call: (512) 438-3765

Subchapter L. Provisions Applicable to Facilities Generally

40 TAC §§90.321, 90.323-90.325

The amendments and new sections are adopted under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; and under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs.

The amendments and new sections implement the Health and Safety Code, §§252.001 - 252.186, and the Human Resources Code, §§22.001 - 22.030.

§90.323. *Procedures for Inspection of Public Records.*

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

(e) Records maintained by Long Term Care-Regulatory are open to the public, with the following exceptions:

(1) (No change.)

(2) all reports, records, and working papers used or developed by DHS in an investigation of reports of abuse and neglect are confidential, and may be released to the public only as follows:

(A) (No change.)

(B) if DHS receives written authorization from a facility resident or the resident's legal representative regarding an investigation of abuse or neglect involving that resident, DHS will release the completed investigation report without removing the resident's name. The authorization must:

(i) be signed and dated within six months of the request or state a length of time the authorization is valid;

(ii) detail the information to be released;

(iii) identify to whom the information can be released; and

(iv) release DHS from all liability for complying with the authorization.

(3)-(8) (No change.)

(f) (No change.)

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 April 9, 1998.

TRD-9805001

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 §90.322

The repeal is adopted under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; and under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs.

The repeal implements the Health and Safety Code, §§252.001 - 252.186, and the Human Resources Code, §§22.001 - 22.030.

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 April 9, 1998.

TRD-9805000

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: May 1, 1998

Proposal publication date: November 21, 1997

For further information, please call: (512) 438-3765



TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

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

ADOPTED

The Commissioner of Insurance ("Commissioner") at a public hearing under Docket No. 2338 on March 25, 1998, held at 9:00 a.m., in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, adopted two amendments to the Texas Private Passenger Automobile Statistical Plan ("Stat Plan") as proposed by the staff of the Texas Department of Insurance ("TDI").

The first amendment is necessary to gather experience arising from the implementation of S.B. 1498 passed by the 75th Legislature. S.B. 1498 amended the Texas Insurance Code, Article 5.03-5 to allow insurers to grant a discount on certain automobile insurance premiums for members of youth groups if the necessary qualifications are met. The staff proposed the amendments to add one field of data to the Quarterly Detailed Experience module of the Texas Private Passenger Automobile Statistical Plan to gather experience on the use of youth group members premium discounts. The second amendment adds one additional code to an existing field, youth driver training, in order to clarify the distinction between youth driver training commercially provided and youth driver training provided by a parent or guardian. The staff proposed this amendment in response to public concerns, raised at a January 29, 1998 hearing, that there is a need to differentiate between the two types of driver trainers. Staff's petition (Ref. A-0298-2-I) proposing the amendments was filed with the TDI Chief Clerk on February 3, 1998, and notice of the filing was published in the February 13, 1998 issue of the *Texas Register* (22 TexReg 10520).

The Commissioner adopted all of the amendments described herein at the March 25, 1998 public hearing.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.96 and 21.69. The Insurance Code, Articles 5.96 and 21.69 authorize the filing of this petition. Article 5.96 authorizes the Commissioner to prescribe, promulgate, adopt, approve, amend, or repeal standard and uniform manual rules, rating plans, classification plans, statistical plans and policy and endorsement forms for motor vehicle insurance. Article 21.69 authorizes the Commissioner to contract with or designate a statistical agent to gather data from reporting insurers under a statistical plan and to adopt rules necessary to accomplish the purposes of that article.

The amendments as adopted by the Commissioner are filed with the TDI Chief Clerk under Ref. No. A-0298-2-I and are incorporated by reference by Commissioner's Order 98-0376.

Consistent with the Insurance Code, Article 5.96(h), prior to the effective date of this action, TDI will notify all insurers writing the affected lines of insurance in this state.

This notification is made pursuant to the Insurance Code, Articles 5.96, which exempt action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, ch. 2001).

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

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the amendments to the Texas Private Passenger Automobile Statistical Plan as described herein, be adopted to be effective for all affected insurers twenty days after the date this action is published in the *Texas Register*.

Filed with the Office of the Secretary of State on April 6, 1998.

TRD-9804768

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: May 14, 1998

Proposal publication date: February 13, 1998

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



ADOPTED

TEXAS DEPARTMENT OF INSURANCE EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96 ADOPTION OF NEW AND/OR ADJUSTED 1998 MODEL PRIVATE PASSENGER AUTOMOBILE PHYSICAL DAMAGE RATING SYMBOLS FOR THE TEXAS AUTOMOBILE RULES AND RATING MANUAL

The Commissioner of Insurance, at a public hearing under Docket No. 2340 held at 9:00 a.m., March 25, 1998 in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in

Austin, Texas, adopted amendments proposed by staff to the Texas Automobile Rules and Rating Manual (the Manual) in a petition captioned "Second Petition...." The amendments consist of new and/or adjusted 1998 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-0298-04-I) was published in the February 20, 1998 issue of the *Texas Register* (23 TexReg 1643).

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

The amendments as adopted by the Commissioner of Insurance are shown in exhibits on file with the Chief Clerk under Ref. No. A-0298-04-I, which is incorporated by reference into Commissioner's Order No. 98-0373.

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

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

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

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

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the Manual is amended as described herein, and the amendments are adopted effective on the 60th day after publication of the notification of the Commissioner's action in the *Texas Register*.

Filed with the Office of the Secretary of State on April 9, 1998.

TRD-9805007

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: June 23, 1998

Proposal publication date: February 20, 1998

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

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ADOPTED

ADOPTION OF NEW AND/OR ADJUSTED 1998 MODEL PRIVATE PASSENGER AUTOMOBILE PHYSICAL DAMAGE RATING SYMBOLS FOR THE TEXAS AUTOMOBILE RULES AND RATING MANUAL

The Commissioner of Insurance, at a public hearing under Docket No. 2341 held at 9:00 a.m., March 25, 1998 in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, adopted amendments proposed by staff to the Texas Automobile Rules and Rating Manual (the Manual) in a petition captioned "Third Petition...." The amendments consist of new and/or adjusted 1998 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-0298-05-I) was published in the February 20, 1998 issue of the *Texas Register* (23 TexReg 1643).

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

The amendments as adopted by the Commissioner of Insurance are shown in exhibits on file with the Chief Clerk under Ref. No. A-0298-05-I, which is incorporated by reference into Commissioner's Order No. 98-0374.

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

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

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

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

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the Manual is amended as described herein, and the amendments are adopted effective on the 60th day after publication of the notification of the Commissioner's action in the *Texas Register*.

Filed with the Office of the Secretary of State on April 9, 1998.

TRD-9805008

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: June 23, 1998

Proposal publication date: February 20, 1998

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

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== REVIEW OF AGENCY RULES ==

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

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

Proposed Rule Review

Texas Education Agency

The Texas Education Agency (TEA) files this notice of intention to review 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter AA, Special Education Services, pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167. As part of this review process, the TEA is proposing amendments to §§89.1001, 89.1011, 89.1015, 89.1020, 89.1025, 89.1030, 89.1035, 89.1040, 89.1045, 89.1050, 89.1055, 89.1060, 89.1065, 89.1075, 89.1085, 89.1115, 89.1125, 89.1131, 89.1141, 89.1155, 89.1160, 89.1165, 89.1170, 89.1175, 89.1180, 89.1185, and the repeal of §§89.1095, 89.1105, and 89.1190. The proposed amendments and repeals may be found in the Proposed Rules section of the Texas Register. The TEA is not proposing any changes to §§89.1070, 89.1080, 89.1090, 89.1100, 89.1110, 89.1121, and 89.1151.

The TEA is also proposing new §§89.1181 and 89.1186-89.1190, which can also be found in the Proposed Rules section of the Texas Register. The new sections are not proposed under Section 167.

As required by Section 167, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 89, Subchapter AA, continues to exist. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted to Criss Cloudt, Policy Planning and Research, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701, or electronically to rules@tmail.tea.state.tx.us.

TRD-9805123

Criss Cloudt

Associate Commissioner, Policy Planning and Research
Texas Education Agency

Filed: April 13, 1998



TABLES & GRAPHICS

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

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

FIGURE NO. 1: TITLE 28 TAC CHAPTER 251 STATE RISK MANAGEMENT

STATE OFFICE OF RISK MANAGEMENT RULES
PREVIOUSLY RULES FROM THE OFFICE OF THE ATTORNEY GENERAL AND THE
TEXAS WORKERS' COMPENSATION COMMISSION

OLD RULES 1 TAC CHAPTER 51	NEW RULES CHAPTER 251 STATE OFFICE OF RISK MANAGEMENT
CHAPTER 51. State Employees - Workers' Compensation	Subchapter A. State Employees - Workers' Compensation
51.1 Definitions	§251.1 Definitions
CHAPTER 51 Procedures	Subchapter B. Procedures
CHAPTER 51.11 Compliance	§251.20 Compliance
CHAPTER 51.12 Employing Agency's Cooperation	§251.201 Employing Agency's Cooperation
CHAPTER 51.13 Posting Proposed Changes	§251.202 Posting Proposed Changes
CHAPTER 51.14 Filing of Instruments	§251.203 Filing of Instruments
CHAPTER 51.15 Communicating with Commission	§251.204 Communicating with Commission
CHAPTER 51.16 Medical Reports	§251.205 Medical Reports
CHAPTER 51.17 Employing Agency's Records	§251.206 Employing Agency's Records
CHAPTER 51.18 Requirement for Submitting Form TWCC-1S	§251.207 Requirement for Submitting Form TWCC-1S
CHAPTER 51.19 Two-Year Retention of Records	§251.208 Two-Year Retention of Records
CHAPTER 51.20 Time Limit on Submitting Form TWCC-1S	§251.209 Time Limit on Submitting Form TWCC-1S
CHAPTER 51.21 Form TWCC-6	§251.210 Form TWCC-6
CHAPTER 51.22 Absence of More Than 60 Days	§251.211 Absence of More Than 60 Days

CHAPTER 51.23 Immediate Notice of Injury	§251.212 Immediate Notice of Injury
CHAPTER 51.24 Claims Coordinator	§251.213 Claims Coordinator
CHAPTER 51.25 Duties of Claims Coordinator	§251.214 Duties of Claims Coordinator
CHAPTER 51.26 Employee Report	§251.215 Employee Report
CHAPTER 51.27 Legal Responsibilities of Injured Employee	§251.216 Legal Responsibilities of Injured Employee
CHAPTER 51.29 Agency Policies Regarding Workers' Compensation	§251.217 Agency Policies Regarding Workers' Compensation
CHAPTER 51.30 Correspondence	§251.218 Correspondence
CHAPTER 51.34 Reconsideration of Claim	§251.219 Reconsideration of Claim
CHAPTER 51.35 Request for Inspection or Copying in Writing	§251.220 Request for Inspection or Copying in Writing
CHAPTER 51.36 Officer for Public Records	§251.221 Officer for Public Records
CHAPTER 51.37 Legal Authorization for Access	§251.222 Legal Authorization for Access
	Subchapter C. Employee Entitlement to Compensation
CHAPTER 51.53 Utilization of Sick Leave	§251.301 Utilization of Sick Leave
CHAPTER 51.54 No Waiting Period	§251.302 No Waiting Period
CHAPTER 51.55 Waiting Period	§251.303 Waiting Period
CHAPTER 51.56 Computing Sick Leave	§251.304 Computing Sick Leave
CHAPTER 51.57 Right to Compensation	§251.305 Right to Compensation
CHAPTER 51.58 Effect of Sick Leave	§251.306 Effect of Sick Leave
CHAPTER 51.59 Payment of Compensation	§251.307 Payment of Compensation
CHAPTER 51.60 Effect of Emergency Leave	§251.308 Effect of Emergency Leave
CHAPTER 51.61 Communications Concerning Sick and Emergency Leave	§251.309 Communications Concerning Sick and Emergency Leave
	Subchapter D. Accident Prevention

CHAPTER 51.71 Authority for Accident Prevention Rules	§251.401 Authority for Accident Prevention Rules
CHAPTER 51.72 Accident Prevention Rules	§251.402 Accident Prevention Rules
CHAPTER 51.73 Interpretation of Director	§251.403 Interpretation of Director
CHAPTER 51.74 National Safety Council Guidelines	§251.404 National Safety Council Guidelines
CHAPTER 51.75 Administration of Accident Prevention Rules	§251.405 Administration of Accident Prevention Rules
CHAPTER 51.76 Correction of Cited Discrepancy	§251.406 Correction of Cited Discrepancy
CHAPTER 51.77 Hearing Procedures	§251.407 Hearing Procedures
CHAPTER 51.78 Hearing Records	§251.408 Hearing Records
CHAPTER 51.80 Request for Change in Rules	§251.409 Request for Change in Rules
CHAPTER 51.81 Provisions for Requesting a Change in Rules	§251.410 Provisions for Requesting a Change in Rules
CHAPTER 51.82 Director's Determination Regarding Change in Rules	§251.411 Director's Determination Regarding Change in Rules
CHAPTER 51.83 Substitute Rule Request	§251.412 Substitute Rule Request
CHAPTER 51.84 Availability of Rules	§251.413 Availability of Rules
28 TAC Chapter 170	
CHAPTER 170. State Risk Management	Chapter 252
CHAPTER 170.1 Definitions	§252.1 Definitions
CHAPTER 170.2 State Risk Management Guidelines	§252.101 State Risk Management Guidelines
CHAPTER 170.3 Reports	§252.102 Reports

Figure: 30 TAC §114.201(d)(1)

$$credit = \frac{F_{required} - F_{optional}}{F_{CV} - F_{LEV}}$$

$$\left[credit = \frac{F_{base} - F_{optional}}{F_{CV} - F_{LEV}} \right]$$

where:

credit = the credit generated by the vehicle for a fleet to fleet trade;

$F_{required}$ = the emission factor for the vehicle that is required;

~~F_{base} = the emission factor for the base vehicle that is required;~~

$F_{optional}$ = the emission factor for the extra or cleaner than LEVs (ULEV, ILEV, or ZEV) [clean-fuel vehicle];

F_{cv} = for light-duty vehicles and trucks, the emission factor for a conventional light-duty vehicle; and for heavy-duty vehicles, the emission factor for a conventional vehicle in the same weight class as the credit generating vehicle; and

F_{LEV} = for light duty vehicles and trucks, the emission factor for a light-duty vehicle LEV; and for heavy duty vehicles, the emission factor for an LEV in the same weight class as the credit generating vehicle.

Figure: 30 TAC §114.201(d)(2)

$$MERC_{\text{grams/year}} = \frac{(\text{differential vehicle benefit} \times VMT \times CF)}{n}$$

where:

- differential vehicle benefit = difference in emissions between the LEV {clean-fuel} and the conventional vehicle
- VMT = estimated total remaining vehicle miles traveled for the vehicle;
- CF = conversion factor used only for heavy-duty vehicles, defined as brake specific fuel consumption multiplied by fuel economy multiplied by fuel density; and
- n = estimated number of years the vehicle will be [is] in service.

[Figure: 30 TAC 336.807(h)]

[LETTER FROM CHIEF FINANCIAL OFFICER]

[(Address to the Executive Director of the Texas Natural Resource Conservation Commission (TNRCC))]

[I am the chief financial officer of (firm's name and address). This letter is in support of this firm's use

of the financial test to demonstrate financial responsibility for closure activities and, if applicable, long-term care as specified in Subchapter I of 30 Texas Administrative Code Chapter 336.

(Fill out the following five paragraphs regarding facilities and/or sites and associated current cost estimates. If your firm has no facilities and/or sites that belong in a particular paragraph, write "NONE" in the space indicated. For each facility or site, include its TNRCC License or Permit Number, name, address and current cost estimates. Identify each cost estimate as to whether it is for closure, post-closure, plugging and abandonment, or long-term care.)]

[1.The firm identified above is the parent company of the following facilities for which financial assurance is being demonstrated through the financial test. The current cost estimates covered by the

test are shown for each facility: _____.]

[2.The firm identified above guarantees, through the guarantee specified in Subchapter I of 30 TAC

Chapter 336, closure at each of the following facilities: _____.]

[3.In states where TNRCC is not administering the financial assurance requirements of Subchapter I of 30 TAC Chapter 336, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure and, if applicable, long-term care of the following facilities and/or sites through the use of a test equivalent or substantially equivalent to the financial test specified in Subchapter I of 30 TAC Chapter 336. The current cost estimate covered by such a test are shown for each facility or site: _____.]

[4.This firm is the owner or operator or guarantor of the following hazardous waste management

facilities for which financial assurance for closure, post-closure care, corrective action, and/or liability

coverage is demonstrated either to TNRCC, EPA or a State through the financial test specified in subpart H of 40 CFR parts 264 and 265 or equivalent or substantially equivalent State mechanisms.

The current closure cost estimate, post-closure cost estimate, corrective action, and/or liability covered

by such financial assurance are shown for each facility: _____.]

[5. This firm is the owner or operator of the following UIC facilities for which financial assurance for

plugging and abandonment is demonstrated either to EPA, TNRCC or a State through the financial test

specified in 40 CFR part 144 or 30 TAC Chapter 331 or equivalent or substantially equivalent State

mechanisms. The current closure cost estimates covered by such financial assurance are shown for

each facility: _____.]

[I further attest that the licensee for which this guarantee is being made has a positive tangible net worth.]

[This firm (insert "is required" or "is not required") to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.]

[The fiscal year of this firm ends on (month, day). I certify that the figures for the following items

marked with an asterisk are derived from this firm's independently audited, year-end financial statements and footnotes for the latest completed fiscal year, ended (date).

(Fill in either Alternative I if the criteria of <*>336.804(g) (2) are used or Alternative II if the criteria of <*>336.804(g) (3) are used.)]

[ALTERNATIVE I]

[1. Sum of current cost estimates (total of all cost estimates shown in the five paragraphs above)
\$ _____]

[*2. Total liabilities (if any portions of the cost estimates are included in total liabilities, you may deduct the amount of that portion from this

line and add that amount to lines 3 and 4)

\$ _____]

[*3. Tangible net worth

\$ _____]

[*4. Net Worth

\$ _____]

[*5. Current assets

\$ _____]

[*6. Current liabilities

\$ _____]

[*7. Net working capital (line 5 minus line 6)

\$ _____]

[*8. The sum of net income plus depreciation, depletion and amortization\$ _____]

[*9. Total assets in U. S. (required only if less than 90% of firm's are located in U.S.)

\$ _____]

[Circle either "yes" or "no" to the following questions.]

[10. Is line 3 at least \$20 million?

yes/no]

[11. Is line 3 at least 6 times line 1?

yes/no]

[12. Is line 7 at least 6 times line 1?

yes/no]

[*13. Are at least 90% of firm's assets located in the U.S.?yes/no

If not, complete line 14]

[14. Is line 9 at least 6 times line 1?

yes/no]

[15. Is line 2 divided by line 4 less than 2.0?

yes/no]

[16. Is line 8 divided by line 2 greater than 0.1?

yes/no]

[17. Is line 5 divided by line 6 greater than 1.5?

yes/no

_____]

[*Denotes figures were derived from audited financial statements.]

[ALTERNATIVE II]

[1. Sum of current cost estimates (total of all cost estimates shown

in the five paragraphs above)

\$ _____]

[2. Current bond rating of most recent issuance of this firm and

name of rating service

_____]

[3. Date of issuance of bond

_____]

[4. Date of maturity of bond

_____]

[*5. Tangible net worth (if any portion of the cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line).

\$ _____]

[*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.)

\$ _____]

[Circle either "yes" or "no" to the following questions.]

[7. Is line 5 at least \$20 million?

yes/no]

[8. Is line 5 at least 6 times line 1?

yes/no]

[*9. Are at least 90% of the firm's assets located in the U.S.? yes/no

If not, complete line 10.]

[10. Is line 6 at least 6 times line 1?

yes/no

_____]

[*Denotes figures derived from audited financial statements.]

[I hereby certify that the wording of this letter is identical to the wording specified in 30 Texas Administrative Code <*>336.807(h) as such regulations were constituted on the date shown immediately below.]

[(Signature)]

[(Name)]

[(Title)]

[(Date)]

[Figure: 30 TAC 336.807(i)]

[CORPORATE GUARANTEE]

[Guarantee made this (date) by (name of guaranteeing entity), a corporation organized under the laws of the State of (insert name of State), herein referred to as guarantor, to the Texas Natural Resource Conservation Commission, hereinafter called TNRCC, obligee, on behalf of our subsidiary (licensee) of (business address).]

[<etb>Recitals]

[<et> 1. Guarantor has full authority and capacity to enter into this guarantee under its bylaws, articles of incorporation, and the laws of the State of (insert guarantor's state of incorporation), it's State of Incorporation. (Guarantor should include which financial test is being used.)
[2. This guarantee is being issued to comply with regulations issued by the Texas Natural Resource Conservation Commission (TNRCC), an agency of the State of Texas, pursuant to Chapter 401 of the Texas Health and Safety Code. TNRCC has promulgated regulations in Chapter 336 of Title 30 of the Texas Administrative Code. These regulations require that a licensee of (insert type of facility) shall provide assurance that funds will be available when needed in accordance with the approved Closure Plan and, if applicable, for long term care of the facility.]
[3. Guarantor meets or exceeds the following financial test criteria (insert statement indicating which financial test is being used) and agrees to comply with all notification requirements for sureties as specified in Subchapter I of the 30 Texas Administrative Code Chapter 336:]
[Guarantee shall meet one of the following two financial tests:]
[(a) Financial test one.]

[(i) Guarantor's tangible net worth and net working capital are each equal to or greater than six times the amount of the current cost estimates required by the license; and]
[(ii) Guarantor's assets located in the United States amount to at least 90 percent of its total assets or at least six times the amount of the TNRCC approved current cost estimates required by the license; and]
[(iii) Guarantor meets two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and]
[(iv) Guarantor's tangible net worth is at least \$20 million dollars;]

[OR]

[(b) Financial test two.]

[(i) The guarantor's most recently issued senior credit obligations are rated "BBB" or higher by Standard and Poor's Corporation, or "Baa" or higher by Moody's Investors Service, Inc.; and]
[(ii) The guarantor's tangible net worth is at least \$20 million and is equal to or greater than six times the amount of the TNRCC approved current cost estimates required by the license; and]
[(iii) The guarantor's assets located in the United States amount to at least 90 percent of its total assets or at least six times the amount of the TNRCC approved current cost estimates required by the license.]

[4. Guarantor owns 51 percent or more of the voting stock of the following licensee(s) covered by this guarantee. List for each licensee: Name, address, the facilities owned or operated by each licensee, and the corresponding license numbers. Guarantor also certifies that the licensee(s) for which this guarantee is being made has (have) a positive tangible net worth.]

[5. "Closure Plans" refers to the plans maintained as required by 30 Texas Administrative Code Chapter 336, for the closure activities and, if applicable, long-term care of the facilities identified above.]

[6. For value received from (licensee) and pursuant to the authority conferred upon the guarantor

by

(insert either "the unanimous resolution of its directors" or "the majority vote of its shareholders"), a

certified copy of which is attached, guarantor guarantees to TNRCC that in the event the licensee

fails

to perform the activities required in the TNRCC approved Closure Plan as required by License

No.

(insert numbers), the guarantor shall:]

[a. Carry out the required activities, or]

[b. Set up a trust fund in favor of the TNRCC in the amount of these TNRCC approved current

cost

estimates for these activities, and]

[c. In addition, the licensee or guarantor shall cover the payment of the amount for long term care,

if

applicable, as required by 30 Texas Administrative Code Chapter 336.]

[7. Guarantor agrees to submit revised financial statements, financial test data, and a special

auditor's

report and reconciling schedule annually, within 90 days of the close of the parent company

guarantor's

fiscal year.]

[8. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the

guarantor fails to meet the financial test criteria, guarantor shall send within 60 days, by certified

mail,

notice to the TNRCC Executive Director and to (licensee) that it intends to provide alternate

financial

assurance as specified in Subchapter I of 30 Texas Administrative Code Chapter 336, in the

name of

the (licensee). Within 90 days after the end of such fiscal year, the guarantor shall establish such

financial assurance unless (licensee) has done so.]

[9. The guarantor also agrees to notify the TNRCC promptly if the ownership of the licensee or

the

parent firm is transferred and to maintain this guarantee until the new parent firm or the licensee

provides alternate financial assurance, as specified in Subchapter I of 30 Texas Administrative

Code

Chapter 336, acceptable to the TNRCC Executive Director.]

[10.The guarantor agrees to notify the TNRCC Executive Director, by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.]

[11.Guarantor agrees that within 30 days after being notified by the TNRCC Executive Director of a determination that guarantor no longer meets the financial test criteria or that it is disallowed from continuing as a guarantor for the facility under license number (insert license number), it shall establish alternate financial assurance, as specified in Subchapter I of 30 Texas Administrative Code Chapter 336, in the name of (licensee), unless (licensee) has done so.]

[12.Guarantor as well as its successors and assigns agrees to remain bound jointly and severally under this guarantee notwithstanding any or all of the following: amendment or modification of the license or Closure Plan for that facility, the extension or reduction of the time of performance of closure or any other modification or alteration of an obligation of the licensee pursuant to 30 Texas Administrative Code Chapter 336.]

[13.Guarantor agrees to remain bound under this guarantee for so long as (licensee) must comply with the applicable financial assurance requirements of Subchapter I of 30 Texas Administrative Code Chapter 336, for the above listed facilities, except that guarantor may cancel this guarantee by sending notice by certified mail to the TNRCC Executive Director and to (licensee), such cancellation to become effective no earlier than 90 days after receipt of such notice by both TNRCC Executive Director and (licensee), as evidenced by the return receipts.]

[14.Guarantor agrees that if (licensee) fails to provide alternate financial assurance as specified in Subchapter I of 30 Texas Administrative Code Chapter 336 as applicable, and to obtain written approval of such assurance from the TNRCC Executive Director within 60 days after a notice of

cancellation by the guarantor is received by the TNRCC Executive Director from guarantor, guarantor shall provide such alternate financial assurance in the name of (licensee) or make full payment under the guarantee. The guarantor and the licensee agree to be jointly and severally liable for all litigation costs incurred by the TNRCC in any successful effort to enforce the agreement against the guarantor.

15. Guarantor expressly waives notice of acceptance of this guarantee by the Texas Natural Resource Conservation Commission or by (licensee). Guarantor also expressly waives notice of amendments or modifications of the Closure Plan and of amendments or modifications of the license.]

[16. If the guarantor files Financial Reports with the U.S. Securities and Exchange Commission, then it shall promptly submit them to the TNRCC during each year in which this guarantee is in effect. I hereby certify that the wording of this guarantee is identical to the wording specified in 30 Texas

Administrative Code <*>336.807(i) as such regulations were constituted on the date shown immediately below.]

[Effective date: _____.]

[(Name of guarantor)]

[(Authorized signatures for guarantor) (2)]

[(Name of persons signing) (2)]

[(Title of persons signing) (2)]

[(Name of licensee) (2)]

[(Authorized Signatures for licensee) (2)]

[(Names of persons signing) (2)]

[(Titles of persons signing) (2)]

[Signature of witness or notary: _____]

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, April 22, 1998, 9:00 a.m.

333 Guadalupe Street, Tower III, Suite 900, Room 910

Austin

Behavioral Enforcement Committee

AGENDA:

A. Investigations:

1. File No. 98-01-10L
File No. 98-01-11L
2. File No. 98-02-13L
3. File No. 98-03-22L
4. File No. 98-02-05L
5. File No. 98-03-17L
6. File No. 97-07-21L
7. File No. 98-01-09L
8. File No. 98-02-10L
9. File No. 98-02-02L
10. File No. 98-02-14L
11. File No. 98-02-03L
12. File No. 98-01-12L
13. File No. 97-07-11L

B. Discussion Item

C. Possible Investigation

D. Informal Conference

1. File No. 98-01-63L — 9:00 a.m.
2. File No. 97-06-05L — 10:30 a.m.

Contact: Amanda G. Birrell, 333 Guadalupe, Tower III, Suite 900,
Austin, Texas 78701-3900, (512) 305-7848.

Filed: April 9, 1998, 10:04 a.m.

TRD-9804982



Thursday, April 23, 1998, 9:00 a.m.

333 Guadalupe Street, Tower III, Suite 900, Room 910

Austin

Technical Standards Review Committee

AGENDA:

A. Informal Conference:

1. File No. 97-07-19L
2. File No. 97-07-17L
3. File No. 97-07-18L
4. File No. 97-08-63L
5. File No. 96-03-17L

B. Discussion Item:

1. Ryan & Company P.C.
2. Investigation 97-08-53L

C. Investigations:

1. 97-10-29L

2. 97-10-17L
3. 97-11-10L
4. 98-03-25L
5. 98-02-08L
6. 97-05-19L

Contact: Amanda G. Birrell, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3900, (512) 305-7848.
 Filed: April 10, 1998, 11:45 a.m.

TRD-9805087



State Office of Administrative Hearings

Thursday, April 23, 1998, 1:30 p.m.

1700 North Congress Avenue, Stephen F. Austin Building, 11th Floor
 Austin

Utility Division

AGENDA:

A Pre-Hearing conference will be held at the above date and time in SOAH Docket No. 473-98-0484- Petition of CENTRAL TELEPHONE COMPANY OF TEXAS, d/b/a SPRINT, to Recover Lost Revenues and Cost of Implementing Expand Local Calling Service Pursuant to PUC Subst. R. 23.49 (c)(12) PUC Docket No 17809).

Contact: William G. Newchurch, 300 West 15th Street, Suite 502, Austin, Texas 78701-1649, (512) 936-0728.
 Filed: April 13, 1998, 3:32 p.m.

TRD-9805172



Thursday, April 30, 1998, 10:00 a.m.

1700 North Congress Avenue,

Austin

Utility Division

AGENDA:

A Sanctions Hearing is scheduled to be held at the above date and time in: SOAH Docket No. 473-97-1849- Petition of THE NAVY For Declaratory Ruling on Wholesale Electric Customer Status for Ten Bases in Texas (PUC Docket No. 17180).

Contact: William G. Newchurch, 300 West 15th Street, Suite 502, Austin, Texas 78701-1649, (512) 936-0728.
 Filed: April 9, 1998, 10:11 a.m.

TRD-9804988



Texas Commission on Alcohol and Drug Abuse

Friday, April 24, 1998, 11:00 a.m.

3930 Kirby, Suite 207, Texas Youth Commission

Austin

Regional Advisory Consortium (RAC), Region 6

AGENDA:

Call to order; welcome and introductions to guests; approval of minutes; services network status; RAC convenor's meeting report; status of current committees; old business; new business; announcements/public comment; and adjournment.

Contact: Heather Harris, 9001 North IH35, Suite 105, Austin, Texas 78753-5233, (512) 349-6669 or (800) 832-9623, extension 6669.
 Filed: April 10, 1998, 10:20 a.m.

TRD-9805079



Tuesday, April 28, 1998, 11:00 a.m.

4615 Alameda Avenue, El Paso Psychiatric Center

El Paso

Regional Advisory Consortium (RAC), Region 10

AGENDA:

Call to order; welcome and introductions to guests; approval of minutes; update on statewide RAC meeting; need assessment committee report; dual diagnosis update; old business; new business; terms of RAC members; public comment/announcements; and adjournment.

Contact: Heather Harris, 9001 North IH35, Suite 105, Austin, Texas 78753-5233, (512) 349-6669 or (800) 832-9623, extension 6669.
 Filed: April 9, 2:47 p.m.

TRD-9805048



Texas Council on Alzheimer's Disease and Related Disorders

Thursday, April 30, 1998, 9:30 a.m.

Tower Building, Room T-407, Texas Department of Health, 1100 West 49th Street

Austin

AGENDA:

The council will discuss and possibly act on: approval of the minutes of the last meeting; introduction of members; election of a new chairperson; Department of Human Services' (DHS) pilot project; Texas Council on Alcohol and Drug Abuse (TCADA) Memorandum of Understanding; governor's conference on aging; research updates; Alzheimer's annual report/newsletter; strategic planning for the future; update on appointment terms for members; other business not requiring action; and public comment.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD (512) 458-7708 at least four days prior to the meeting.

Contact: Anne Williamson, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7324.
 Filed: April 13, 1998, 11:59 a.m.

TRD-9805146



Advisory Board of Athletic Trainers

Friday, May 1, 1998, 9:30 a.m.

Exchange Building, Room S-402, Texas Department of Health, 8407 Wall Street

Austin

AGENDA:

The board will recognize guests and will discuss and possibly act on: open forum to receive input from interested parties; approval of the minutes of the January 13, 1998 board meeting; the September 23, 1991 apprenticeship agreement with Southern Methodist University; Scope of Practice Committee report; Education Committee report; proposed amendments (25 TAC §§313.5, 313.15) regarding qualifications for licensure and guidelines for conduct; and new proposed (25 TAC §313.20) regarding scope of athletic training practice; announcements and comments; and other business not requiring action.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6615.

Filed: April 9, 1998, 11:03 a.m.

TRD-9805011



The State Bar of Texas

Thursday-Friday, April 16-17, 1998, beginning at 4:00 p.m.
April 16

The Marriott at the Capitol — Tannehill Room, Fourth Floor, 701 East 11th Street

Austin

The Texas Commission for Lawyer Discipline

AGENDA:

PUBLIC SESSION: Call to order/Introductions/ Approve Minutes

CLOSED SESSION: Discuss appropriate action with respect to pending evidentiary cases; pending and potential litigation; special counsel assignments; and the performance of the General Counsel/ Chief Disciplinary Counsel and staff.

PUBLIC SESSION: Discuss and authorize General counsel to make, accept or reject offers or take other appropriate action with respect to matters discussed in closed session/ Review, discuss, and take appropriate action on the ABA's Committee on Professional Discipline's offer of assistance/ Review and discuss the outcome of recent disciplinary trails/Review, discuss and take appropriate action on: statistical and status reports of pending cases; the Commission's compliance with governing rules; reports concerning the state of the attorney disciplinary system and recommendations for refinement; budget, operations, and duties of the Commission and the General Counsel's Office; matters concerning district grievance committees; the Special Counsel Program and recruitment of volunteers/Discuss future meetings/Discuss other matters as appropriately come before the Commission/Public comment/ Adjourn.

Contact: Ann McKenna, P.O. Box 12487, Austin, Texas 78711, 1-800-204-2222.

Filed: April 8, 1998, 2:56 p.m.

TRD-9804955



Friday, April 17, 1998, 9:00 a.m.

The Marriott at the Capitol, 701 East 11th Street

Austin

AGENDA:

Call to order/Roll Call/Invocation/Consent Agenda/Election of 1998-1999 Chair of the Board/Items presented by: President (including Report from Minority Representation Committee/ ad hoc Committee to Select Minority Members and consider approval of Minority Members to serve until 2001); Nominations and Elections Committee (including Consideration of approval for: amendment to Policy manual regarding Nominations and Elections recommendations regarding presidential elections, and including biographical information in Board ballots), Executive Director, President-Elect/Budget Committee (including considering adoption of 1998-1999 SBOT budget), Administrative Oversight Committee [CLOSED SESSION: discuss the evaluation, duties and compensation of the Executive Director and General counsel/Return to OPEN SESSION: consider and take appropriate action regarding matter discussed in closed session], commission for Lawyer Discipline, and General Counsel/Review and take appropriate action on items presented by: Board Committees (Regarding Section Representation, Ad Hoc Benchmark Appeals, Client Security Fund, General Counsel Oversight, Grant Review Committee, Regarding the Out-of-State Lawyer Liaison Long Range Planning Committee, Legal Services Committee), Annual Meeting Resolutions Committee, State Bar Committees, Sections, and Divisions (Lawyers' Assistance Program, Professionalism, Proposed Creation of New Sections — Insurance Law Section and Sexual Orientation and Gender Identification Section)/Reports from: Supreme Court Liaison, Court of Criminal Appeals Liaison, Immediate Past President, TYLA President, Federal Judicial Liaison, Judicial Section Liaison, and State Bar of Texas Insurance Trust/Public comment/Adjourn.

Contact: Pat Hiller, P.O. Box 12487, Austin, Texas 78711, 1-800-204-2222.

Filed: April 8, 1998, 2:57 p.m.

TRD-9804956



Texas Commission for the Blind

Saturday, April 25, 1998, 10:00 a.m.

3602 West Dallas

Houston

AGENDA:

A Town Meeting is being held by the Texas Commission for the Blind (TCB) on Saturday, April 25, 1998 from 10:00 a.m. until 12:00 noon in the Community Services Building at The Lighthouse for the Blind of Houston, 3602 West Dallas, Houston, Texas. The purpose of this Town Meeting is to provide people the opportunity to review and provide comment on the Commission's Vocational Rehabilitation State Plan, Federal Strategic Plan and current agency services. The recommendations and suggestions will be used in planning and improving our services.

The State Plan and Federal Strategic Plan are both available in regular, large print, and braille formats for viewing in the Houston and Southeast Regional offices. A draft copy of the proposed changes are available prior to the Town Meeting by contacting Ed Browning or Jerry Wells at 10800-252-5204, or the Houston Regional Office at (713) 880-0721, or the Southeast Regional Office at (713) 944-9924.

People who are unable to attend are invited to send written comments by May 4, 1998 to Glenda Embree, Texas Commission for the Blind, 4800 North Lamar Boulevard, Austin, Texas 78756.

Contact: Sharon Wellslager at (713) 880-0721 or Toni Brew at (713) 944-9924.

Filed: April 10, 1998, 4:14 p.m.

TRD-9805100



Saturday, May 2, 1998, 10:00 a.m.

1314 Lomaland Drive

El Paso

AGENDA:

A Town Meeting is being held by the Texas Commission for the Blind (TCB) on Saturday, May 2, 1998 from 10:00 a.m. until 12:00 noon in the Texas Commission for the Blind's El Paso Regional Office, 1314 Lomaland Drive, El Paso, Texas. The purpose of this Town Meeting is to provide people the opportunity to review and provide comment on the Commission's Vocational Rehabilitation State Plan, Federal Strategic Plan and current agency services. The recommendations and suggestions will be used in planning and improving our services.

The State Plan and Federal Strategic Plan are both available in regular, large print, and braille formats. To review a copy for review prior to the Town Meeting, please contact Robert Counts or Jerry Wells at 1-800-252-5204 or the El Paso Regional Office at (915) 590-7388. If additional information is needed, please call (915) 590-7388.

People who are unable to attend are invited to send written comments by May 4, 1998 to Glenda Embree, Texas Commission for the Blind, 4800 North Lamar Boulevard, Austin, Texas 78756.

Contact: David Zarazua, (915) 590-7388.

Filed: April 10, 1998, 4:14 p.m.

TRD-9805099



Texas Boll Weevil Eradication Foundation

Tuesday, April 28, 1998, 9:00 a.m.

Inn of the Conchos, 2021 North Bryant

San Angelo

Technical Advisory Committee

AGENDA:

Introductions

The role of the Technical Advisory Committee relative to the Foundation

Texas eradication program update

Coordinated boll weevil research in support of education

Discussion of the recommendations of the Steering Committee for the 1998 eradication program in the Southern Rolling Plains, the Western High Plains and the Permian Basin, and the Southern High Plains/Caprock Zones.

Adjourn.

Contact: Katie Dickie Stavinoha, P.O. Box 12847, Austin, Texas 78711, (512) 463-7593.

Filed: April 15, 1998, 9:40 a.m.

TRD-9805250



Comptroller of Public Accounts

Friday, April 17, 1998, 9:30 a.m.

111 East 17th Street, Room 114

Austin

Texas Prepaid Higher Education Tuition Board Investment Committee

AGENDA:

Pursuant to Texas Government Code, Chapter 551, the following matters, not necessarily in the order noted, will be taken up for discussion and/or decision by the Texas Prepaid Higher Education Tuition Board Investment Committee at the Lyndon B. Johnson Building, 111 East 17th Street, Room 114, Austin, Texas on the 17th day of April, 1998, commencing at 9:30 a.m.

I. Program Update

II. Presentations from candidates for fund manager

III. Discussion and possible selection of fund manager candidate to recommend to Board

Contact: Todd Morgan, 111 East 17th Street, Room 1114, Austin, Texas 78774, (512) 475-1735.

Filed: April 8, 1998, 2:48 p.m.

TRD-9804954



Friday, April 17, 1998, 3:00 p.m.

111 East 17th Street, Room 114

Austin

Texas Prepaid Higher Education Tuition Board

AGENDA:

Pursuant to Texas Government Code, Chapter 551, the following matters, not necessarily in the order noted, will be taken up for discussion and/or decision by the Texas Prepaid Higher Education Tuition Board at the Lyndon B. Johnson Building, 111 East 17th Street, Room 114, Austin, Texas on the 17th day of April, 1998, commencing at 3:00 p.m. The Board may meet in executive session on any items listed below as authorized by Texas Government Code, Chapter 551.

I. Program Update

II. Discussion on fixed income investment practices

III. Possible selection of fund manager

IV. Discuss and possible selection of dedicated brokerage firm

Contact: Todd Morgan, 111 East 17th Street, Room 1114, Austin, Texas 78774, (512) 475-1735.

Filed: April 8, 1998, 2:48 p.m.

TRD-9804953



Texas Cosmetology Commission

Monday, April 27, 1998, 10:00 a.m.

Radisson Hotel, Hobby Airport, 9100 Gulf Freeway

Houston

Commission Meeting

AGENDA:

Call to Order; Approval of Commission Minutes from February 9, 1998; Appointment of Vice-Chairman and Designation of Committee Chairs (Hairweaving/Braiding, Examination, and Rules Committee), and Possible Vote; Adoption of Rule 89.1, with changes and Possible Vote; Assistant Attorney General Opinion Regarding Rule 89.23, Transfer of Hours, and Possible Vote; Discussion of Rule 83.3(b), Proper Quarters, with Rule 89.40, Cosmetology Establishment Transfer, Concerning Carpeting, and Possible Vote; Presentation Concerns with Nail Diseases as Understood by Dermatologists (Presentation by Dr. Shelley Sekula); and Possible Vote; Strategic Plan, and Possible Vote; Discussion of Manicure Nail Drills (Presentation given by Vicki Peters, Representative from Association of Electric File Manufacturers in California), and Possible Vote; Executive Session; Reconvene and Possible Vote; Adjourn.

Contact: Catherine Nahay, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

Filed: April 10, 1998, 10:20 a.m.

TRD-9805078



Office of Court Administration

Thursday, April 16, 1998, 9:00 a.m., (rescheduled from 8:00 a.m.)

Texas Supreme Court Chamber, 201 West 14th Street, First Floor
Austin

Texas Judicial Council Committee on Court Records

EMERGENCY REVISED 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

REASON FOR EMERGENCY: Member's schedules

Contact: Amy Chamberlain, P.O. Box 12066, Austin, Texas 78711-2066, (512) 463-1625.

Filed: April 14, 1998, 3:03 p.m.

TRD-9805222



Thursday, May 7, 1998, 11:00 a.m.

Harris County Commissioners Court, 1001 Preston, 9th Floor
Houston

Texas Judicial Council Committee on Juvenile Justice Reform/Impact on the Courts

AGENDA:

- I. Commencement of Meeting- Judge Penny L. Pope
- II. Attendance of Members
- III. Overview of Background Resources

IV. Discuss Issues to be Addressed by Committee

V. Invited and Public Testimony

VI. Other Business

VII. Adjourn

Contact: Amy Chamberlain, P.O. Box 12066, Austin, Texas 78711-2066, (512) 463-1625.

Filed: April 15, 1998, 10:28 a.m.

TRD-9805264



Texas Department of Criminal Justice

Monday, April 20, 1998, 9:00 a.m.

201 East 14th Street, Sam Houston Building,
Austin

Programs Committee of Board of Criminal Justice

AGENDA:

- 1. Harris County CSCD Sex Offender Unit
- 2. Windham School District Library Program
- 3. Family Support Programs
- 4. Community Projects and Public Service Projects
- 5. Strategies for Increasing Contact Hours with Windham
- 6. Community Resources and Coordination Groups of Texas — Overview of Plane State Jail Pilot Project
- 7. Sex Offender Treatment Program Expansion; Civil Commitment Process; Development of Orchiectomy Contract
- 8. Prison Industries Enhancement Program "Factories with Fences"
- 9. Corrections Concepts, Inc. — Community Corrections Institution of Red River County

Contact: Amanda Ogden, SATP, (512) 443-9472.

Filed: April 10, 1998, 11:45 a.m.

TRD-9805074



Texas Council on Purchasing from People with Disabilities

Monday, April 27, 1998, 10:00 a.m.

Capitol Extension, 1400 North Congress Avenue, Hearing Room E2.026

Austin

AGENDA:

Executive Session to Consult with Legal Council Concerning Pending Litigation Pursuant to the provisions of Texas Government Code, §551.071.

Persons with disabilities who plan to attend this meeting and who may need ADA assistance or services, please contact Erica Goldbloom at (512) 463-3244, two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Chester Beattie Jr., 1711 San Jacinto, Austin, Tx 78701, (512) 463-3583.

Filed: April 13, 1998, 3:33 p.m.

TRD-9805173

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Interagency Council on Early Childhood Intervention

Wednesday, April 22, 1998, 8:30 a.m.

909 West 45th Street

Austin

Board

AGENDA:

Public comment. Discussion and approval of minutes from the March 25, 1998 meeting. Discussion and approval of Advisory Committee and Director's Forum reports. Discussion and approval of Ad Hoc appointments to the Early Childhood Intervention Advisory Committee. Discussion and approval of the continuation of Milestones contracts for Fiscal Year 1998. Discussion and approval of Internal Audit Committee recommendations. Recess for Lunch. Discussion of Fiscal Year 2000-2001 Legislative Appropriations Request process. FYI.

Persons with disabilities who plan to attend this meeting are requested to contact Linda Hill (512) 424-6754, at least three days prior to the meeting.

Contact: Linda B. Hill, 4900 North Lamar, Austin, Texas 78751, (512) 424-6754.

Filed: April 15, 1998, 8:44 a.m.

TRD-9805239

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Texas Department of Economic Development

Thursday, April 23, 1998, 10:00 a.m.

7300 Jack Newell Boulevard South

Fort Worth

Texas Manufacturing Institute Board

AGENDA:

10:00 a.m. — Call to Order

ACTION ITEMS:

10:05 a.m. — Adopt Minutes from January 15, 1998

10:10 a.m. — Consider the Transition Committee Report

INFORMATION ITEM

11:10 a.m. — TMAC Presentation

COMMENTS

11:30 a.m. — Public Comments

11:40 a.m. — Board Comments

11:50 a.m. — Adjourn

Contact: Lena Chiu, 1700 North Congress Avenue, Austin, Texas 78701, (512) 936-0234.

Filed: April 14, 1998, 10:32 a.m.

TRD-9805201

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Texas Education Agency (TEA)

Wednesday, April 29, 1998, 8:30 a.m.

Red Lion Hotel, 6121 IH35 North, Lone Star 2-3

Austin

Continuing Advisory Committee (CAC) for Special Education

AGENDA:

On Wednesday, April 29, 1998 beginning at 8:30 a.m., the CAC will hear welcoming remarks and approve the minutes from the February 25, 1998 meeting. The CAC will discuss CAC procedures and hear presentations on the status of the Office of Special Education Programs corrective action plan; and the proposed State Board of Education (SBOE) and commissioner of education rules relating to special education. Beginning at 10:45 a.m., the CAC, in workgroups, will discuss and develop recommendations on the proposed SBOE and commissioner's rules. Beginning at 12:45 p.m., the CAC will hear presentations on alternative assessment for students with disabilities; and the state implementation plan for the Individuals with Disabilities Education Act (IDEA). Beginning at 2:45 p.m., the CAC, in workgroups, will discuss and develop recommendations on the state implementation plan for IDEA. The CAC will set future meetings, agendas, and adjourn.

Contact: Shirley Sanford and Laura Taylor, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9414.

Filed: April 15, 9:40 a.m.

TRD-9805252

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State Board for Educator Certification

Friday, April 17, 1998, 10:00 a.m.

Mesquite ISD, 405 East Davis Street

Mesquite

Finance Committee

AGENDA:

1. Review the discussions of the February 13, 1998 Finance Committee meeting.
2. Discussion of amendments to the 1997-1998 budget.
3. Discussion of the 1998-1999 budget.
4. Discussion of the Legislative Appropriations Request for the 1999-2001 biennium.

Contact: Denise Jones, State Board for Educator Certification, (512) 489-3005.

Filed: April 10, 7:44 a.m.

TRD-9805070

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Advisory Commission on State Emergency Communications

Thursday, April 16, 1998, 8:30 a.m.

333 Guadalupe, Room 1000

Austin

Legislative and Regulatory 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: PUC. Project No. 16251, Investigation of Southwestern Bell Telephone Company's Entry into the Texas Interlata Telecommunications Market; PUC Project No. 17264, Rule-making Regarding Amendment to Substantive Rule 23.98, Relating to Abbreviated Dialing Codes (311 and 711); PUC Project Nos. 18438, 16899, 16900, and 16091 Number Conservation and Area Code Relief Planning Issues for the 214/972, 713/281, and 512 Area Codes; PUC Project No. 18734, survey of 9-1-1 Issues Related to Competitive Telecommunications Competition; PUC Project No. 18758, Potential Revisions to the PUC Interconnection Rule; HB 1668, Implementation and Process on Service Fee and Equalization Surcharge Review; Standards for 9-1-1 Compliant Switches and Equipment; Other Public Utility Commission of Texas and Federal Communications Commission Matters; Approval of April 17 and October 8, 1998, and January 14, 1998 Meeting Minutes. The Committee may meet in Executive Session on any of the items as authorized per Texas Open Meetings Act, and pursuant to Government Code 551, Subchapter D, 551.071, consultation with Assistant Attorneys General on pending or contemplated litigation or to seek legal advice. Adjourn.

Persons requesting ADA services or accommodation, are requested to contact Velia Williams at (512) 305-6933 at least two working days prior to the meeting.

Contact: Velia Williams, ACSEC, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-6933.

Filed: April 8, 1998, 1:33 p.m.

TRD-9804941



Thursday, April 16, 1998, 10:00 a.m., or upon adjournment of Legislative Committee

333 Guadalupe, Room 100

Austin

Planning and Implementation 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: Consider Comments Received on Proposed Amendments to Rule 251.7, Guidelines for Integrated Services; Consider Proposed Addressing Maintenance Rule; Capital Recovery Issues; Attorney General Opinion on Resell of Addressing Data; Ark-Tex Council of Governments Strategic Plan Amendments; Golden Crescent Regional Planning Commission Strategic Plan/Administrative Budget Amendment; East Texas Council of Governments Service Fee Billing and Remittance; Consideration of Implementation of a Non-Emergency Public Safety 3-1-1 Program for the Austin Police Department; Update on AT&T Wireless Services (AWS) First Office Application (FOA) Trial at the Capital Area Planning Council; Update on GTE Wireless Trial at the Capital Area Planning Council; Update on ACSEC/CAPCO Integration Trial and Testing Project; Update on the Capital Area Planning Council's Strategic Plan; Approval of November 18, 1997 and January 14, 1998, Meeting Minutes. The Committee may meet in Executive Session on any of the items as authorized per Texas Open Meetings Act, and pursuant to Government Code 551, Subchapter D, 551.071, consultation with Assistant

Attorneys General on pending or contemplated litigation or to seek legal advice. Adjourn.

Persons requesting ADA services or accommodation, are requested to contact Velia Williams at (512) 305-6933 at least two working days prior to the meeting.

Contact: Velia Williams, ACSEC, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-6933.

Filed: April 8, 1998, 1:33 p.m.

TRD-9804942



Thursday, April 16, 1998, 1:15 p.m.

333 Guadalupe, Room 100

Austin

Commission Meeting

AGENDA:

The Committee will Call the Meeting to Order and Recognize Guests; Hear Public Comment; Hear Reports, Discuss and take Committee Action, as necessary: EXECUTIVE SESSION: City of Corpus Christi's Proposed Withdrawal from the Coastal Bend Council of Governments's 9-1-1 Regional Plan and Potential Amendment to Regional Plan; OPEN SESSION: Call to order; Presentation by the Ethics Commission; Election of Commission Vice-Chair; ACSEC 9-1-1 and Poison Control Financial Reports; GTE Service Fee Remittance and Collection; approval of FY' 1998 Internal Audit Plan; State of Texas Auditor's Office Audit of the Emergency Services (9-1-1) System in Texas; Agency Rule Review Pursuant to Section 167 of the Current Appropriations Act; Legislative and Regulatory Committee Report; Planning and Implementation Committee Report; Executive Committee Report; Approval of February 19, 1998 Commission Meeting Minutes. The Committee may meet in Executive Session on any of the items as authorized by the Texas Open Meetings Act, and pursuant to Government Code 551, Subchapter D, 551.071, consultation with Assistant Attorneys General on pending or contemplated litigation or to seek legal advice. Adjourn.

Persons requesting ADA services or accommodation, are requested to contact Velia Williams at (512) 305-6933 at least two working days prior to the meeting.

Contact: Velia Williams, ACSEC, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-6933.

Filed: April 8, 1998, 1:33 p.m.

TRD-9804943



State Employee Charitable Campaign

Monday, April 20, 1998, 3:30 p.m.

625 Dallas Drive, #525

Denton

Local Employee Committee, Denton

AGENDA:

- I. Review and voting on federations and agencies
- II. Appeals needed and data for letters not accepted.
- III. Campaign Plan

Contact: Pat Gobble, 625 Dallas Drive, Suite 525, Denton, Texas ,
(940) 566-5851.
Filed: April 13, 1998, 12:23 p.m.
TRD-9805154



Wednesday, April 22, 1998, 1:30 p.m.
4000 Southpark Drive
Tyler
Local Employee Committee, Tyler/Smith County
AGENDA:

- I. Call to order
- II. Approve minutes of March 4th meeting
- III. Consider Organization Applications
- IV. Review Campaign Plan
- V. Discuss brochure development
- VI. Discuss agenda and schedule next meeting

Contact: Dawn Franks, 4000 Southpark Drive, Tyler, Texas , 75703,
(903) 581-6376.
Filed: April 9, 1998, 10:51 a.m.
TRD-9805004



Wednesday, April 22, 1998, 3:30 p.m.
2207 Line Avenue
Amarillo
Local Employee Committee, Amarillo
AGENDA:

- A. Introductions — Dr. Lee Taylor
- B. Minutes — Dr. Lee Taylor
- C. Budget and Calendar — Dr. Lee Taylor
 1. 1998 Proposed Budget
 2. 1998 Calendar
- D. Documentation for Notebooks — Diana Phillips
 1. Letter from Don Nicholson
 2. Letter to SPC concerning clarification on year round fundraising by agencies
 3. Ethics Advisory Opinion No. 182
 4. Revised state agency listing
- E. Review of 1998 Applications — Committee
 1. Local Charitable Organization Applications
 2. Local Federation Application
- F. Sub-Committee Meetings
 1. Kickoff
 2. Training
 3. LE Recruitment
- G. Adjourn

Contact: Diana Phillips, 2207 Line Avenue, Amarillo, Texas 79106,
(806) 376-6359.
Filed: April 9, 1998, 10:54 a.m.
TRD-9805010



Thursday, April 23, 1998, 10:00 a.m.
2201 19th Street
Lubbock
Local Employee Committee, Lubbock
AGENDA:

- I. Approval of February 26, 1998 minutes — Jim Bob Jones
- II. Review 1998 Local Charitable Organizations Applications — Jim Bob Jones
- III. Approval of 1998 Calendar — Jim Bob Jones
- IV. Discussion of other campaign issues — Jim Bob Jones

Contact: Jami Pitts, 2201 19th Street, Lubbock, Texas 79401, (806)
747-2711.
Filed: April 9, 1998, 5:01 p.m.
TRD-9805067



Monday, May 4, 1998, 2:30 p.m.
700 South Alamo
San Antonio
Local Employee Committee, San Antonio
AGENDA:

1. Local Agency eligibility Determination
2. Adjourn

Contact: Jerry Swinarsky, 700 South Alamo, San Antonio, Texas
78295, (210) 352-7000.
Filed: April 8, 1998, 2:48 p.m.
TRD-9804949



Thursday, May 21, 1998, 3:00 p.m.
901 Ross Avenue
Dallas
Local Employee Committee, Dallas
AGENDA:

Campaign Planning/Cultivation
Contact: Gina Goolsby, 901 Ross Avenue, Dallas, Texas , 75202,
(214) 978-0000.
Filed: April 9, 1998, 10:53 a.m.
TRD-9805009



Employees Retirement System of Texas
Thursday, April 16, 1998, 9:30 a.m.
ERS Auditorium, ERS Building, 18th and Brazos Streets

Austin

ERS Board of Trustees

AGENDA:

Contact: William S. Nail, 18th and Brazos Streets, Austin, Texas 78701; (512) 867-31788.

Filed: April 8, 1998, 1:23 p.m.

TRD-9804937



Wednesday, April 16, 1998, 9:00 a.m.

ERS Auditorium — ERS Building, 18th and Brazos

Austin

ERS Audit Committee

AGENDA:

1. Presentation of the Review of the Performance Verification Process Within the Investments Division, Dated January 23, 1998
2. Status of the Fiscal Year 1998 Audit Plan
3. Executive Session — Pursuant to Chapter 551.074, Texas Government Code, the ERS Audit Committee will meet to discuss the appointment of the Director of Internal Auditing in order to present a recommendation to the ERS Board of Trustees
4. Any Action Resulting from Executive Session
5. Adjournment

Contact: William S. Nail, 18th and Brazos; Austin, Texas 78701; (512) 867-3178.

Filed: April 8, 1998, 1:25 p.m.

TRD-9804938



Fire Fighters Pension Commission

Thursday-Friday, April 23–24, 1998, 9:00 a.m.

State Pension Review Board, William P. Clements Building, Room 406, 300 West 15th Street

Austin

Administrative Division

AGENDA:

According to the complete agenda, the Board of Trustees will approve the minutes of the previous meeting, recess to Executive Session, assign committees, recess to committee meetings, hear presentation of consultant's report, hear presentations from finalists for investment consultant, hear presentations from the actuary and accountant, act on committee recommendations, select an Investment consulting firm, approve revised contract with Global Asset Mgmt., approve RFP for Master Trust Custodian, approve contract for computer support services, consider purchase of a printer, request approval to exceed the FTE cap, consider policy for changes in service providers, plan for review of Agency Rules, hear Staff reports, set date for next meeting, and adjourn.

Contact: Commissioner Morris E. Sandefer, P.O. Box 12577, Austin, Texas 78711–2577. (512) 936–3372.

Filed: April 15, 1998, 11:39 a.m.

TRD-9805274

General Land Office

Tuesday, April 21, 1998, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 831

Austin

School Land Board

AGENDA:

Approval of previous board meeting minutes; least suspension application and pooling application, Bird Island, SW (Frio D), Kleberg Co.; pooling applications, Cuba Libre (3rd Hinnant), Webb Co.; Giddings (Austin Chalk, Gas), Fayette Co.; Cowtrap Field, Brazoria and Matagorda Cos.; Panhandle West Field, Donley Co.; Wildcat field, Galveston Co.; Reconsideration of Bid received at the April 7, 1998 oil, gas and other minerals lease sale on marginal #1328; Report from staff regarding conclusion of the review and reconsideration of School Land Board administrative rules, 31 Texas Administrative Code, Chapters 151 and 153, and request for authorization to publish in the Texas Register (1) the conclusion from the review and reconsideration that the need for such rules continues to exist and (2) a proposed repeal of the current Chapters 151 and 153 and a concurrent proposed adoption of a new Chapter 151 which consolidates rules formerly separated into Chapters 151 and 153; Request from staff regarding the review and reconsideration of General Land office administrative rules, 31 Texas Administrative Code, Chapter 10 (Exploration and Development of State Minerals Other than Oil and Gas). Staff seeks authorization to file notice of intent to review Chapter 10 as well as the plan for conducting such review with the Texas Register and other appropriate parties; Coastal public lands, commercial easement applications, Galveston Bay, Galveston Co.; structure (cabin) terminations, requests and renewals, Laguna Madre, Kenedy Co.; Laguna Madre, Kleberg Co.; Laguna Madre, Willacy Co.; lease applications and renewals, Lavaca Bay, Calhoun Co.; easement applications, renewals and amendments, Carancahua Bay, Jackson Co.; Galveston Bay, chambers Co.; Laguna Madre, Cameron Co.; Closed and Open Session — consideration and approval of tracts terms and conditions for a June 16, 1998 sealed bid land sale; Closed and Open Sessions — consideration and approval of bids received at the April 7, 1998 sealed bid land sale on Paseo Del Este, El Paso county and/or discussion of Paseo del Este, El Paso Co.; Closed and Open Sessions- status report and review of pending lease and development proposals; Riverwalk Tract, San Antonio, Bexar Co., Tx.; Closed and Open Sessions — Consideration and approval of negotiated audit resolution, including agreement on the methodology for determining future royalty and future lease use gas volumes and the reduction of penalty and interest, Appling North Field, Jackson and Calhoun Cos.; Closed and Open Sessions- consideration of proposed settlement agreement with certain defendants, Cause 97–12328, State v. Langdon et al; Closed and Open Sessions- consideration of proposed settlement on underpayment claims at issue in Cause #9713874, TransTexas Gas Corp. v. Texas General Land Office, v. TransTexas Gas Corp., Conoco, Inc., and First Union Bank of Connecticut; Closed Session and Open Sessions- status report on State of Texas et al v. Amoco Production Company, et al, Cause #95–08680, 345th Judicial District Court, Travis Co., Texas; Closed and Open Sessions — pending or contemplated litigation; and/or settlement offers.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463–5016.

Filed: April 13, 1998, 3:35 p.m.

TRD-9805174



Tuesday, May 5, 1998, 7:00 p.m.

Austin State Hospital Canteen, RM-C, 4110 Guadalupe Street

Austin

West 38th Street PUD Site Plan Review Committee

AGENDA:

I). Call to Order; II). Discuss procedures for conducting the Committee's business; III). Receive a presentation to the Committee by MEDCATH, Inc. of its plan for development of the Medical Office Building; IV). Public comment; V). Vote to approve the site plan for compliance with the PUD Zoning/Architectural Guidelines; VI). Adjourn.

Contact: Bob Hewgley, 1700 North Congress Avenue, Room 720, Austin, Texas 78701, (512) 463-5013.

Filed: April 14, 1998, 10:23 a.m.

TRD-9805199



Texas Department of Health

Thursday, April 16, 1998, 10:30 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health, Human Resources Committee

AGENDA:

The committee will meet to discuss and possibly act on: approval of the minutes of the March 19, 1998 meeting; final adoption of the rule concerning the establishment of an Animal Friendly Advisory Committee; appointments to the Emergency Health Care Advisory Committee; and program and budget briefings for the Injury Prevention and Control Program and the Medical Transportation Program.

For ADA accommodation, please contact 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: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: April 8, 1998, 3:02 p.m.

TRD-9804957



Thursday, April 16, 1998, 11:30 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health, Regulatory Committee

AGENDA:

The committee will discuss and possibly act on: approval of the minutes of the March 19, 1998 meeting; proposed rules concerning (accreditation and certification of mammography systems under the Texas Radiation Control Act; the licensing of ambulatory surgical

centers; voluntary registration of dispensing opticians; voluntary registration for providers of health-related services; and regulations to classify Ephedrine a dangerous (prescription) drug); final adoption of the repeal and new rules concerning Texas Molluscan Shellfish; final adoption of rules concerning (voluntary indoor air quality guidelines for public schools; rules concerning the certification and accreditation for lead-based paint activities in target housing and child-occupied facilities; and hospital data, charity care and community benefits reporting.

For ADA accommodation, please contact 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: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: April 8, 1998, 3:02 p.m.

TRD-9804958



Thursday, April 16, 1998, 1:00 p.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health, Strategic Management Committee

AGENDA:

The committee will discuss and possibly act on: approval of the minutes of the March 19, 1998 meeting; approval for acceptance of a gift of immunization reminder greeting cards; proposed new rule and repeal of rules concerning requests for providing public information; proposed rules concerning (medical certification of certificate of death; and supplemental birth certificates and paternity files); recent audit activities; Sunset update; federal update; Office of Border Health update; strategic planning update; and strategic financial issues.

For ADA accommodation, please contact 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: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: April 8, 1998, 3:02 p.m.

TRD-9804959



Friday, April 17, 1998, 8:30 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health, Board Briefing

AGENDA:

The board will meet to discuss and possibly act on: a briefing by the Commissioner on current activities of the Texas Department of Health; and a discussion concerning procedural and/or administrative issues of the Board of Health.

For ADA accommodation, please contact 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: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.
Filed: April 8, 1998, 3:02 p.m.
TRD-9804960



Friday, April 17, 1998, 9:30 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health, Health Financing Committee

AGENDA:

The committee will discuss and possibly act on: approval of the minutes of the March 19, 1998 meeting; recommendation to the State Medicaid Director concerning proposed rules regarding Texas Health Steps (EPSDT) dental services; Managed Care report; and Vendor Drug Program report.

For ADA accommodation, please contact 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: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.
Filed: April 8, 1998, 3:02 p.m.

TRD-9804961



Friday, April 17, 1998, 10:30 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health, Health and Clinical Services Committee

AGENDA:

The committee will discuss and possibly act on: approval of the minutes of the February 7, 1998 meeting; proposed rules concerning (training of animal shelter personnel; and brain injury reporting); final adoption of repeal of rules concerning the medically Underserved community-state matching incentive program; and approval of report and recommendations of the Task Force on School Health Services.

For ADA accommodation, please contact 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: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: April 8, 1998, 3:02 p.m.

TRD-9804962



Friday, April 17, 1998, 1:00 p.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health

AGENDA:

The board will meet in open session to discuss and possibly act on: introduction of guests; approval of the minutes of the March 20, 1998, meeting; commissioner's report; resolution commemorating trauma awareness month and Texas EMS week and an announcement of statewide news release of information on Senate Bill 102 funding; Strategic Management Committee report (approval for acceptance of a gift of immunization reminder greeting cards; proposed new rule and repeal of rules concerning requests for providing public information; proposed rules concerning (medical certification of certificate of death; and supplemental birth certificates and paternity files); Health Financing Committee report (recommendation to the State Medicaid Director concerning proposed rules regarding Texas Health Steps (EPSDT) dental services); Health and Clinical Services Committee report (proposed rules concerning (training of animal shelter personnel; and brain injury reporting); final adoption of repeal of rules concerning the medically Underserved community-state matching incentive program; and approval of report and recommendations of the Task Force on School Health Services); Human Resources Committee report (final adoption of the rule concerning the establishment of an Animal Friendly Advisory Committee; and appointments to the Emergency Health Care Advisory Committee); Regulatory Committee report (proposed rule concerning accreditation and certification of mammography systems under the Texas Radiation Control Act; final adoption of the repeal and new rules concerning Texas Molluscan Shellfish; and final adoption of rules concerning) voluntary indoor air quality guidelines for public schools; rules concerning the certification and accreditation for lead-based paint activities in target housing and child-occupied facilities; and hospital data, charity care and community benefits reporting); public comments; announcements/comments; and the setting of the board meeting date for May 1998. The board will then meet in executive session to discuss personnel appointments (Associate Commissioner for Health Care Financing Program and Policy; and Associate Commissioner for Health Care Financing Information, Finance and Support); The board will return to open session to take action for approval of personnel appointments (Associate Commissioner for Health Care Financing Program and Policy; and Associate Commissioner for Health Care Financing Information, Finance Support).

For ADA accommodation, please contact 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: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: April 8, 1998, 3:02 p.m.

TRD-9804963



Monday, April 27, 1998, 9:30 a.m.

Moreton Building, Room M-618, Texas Department of Health, 1100 West 49th Street

Austin

Midwifery Board, Education Committee

AGENDA:

The committee will discuss and possibly act on: procedures for investigation of complaints against basic education courses; procedures for re-approving basic education courses; and continuing education requirements for 1998.

For ADA accommodation, please contact 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: Yvonne Feinleib, (512) 458-7444, Extension 2950, or Belva Alexander, (512) 458-7111, Extension 2067, 1100 West 49th Street, Austin, Texas 78756.

Filed: April 13, 1998, 11:59 a.m.

TRD-9805148



Monday, April 27, 1998, 11:00 a.m.

Moreton Building, Room M-618, Texas Department of Health, 1100 West 49th Street

Austin

Midwifery Board, Education/Documentation Rules Committee

AGENDA:

The committee will discuss and possibly act on: education rules 25 TAC Chapter 37, (review draft of proposed rules; make corrections/changes to the draft; recommendation for forwarding education rules to Midwifery Board or continue with editing of rules); and documentation rules (25 TAC, Chapter 37 (review draft of proposed rules; make corrections/changes to the draft; recommendation for forwarding documentation rules to Midwifery Board or continue with editing of rules).

For ADA accommodation, please contact 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: Yvonne Feinleib, (512) 458-7444, Extension 2950, or Belva Alexander, (512) 458-7111, Extension 2067, 1100 West 49th Street, Austin, Texas 78756.

Filed: April 13, 1998, 11:59 a.m.

TRD-9805147



Texas Health Care Information Council

Wednesday, April 22, 1998, 10:00 a.m.

Brown-Heatly Building, 4900 North Lamar Boulevard, Room 5501

Austin

Reimbursement of Medical Education and Research Costs Technical Advisory Committee

AGENDA:

The Texas Health Care Information Council Reimbursement of Medical Education and Research Costs Technical Advisory Committee will convene in open session, deliberate, and possibly take formal action on the following items: call to order; presentation by Mike McKinney, MD, former Commissioner of Texas Department of Health and Human Services, following by discussion; presentation by Bruce Levy, MD, Executive Director, Texas State Board of Medical Examiners, followed by discussion, recommendations to Council; other business; and Adjourn.

Contact: Jim Loyd, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 424-6490, fax: (512) 424-6491.

Filed: April 14, 1998, 8:03 a.m.

TRD-9805186



Texas Health Insurance Risk Pool ("Health Pool")

Wednesday, April 22, 1998, Audit Subcommittee — 9:00 a.m.; Board — 9:30 a.m.; Grievance Subcommittee (immediately following Board meeting)

301 Congress Avenue, Suite 360, Third Floor Conference Room

Austin

Board and Audit And Grievance Subcommittees

AGENDA:

1. Subcommittees: *Audit*: Discussion and possible action on: 1) Financial Matters: a) deposit accounts; b) financial statements; c) payment of agent fees, administrative fee, other costs of operation. 2) Assessments by the Pool. 3) Audit procedures. 4) Annual reporting. *Grievance*: Discussion and possible action on: 1) Notice of grievance procedures for applicants and insureds. 2) Review of filed grievances. *Board*: Discussion and possible action on: 1) Subcommittee reports. 2) TDI Notice rule 3) Status of TPA, 3) Enrollment, claims and complaints. 5) Policy effective dates; 6) Status report on Pool publicity. 7) Public comment. 8) Other management or administrative matters. 9) Setting of next meeting.

Contact: Rhonda Myron, 333 Guadalupe Street, Austin, Texas 78701, (512) 463-6651.

Filed: April 14, 1998, 3:25 p.m.

TRD-9805229



Texas Healthy Kids Corporation ("THKC")

Friday, April 17, 1998, 9:30 a.m.

Brown-Heatly Building, 4900 North Lamar Boulevard, Room 1410

Austin

Board of Directors

AGENDA:

Staff presentation, possible Board deliberation and action relating to the following topics: Staffing needs and introduction of new staff; receipt and scoring of response(s) of RFP for third party administrator and other services and possible award of contract; accounting and budgeting procedures and proposed purchase of accounting software; building space and related services issues; proposed purchase of liability insurance and surety bond; proposed rules to handle any possible vendor protests; letter from State Auditor clarifying issues relating to THKC compliance with certain laws, handling of funds; options to deposit certain THKC funds in private bank accounts; issuance of RFP for Health Benefit Plan Vendor(s) (on 4/3/98) and pre-proposal conference (on 4/15/98); community outreach efforts; timelines, general updates, other administrative, procedural matters. Time for public comment.

Persons with disabilities who require auxiliary aids, services or materials in alternate format, please contact THKC at least three business days before the meeting.

Contact: Tyrette Hamilton, P.O. box 1506, Austin, Texas 78767-1506, Austin, Texas, 78751, (512) 424-6565, fax: (512) 424-6601.

Filed: April 9, 1998, 3:12 p.m.

TRD-9805054



Texas Higher Education Coordinating Board

Wednesday, April 22, 1998, 1:30 p.m.

Chevy Chase Office Complex, Building 5, Room 5.212, 7745 Chevy Chase Drive

Austin

Administration and Financial Planning Committee

AGENDA:

Briefing on formula funding.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, (512) 483-6101.

Filed: April 15, 1998, 11:01 a.m.

TRD-9805267

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Tuesday, May 5, 1998, 2:00 p.m.

Chevy Chase Office Complex, Building 1, Room 1.102, 7700 Chevy Chase Drive

Austin

Special Committee on Higher Education in Southern Dallas County

AGENDA:

Discussion of the recent hearing on the need or demand for additional higher education services in southern Dallas County.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, (512) 483-6101.

Filed: April 15, 1998, 9:55 a.m.

TRD-9805254

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Texas Historical Commission

Thursday, April 23, 1998, 1:00 p.m.

Camino Real Hotel, 101 South El Paso Street, Hereford Room, Third Floor

El Paso

Economic Development Committee

AGENDA:

1. Call to order.
2. Approval of minutes of October 3, 1997 meeting.
3. Review and recommendation on Main Street Program policy changes.
4. Discussion of division reorganization
5. Grant Writing Workshops
6. First Lady's Tour
7. Other Business
8. Adjourn

Contact: Terry Colley, P.O. Box 12276, Austin, Texas 78711, (512) 463-6092.

Filed: April 14, 1998, 10:21 a.m.

TRD-9805193

◆ ◆ ◆

Thursday, April 23, 1998, 2:00 p.m.

Camino Real Hotel, 101 South El Paso Street, Longhorn Room

El Paso

Heritage Tourism Committee

AGENDA:

I. Approval of Minutes of January 1998 Heritage Tourism Committee Meeting and Brief Update on Interagency Cultural Tourism Task Force Activities

II. Heritage Tourism Activities Progress Report

A. Promotion.

1. Civil War Map

2. African- American Heritage Trail

B. Research

1. Economic Impact Study of Historic Preservation

2. Historic Sites Report

3. Red River Wars

4. El Paso (Pass of the North Heritage Corridor)

5. Fort St. Louis

C. Repairs and Maintenance

1. Sam Rayburn House

2. Civil War Monuments

D. Planning

1. Heritage Tourism Program Plan

III. T.T.I.A. Unity Dinner and Heritage Tourism Activities for FY 1999

IV. Other Information Items

V. Adjournment

Contact: Mario L. Sanchez, P.O. Box 12276, Austin, Texas 78711-2276, (512) 463-5754.

Filed: April 14, 1998, 10:21 a.m.

TRD-9805194

◆ ◆ ◆

Thursday, April 23, 1998, 2:00 p.m.

Camino Real Hotel, 101 South El Paso Street, Hereford #2 Room

El Paso

Architecture and Texas Preservation Trust Fund Committee

AGENDA:

1) Awards of Excellence in Historic Architecture

2) Courthouse Restoration Project

3) Tax Act Program Update

4) Trust Fund Administration

5) Other Business

Contact: Stan Graves/Lisa Harvell, P.O. Box 12276, Austin, Texas 78711, (512) 463-6094.

Filed: April 14, 1998, 10:21 a.m.

TRD-9805195

◆ ◆ ◆

Thursday, April 23, 1998, 3:30 p.m.
Camino Real Hotel, 101 South El Paso Street, Hereford Room
El Paso
Communications Committee

AGENDA:

I. Approval of Minutes.

II. Briefing.

Marketing Communications Division News: Renee Peterson

- Division Project List
- Staffing and Name of Marketing Communications Division
- Revised THC Logo

Publications: Roni Morales

- Communications Audit Update
- The Medallion
- Update on the Three Heritage Tourism Brochures

Public Relations: Renee Peterson

- Quarterly Media Report
- Summary of Net Advertising Worth/Value of News Coverage
- Update on the New Shipwreck Discovery

III. Action Items

Approval of 1997 T.R. Fehrenbach Book Awards: Roni Morales

Future Funding of Book Awards: Roni Morales

Contact: Renee Peterson, P.O. Box 12276, Austin, Texas 78711, (512) 463-6255.

Filed: April 14, 1998, 10:22 a.m.

TRD-9805196



Friday, April 24, 1998, 7:30 a.m.

Camino Real Hotel, 101 South El Paso Street, Boardroom
El Paso

Executive Committee

AGENDA:

I. Call to Order

II. Governor's Award for Historic Preservation

III. a) Courthouse Restoration Project

b) Courthouse Advisory Committee

IV. Update on Agency Reorganization

V. a) Consideration of Legislative Objectives

b) Legislative Appropriation Request

VI. Update on the Strategic Plan

VII. French Shipwrecks

VIII. New Matters/Other Business

IX. Adjournment

Contact: Marlene Casarez, P.O. Box 12276, Austin, Texas 78711, (512) 463-6100.

Filed: April 14, 1998, 10:22 a.m.

TRD-9805197



Friday, April 24, 1998, 2:00 p.m.

Camino Real Hotel, 101 South El Paso Street, Salon B
El Paso

Quarterly Board Meeting

AGENDA:

I. Call to Order

II. Minutes from January 30, 1998

III. Announcements

IV. Public Comments

V. Action Items

VI. Information Items

VII. Chairman's Report

VIII. Committee Reports

IX. Adjournment

Contact: Marlene Casarez, P.O. Box 12276, Austin, Texas 78711, (512) 463-6100.

Filed: April 14, 1998, 10:22 a.m.

TRD-9805198



Texas State Affordable Housing Corporation

Monday, April 20, 1998, Noon

507 Sabine Street, Room 437

Austin

Board

AGENDA:

The Board of Texas State Affordable Housing Corporation will meet to consider and possibly act on: Minutes of Meeting of March 23, 1998.

Approval of New Office Space;

Approval to Incur Debt Secured by Presidents Corner Apartments;

Approval to Purchase Interlinqs Production and Servicing Software;

Approval to Accept Resignations from Vice-President; Assistant Secretaries;

Approval of Position of Business Development Officer; and Vice President of Production;

Approval to Make an Amendment to Title I Home Improvement Contract with Department;

Approval of Corporations Policies;

Approval of Business Plan;

Approval of HOME Grant Contract with Corporation and Department;

Approval of Asset Oversight Agreements for Residence at the Oaks; PebbleBrook Apartments; Volente Town Homes; and Dallas Oxford;

Approval of Corporations Financial Statements;

Approval to Establish a Warehouse Line of Credit;

Approval of Small and Craig as Production and Loan Servicing Legal Counsel;

Approval of Letter on Internal control and Accounting Procedures;

Report on Corporation Insurance; Executive Session — Personnel Matters; Consultation with attorney under §551.071(2) of Texas Government Code; Anticipated Litigation (potential or threatened); Litigation Settlement El Cenizo; Action in Open Session on Items Discussed in Executive Session; Adjourn.

Individuals who require auxiliary aids or services for 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.

Contact: Larry Paul Manley, 507 Sabine, #900, Waller Creek Office Building, Austin, Texas 78701, (512) 475-3934.

Filed: April 10, 1998, 11:10 a.m.

TRD-9805086



Texas Department of Housing and Community Affairs

Monday, April 20, 1998, 9:30 a.m.

507 Sabine Street

Austin

Low Income Housing Tax Credit Public Hearing

AGENDA:

The Low Income Housing Tax Credit Committee of the Board of the Texas Department of Housing and Community Affairs will meet to consider and possibly act on: Minutes of March 6 and March 23, 1998 Meetings; Approval of Determination Notices for Tax Credits for Residence At the Oaks, Dallas, Texas. Adjourn.

Individuals who require auxiliary aids or services for 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.

Contact: L.P. Manley, 507 Sabine, #900, Waller Creek Office Building, Austin, Texas 78701, (512) 475-3934.

Filed: April 10, 1998, 10:20 a.m.

TRD-9805080



Monday, April 20, 1998, 10:00 a.m.

507 Sabine Street, Room 437

Austin

Board Meeting

AGENDA:

507 Sabine Street, Room 437

Austin

Board Meeting

AGENDA:

The Board of the Texas Department of Housing and Community Affairs will meet to consider and possibly act on: Minutes of March 23, 1998 Meeting; Approval of Proposed Agreement between the Department and the Department of Housing and Urban Development to Participate in Portfolio Re-engineering Program;

Approval of Proposed Multi-Family Bond Transaction for Residence at the Oaks, Dallas Texas;

Approval of Amendment to HOME contract with Texas State Affordable Housing Corporation for Home Improvement Loans;

Approval of Definition of Eligible Tenant Relating to Tax Exempt Multi-Family Bond Rules;

Approval of Manufactured Housing Case of Docket No. 332-97-2257; MHD1995000743C, MHD1996001442D, MHD1997002863D, MHD1998000420U, MHD1998000499U In the Matter of Flying W Mobile Homes;

Approval of Quarterly Investment Report;

Executive Directors Report; Executive Session on Personnel Matters; Litigation and Anticipated Litigation (Potential or Threatened under §551.071 and 551.103, Texas Government Code Litigation Exception);

Litigation Settlement — El Cenizo Settlement; Personnel Matters Regarding Duties and Responsibilities in Relationship to Budget under §551.074, Texas Government Code; Consultation with Attorney under §551.071(2), Texas Government Code; Action in Open Session on Items Discussed in Executive Session; Adjourn.

AGENDA:

Contact: Larry Paul Manley, 507 Sabine, #900, Waller Creek Office Building, Austin, Texas 78701, (512) 475-3934.

Filed: April 10, 1998, 2:36 p.m.

TRD-9805091



Texas Department of Human Services (TDHS)

Friday, April 17, 1998, 10:00 a.m.

701 West 51st Street, East Tower, Public Hearing Room

Austin

Texas Board of Human Services

AGENDA:

1. Approval of the Minutes of March 20, 1998.
2. Award Presentation.
3. Simplification of Income and Resource Policy in the Temporary Assistance for Needy Families (TANF) and Medical Programs.
4. Adoption of Amendments to the Nursing Facility Licensure and Certification Requirements Regarding the Allocation of Medicaid Beds.
5. Adoption of Amendments to the Nursing Facility Licensure Rules Regarding Care for Children with Special Needs.
6. Adoption of Amendments to the Nursing Facility Administrator Licensure Rules for Complaints Management and Sanctions.
7. Adoption of Amendments to the Licensure Rules for Personal Care Facilities.
8. Repeal of Formal and Informal Hearing Rules and Adoption of New Formal Hearing Rules.
9. Amendments to Policies and Procedures.
10. Appointments to the Personal Care Advisory Committee.
11. Updated Strategic Plan for the Planning Period

1999–2003. 12. Commissioner's Report; a. Announcements and Comments. b. Tracking of Board Action.

Contact: Sherron Heinemann, P.O. Box 149030, Austin, Texas 78714–9030, (512) 438–3048.

Filed: April 9, 1998, 11:48 a.m.

TRD-9805019



Tuesday, April 21, 1998, 9:00 a.m.

701 West 51st Street, John Winters Complex, Room 125W

Austin

Nursing Facility Administrators Advisory Committee

AGENDA:

1. Review Minutes from March 17, 1998, Meeting. 2. Rules Update. 3. Update on NFAAC Subcommittee on Education for Nursing Facility Administrators. 4. Case Summary Review. 5. Review of Case Action Items.

Contact: Jerry Walker, P.O. Box 149030, Austin, Texas 78714–9030, (512) 834–6681.

Filed: April 10, 1998, 3:48 p.m.

TRD-9805097



Friday, May 1, 1998, 9:00 a.m.

701 West 51st Street, Room 610E

Austin

Alzheimer's Advisory Committee, Alzheimer's Association

AGENDA:

Old Business: 1. Site of Pilot Discussion. 2. Alzheimer's Disease Community Resource Coordination Groups; AD CRCG/Handbook; Discussion. New Business: 1. Vote of Pilot Site. 2. Proposed time line for Pilot. 3. State Office/AD CRCG assignments; Discussion. 4. Set next meeting date.

Contact: Trena Barnett, P.O. Box 149030, Austin, Texas 78714–9030, (512) 438–2107.

Filed: April 13, 1998, 3:36 p.m.

TRD-9805175



State Independent Living Council

Thursday, April 23, 1998, 9:00 a.m.

Brown-Heatly Building, 4900 North Lamar Boulevard

Austin

Finance Committee

AGENDA:

9:00 Discuss Budget, FY 1999–2001

10:00 Adjourn

Contact: John Meinkowsky, 5555 North Lamar Boulevard, Suite J-125 Austin, Texas 78751, (512) 467–0744.

Filed: April 13, 1998, 8:53 a.m.

TRD-9805106



Thursday, April 23, 1998, 11:00 a.m.

Brown-Heatly Building, 4900 North Lamar Boulevard

Austin

Executive Committee

AGENDA:

11:00 Personnel

Financial

Legal

Development of Mission Statement

12:00 Adjourn

Contact: John Meinkowsky, 5555 North Lamar Boulevard, Suite J-125, Austin, Texas 78751, (512) 467–0744.

Filed: April 13, 1998, 8:53 a.m.

TRD-9805107



Thursday, April 23, 1998, 9:00 a.m.

Brown-Heatly Building, 4900 North Lamar Boulevard

Austin

Evaluation of Independent Living Committee

AGENDA:

9:00 Call to Order

Review of Consultant RFP

Status Report on State Plan

Review of Attachment 16

12:00 Adjourn

Contact: John Meinkowsky, 5555 North Lamar Boulevard, Suite J-125 Austin, Texas 78751, (512) 467–0744.

Filed: April 13, 1998, 8:53 a.m.

TRD-9805108



Thursday-Friday, April 23–24, 1998, 1:00 p.m., 8:00 a.m. respectively

Brown-Heatly Building, 4900 North Lamar Boulevard

Austin

AGENDA:

1:00 Call To Order (Roll Call, Approval of Agenda)

Invited Guest: Anne Heiligenstein, Governor's Policy Office

1:30 Executive Session — CLOSED (Personnel, Legal)

2:30 Committee Meetings (Outreach, Education)

3:00 Committee Meetings (IL Centers and Services, Interagency Relationships)

3:30 Public Comment

4:30 Committee Reports

6:00 Full Council Discussion (Action Plan, Needs Assessment Plan, State Plan)

7:00 Recess

April 24

8:00 Full Council Meeting (Call to Order, Roll Call); Presentation on Travel Procedures (Maryann Hernandez, ARCIL)

9:00 Full Council Discussion continued (Action Plan, Needs Assessment Plan, State Plan)

12:00 Lunch

1:00 Full Council — Finalize (Action Plan, Needs Assessment Plan, State Plan)

3:00 Adjourn

Contact: John Meinkowsky, 5555 North Lamar Boulevard, Suite J-125 Austin, Texas 78751, (512) 467-0744.

Filed: April 13, 1998, 8:53 a.m.

TRD-9805109



Texas Department of Insurance (“TDI”)

Wednesday, April 22, 1998, 9:30 a.m.

333 Guadalupe, Room 102

Austin

Life and Health Working Group, Advisory Committee for Interim Study for Agents and Agents’ Licensing Statutes

REVISED AGENDA:

Discussion of streamlining and consolidation of license types including discussion to consolidate all current Group I and Group II Life/Accident and Health licenses into one new license type. Discussion of the possible inclusion of the 02-08 license type, Property and Casualty Agent Selling Accident and Health and 02-10 license type, Group II Job Protection insurance in the consolidated Life/Accident and Health license. Discussion of the requirements of life/accident and health licenses including who should be licensed and what licensing requirements should be imposed. Deliberation of regulatory, market and consumer protection issues relating to licensing criteria. Discussion of the National Association of Insurance Commissioners’ Agents and Brokers Licensing Model Act including the Limited Insurance Representative License type. Presentation from members of Fraternal Benefit Societies relating to licensing of those groups. Discussion of the marketing of insurance products including electronic marketing on the Internet and telemarketing. Time for public comment. Deliberation and possible action regarding timelines, future meetings, other administrative or procedural matters.

Contact: Bill Elkjer, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-8197.

Filed: April 13, 1998, 4:28 p.m.

TRD-9805181



Friday, April 24, 1998, 9:30 a.m.

333 Guadalupe, Room 100

Austin

Property and Casualty Working Group, Advisory Committee for Interim Study for Agents and Agents’ Licensing Statutes

REVISED AGENDA:

Deliberation and possible action regarding the streamlining and consolidation of license types including:

1. Deliberation and possible action regarding the consolidation of current Local Recording Agent, Local Recording Agent-Auto Only, Solicitor, Insurance Service Representative and Full-Time Salaried Home Office Employee licenses into one “General P&C” license type.

2. Deliberation and possible action regarding a proposal to maintain the Managing General Agent, Surplus Lines, Reinsurance Manger, Reinsurance Broker and Agriculture Agent as independent license types.

3. Deliberation and possible action regarding the creation of a “Specialty” license type to include County Mutual Agent Selling Property & Casualty, Pre-Paid Legal Services and Risk Manager license types.

4. Deliberation and possible action regarding a proposal to delete the Local Recording Agent Temporary license.

5. Deliberation and possible action regarding consolidation of current adjuster licenses into one “all lines” adjuster license.

Discussion of the licensing requirements for Property and Casualty licenses including who should be licensed and what licensing requirements should be imposed. Discussion of the definition of who is an agent under current Insurance Code Article 21.02. Deliberation of regulatory, market and consumer protection issues relating to licensing criteria. Discussion of Corporate licensing issues including the licensing of all officers/directors/shareholders and discussions of corporation ownership of other corporations including partial ownership. Deliberation of Non-Resident licensing issues including the National Association of Insurance Commissioners’ Uniform Treatment proposal and issues of uniformity among states. Discussion of non-resident licensing requirements for individual, corporate, and non-corporate entity licenses. Discussion of non-resident licensing reciprocity and retaliatory practices among states. Deliberation of the National Association of Insurance Commissioners’ Agents and Brokers Licensing Model Act. Discussion of Title Insurance licenses including the current statutory provisions for automatic forfeiture and voluntary surrender. Discussion of Travel Insurance licenses. Time for public comment. Deliberation and possible action regarding timelines, future meetings, other administrative or procedural matters.

Contact: Bill Elkjer, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-8197.

Filed: April 13, 1998, 4:28 p.m.

TRD-9805180



Monday, April 27, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket No. 454-98-0074.C To consider the application of ROSCOE MASON, Houston, Texas, for a Temporary Local Recording Agent’s License to be issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: April 15, 1998, 9:08 a.m.

TRD-9805243

◆ ◆ ◆
Wednesday, April 29, 1998, 1:00 p.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket No. 454-97-2282.C To consider whether disciplinary action should be taken against HAROLD GRADY PRUETT, Bedford, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License issued by the Texas Department of Insurance (reset from 2/6/98).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: April 15, 1998, 9:09 a.m.

TRD-9805244

◆ ◆ ◆
Friday, May 1, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket No. 454-98-0287.C To consider the application of DONALD W. PARKINSON, Tyler, Texas, for a Life, Health, Accident and HMO License (Formerly known as a Group I Legal Reserve Life Insurance Agent's License) to be issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: April 15, 1998, 9:09 a.m.

TRD-9805245

◆ ◆ ◆
Wednesday, May 6, 1998, 9:30 a.m.

333 Guadalupe, Room 102

Austin

Life and Health Working Group, Advisory Committee for Interim Study for Agents and Agents' Licensing Statutes

AGENDA:

Discussion of the marketing of insurance products including electronic marketing on the Internet and telemarketing. Discussion of continuing education requirements including who should be subject to continuing education and how many hours should be required to keep a particular license type in force. Discussions on the revenue neutrality of the changes proposed to the agents' licensing statutes. Time for public comment. Deliberation and possible action regarding timelines, future meetings, other administrative or procedural matters.

Contact: Bill Elkjer, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-8197.

Filed: April 13, 1998, 4:28 p.m.

TRD-9805182

◆ ◆ ◆
Board of Law Examiners

Saturday, April 18, 1998, 8:30 a.m.

Suite 500, Tom C. Clark, 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; Robbie A. Moehlmann; Nicolas Nemeth; Genaro Fraustro; Richard B. Siller; Frank A. Uribie; and James R. McNeeley (character and fitness deliberations may be conducted in executive session, pursuant to §82.003(a), Texas Government Code.)

Contact: Rachael Martin, P.O. Box 13486, Austin, Texas 78711-3486, (512) 463-1621.

Filed: April 8, 1998, 1:56 p.m.

TRD-9804944

◆ ◆ ◆
Texas Department of Licensing and Regulation

Tuesday, April 21, 1998, 9:00 a.m.

920 Colorado, E.O. Thompson Building, First Floor, Room 108

Austin

Enforcement Division, Water Well Drillers

AGENDA:

According to the complete agenda, the Department will hold an Administrative Hearing to consider the possible assessment of administrative penalties against, and revocation of the license of, the Respondent, Thomas K. Braendle, Sr. for failing to plug a water well in accordance with departmental standards for plugging wells that penetrate undesirable water zones, which is a violation of 30 TAC §238.50. This hearing will be conducted pursuant to 16 Texas Water Code Chapter 32 and Tex.Rev.Civ.Stat. Ann. art. 9100, the Texas Government Code Chapter 2001 and 16 TAC chapter 60.

Contact: Rick Wootton, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: April 9, 1998, 2:48 p.m.

TRD-9805049

◆ ◆ ◆
Tuesday, April 21, 1998, 9:00 a.m.

920 Colorado, E.O. Thompson Building, First Floor, Room 108

Austin

Enforcement Division, Water Well Drillers

AGENDA:

According to the complete agenda, the Department will hold an Administrative Hearing to consider the possible assessment of administrative penalties against, and revocation of the license of, the Respondent, Thomas K. Braendle, II. for (1) Failing to seal off or confine the undesirable water to the zone(s) of origin which is a violation of 30 TAC §338.45(a)(1). 2) Failed to inform the land owner that undesirable water has been encountered, within 30 days after encountering the undesirable water. This hearing will be conducted pursuant to 16 Texas Water Code Chapter 32 and Tex.Rev.Civ.Stat. Ann. art. 9100, the Texas Government Code Chapter 2001 and 16 TAC chapter 60.

Contact: Rick Wootton, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: April 9, 1998, 2:48 p.m.

TRD-9805050



Wednesday, April 22, 1998, 9:00 a.m.

920 Colorado, E.O. Thompson Building, First Floor, Room 108

Austin

Enforcement Division, Auctioneering

AGENDA:

According to the complete agenda, the Department will hold an Administrative Hearing to consider the claim against the Auctioneer Education and Recovery Fund by Martin McFarlane based upon the actions of the Auctioneer John McClellan, and determine the amounts due the aggrieved party pursuant to Tex.Rev.Civ.Stat. Ann. arts. 8700 and 9100; the Texas Government Codes Chapter 2001 and 16 TAC chapter 60.

Contact: Rick Wootton, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: April 9, 1998, 2:49 p.m.

TRD-9805051



Wednesday, April 22, 1998, 9:00 a.m.

920 Colorado, E.O. Thompson Building, First Floor, Room 108

Austin

Enforcement Division, Auctioneering

AGENDA:

According to the complete agenda, the Department will hold an Administrative Hearing to consider the claim against the Auctioneer Education and Recovery Fund by Arthur McFarlane based upon the actions of the Auctioneer John McClellan, and determine the amounts due the aggrieved party pursuant to Tex.Rev.Civ.Stat. Ann. arts. 8700 and 9100; the Texas Government Codes Chapter 2001 and 16 TAC chapter 60.

Contact: Rick Wootton, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: April 9, 1998, 2:50 p.m.

TRD-9805052



Thursday, April 23, 1998, 9:00 a.m.

920 Colorado, E.O. Thompson Building, First Floor, Room 108

Austin

Enforcement Division, Air Conditioning

AGENDA:

According to the complete agenda, the Department will hold an Administrative Hearing to consider the possible assessment of administrative penalties against the Respondent, Robert Eric Reeves, 19 counts of performing air conditioning and/or refrigeration contracting without obtaining the required license in violation of Tex.Rev.Civ.Stat. Ann. art. 8861 §3B, pursuant to Tex.Rev.Civ.Stat. Ann. art. 8861 and 9100, the Texas Government Code Chapter 2001 and 16 TAC Chapter 60.

Contact: Rick Wootton, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: April 13, 1998, 9:57 a.m.

TRD-9805133



Thursday, April 23, 1998, 9:00 a.m.

920 Colorado, E.O. Thompson Building, First Floor, Room 108

Austin

Enforcement Division, Air Conditioning

AGENDA:

According to the complete agenda, the Department will hold an Administrative Hearing to consider the possible assessment of administrative penalties against the Respondent, Jack Edwin Fortenberry, performing air conditioning and/or refrigeration contracting without obtaining the required license in violation of Tex.Rev.Civ.Stat. Ann. art. 8861 §3B, and for intentionally or knowingly misrepresenting services to be provided by representing that he installed a new coil in violation of Act §5(a), and for advertising that he engages in the business of air conditioning and refrigeration contracting without first obtaining the required license in violation of 16 TAC §75.22(a), pursuant to Tex.Rev.Civ.Stat. Ann. art. 8861 and 9100, the Texas Government Code Chapter 2001 and 16 TAC chapter 60.

Contact: Rick Wootton, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: April 13, 1998, 9:57 a.m.

TRD-9805134



Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association

Thursday, April 16, 1998, 11:00 a.m.

301 Congress, Suite 500, Board Room

Austin

Governance Committee

AGENDA:

Consideration and possible action on: 1) Governance and other matters; 2) Retaining counsel to the Board; and 3) Next meeting date.

Contact: C.S. LaShelle, 301 Congress Avenue, #500, Austin, Texas 78701, (512) 476-5101.

Filed: April 8, 1998, 4:18 p.m.

TRD-9804968



Sunday, April 19, 1998, 6:00 p.m.

98 San Jacinto Boulevard

Austin

Board of Directors

AGENDA:

Beginning at 6:00 p.m. on Sunday, April 19, 1998, the Board of Directors of the Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association will participate in a dinner meeting at the Shoreline Grill located at 98 San Jacinto Boulevard, Austin, Texas 78701. There will be no agenda and no board action will be

taken on any matter. Meals and refreshments will not be provided to members of the public.

Contact: C.S. LaShelle, 301 Congress Avenue, #500, Austin, Texas 78701, (512) 476-5101.

Filed: April 9, 1998, 11:48 a.m.

TRD-9805021



Monday, April 20, 1998, 8:00 a.m.

301 Congress, Suite 500, Board Room

Austin

Audit Committee

AGENDA:

Consideration and possible action on: 1) Approval of the April 1, 1997 minutes; 2) Independent audit of the 12/31/98 financial statements; 3) Executive Session; 4) Matters discussed in Executive Session; 5) Internal control projects; 6) Next meeting date.

Contact: C.S. LaShelle, 301 Congress Avenue, #500, Austin, Texas 78701, (512) 476-5101.

Filed: April 9, 1998, 11:47 a.m.

TRD-9805017



Monday, April 20, 1998, 9:30 a.m.

301 Congress, Suite 500

Austin

Board of Directors

AGENDA:

Consideration and possible action on: 1) Minutes of the January 27, 1998 Board meeting; 2) Guaranty Association Activities; 3) Executive Session; 4) Matters discussed in Executive Session; 5) Impaired/Insolvent estates; 6) Committee reports; 7) Financial matters; 8) Amendments to Bylaws; 9) TDI issues; 10) 457 pension plan; 11) 1997 annual report; 12) 1998 Operations Plan; 13) Actuarial responsibility in insolvency; and 14) Next meeting.

Contact: C.S. LaShelle, 301 Congress Avenue, #500, Austin, Texas 78701, (512) 476-5101.

Filed: April 9, 1998, 11:52 a.m.

TRD-9805024



Texas State Board of Examiners of Marriage and Family Therapists

Sunday, April 19, 1998, 1:00 p.m.

First Floor Break Room, Exchange Building, Texas Department of Health, 8407 Wall Street

Austin

Application Review Committee

AGENDA:

The committee will discuss and possibly act on: inactive status requests (Gary Antion; Kay Bellamy; Lisa Braverman; Minna Wolfe-Calhoun; Rebecca Capua; Jean Crooks; Norma Deering; Jeannie Falkner; Susan Graves; Mary Grigsby; Elizabeth Hyland; Rose

Jackson; Cathryn McGinnis; Maria McClain; Seth Patrick; Don Raunika; George Sigalos; and Cynthia Williams); requests to return to active status for Mary Lou Branson and Esther Diaz-Yazam; requests to allow correspondence courses for continuing education credit for Amie Winn-Houston, Glen Goree, Bert Rodriguez, Shahine Tavakoli, and Charles Tatum; a request to allow telephone counseling hours to count towards the required 1000 hours of post degree experience by John K. Wood; a request to allow hours accrued for credit before a temporary license was issued for B. Kay Henderson; a request to allow supervision hours obtained for the licensed professional counseling license to be used for the licensed marriage and family therapist license requirement by Priscilla Gallagher; request for reinstatement of license status for Susan Levin; allowing applicants to use their national examination score obtained in another state in lieu of taking the examination in Texas; other business not requiring committee action; and assignment of future agenda items for the committee.

For ADA accommodation or services, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657.

Filed: April 9, 1998, 11:03 a.m.

TRD-9805015



Sunday, April 19, 1998, 2:00 p.m.

First Floor Break Room, Exchange Building, Texas Department of Health, 8407 Wall Street

Austin

Rule Change Committee

AGENDA:

The committee will discuss and possibly act on: comments to proposed amendment (22 TAC §801.19) concerning fees as published in the March 27, 1998 issue of the Texas Register (23 TexReg 3178); draft proposed amendments to rules (22 TAC, Chapter 801); other business not requiring committee action; and assignment of future agenda items for the committee.

For ADA accommodation or services, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657.

Filed: April 9, 1998, 11:03 a.m.

TRD-9805014



Sunday, April 19, 1998, 3:00 p.m.

First Floor Break Room, Exchange Building, Texas Department of Health, 8407 Wall Street

Austin

Ethics Committee

AGENDA:

The committee will discuss and possibly act on: complaints (MFT-97-2; MFT-97-31; MFT-97-33; MFT-97-38; MFT-98-2; MFT-98-4; MFT-98-5; MFT-98-6; MFT-98-7; MFT-98-8; MFT-98-10; MFT-98-11; MFT-98-12; MFT-98-14; MFT-98-15; MFT-98-16; MFT-98-17; MFT-98-18; MFT-98-19; MFT-98-20; MFT-98-22; MFT-98-23; MFT-98-25; MFT-98-26; MFT-98-27; MFT-98-28; and MFT-98-29); other business not requiring committee action; and assignment of future agenda items for the committee.

For ADA accommodation or services, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657.

Filed: April 9, 1998, 11:03 a.m.

TRD-9805013



Monday, April 20, 1998, 8:30 a.m.

Fourth Floor South, Room S-402, Exchange Building, Texas Department of Health, 8407 Wall Street

Austin

Board Meeting

AGENDA:

The board chairperson will introduce guests and entertain public comment, and the board will discuss and possibly act on: approval of the minutes of the August 25, 1997 and January 27, 1998 meetings; Texas Association for Marriage and Family Therapist liaison report; committee reports (Application Committee (inactive status requests (Gary Antion; Lisa Braverman; Minna Wolfe-Calhoun; Rebecca Capua; Jean Crooks; Norma Deering; Jeannie Falkner; Susan Graves; Mary Grigsby; Elizabeth Hyland; Rose Jackson; Cathryn McGinnis; Maria McClain; Seth Patrick; Don Raunikar; George Sigalos; and Cynthia Williams); requests by Mary Lou Branson and Esther Diaz-Yazamto return to active status; requests for approval of correspondence courses for espondence courses for Amie Winn-Houston, Glen Goree, Bert Rodriguez, Shahine Tavakoli, and Charles Tatum; a request for approval of telephone counseling hours towards the supervised experience requirement by John Wood; request for approval of supervised hours accrued before a temporary license was issued by B. Kay Henderson; request for approval of hours accrued in professional counselor intership to be accepted as equivalent to required marriage and family therapy supervised experience requirement by Priscilla Gallagher; request for allowing individuals to use ntional examination scores obtained in another state in lieu of taking the examination in Texas; and request for reinstatement of license status for Susan Levin); Ethics Committee status on (complaints (MFT-97-2; MFT-97-31; MFT-97-33; MFT-97-38; MFT-98-2; MFT-98-4; MFT-98-5; MFT-98-6; MFT-98-7; MFT-98-8; MFT-98-10; MFT-98-11; MFT-98-12; MFT-98-14; MFT-98-15; MFT-98-16; MFT-98-17; MFT-98-18; MFT-98-19; MFT-98-20; MFT-98-21; MFT-98-22; MFT-98-23; MFT-98-25; MFT-98-26; MFT-98-27; MFT-98-28; and MFT-98-29); Rule Change Committee (status of proposed amendment to 22 TAC §801.19 concerning fees and status of discussion of amendments to 22 TAC, Chapter 901)); possible adoption of proposed amendments (22 TAC §801.19) as published in the March 27, 1998 issue of the *Texas Register* (23 TexReg 3178); proposed amendments to 22 TAC, Chapter 801); as provided by §167 of the General Appropriations Act; reinstatement of license for Susan Levin; report from the board

chair; executive director's report; and other business not requiring board action.

For ADA accommodation or services, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657.

Filed: April 9, 1998, 11:03 a.m.

TRD-9805012



Texas State Board of Medical Examiners

Wednesday, April 22, 1998, 12:30 p.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Ad Hoc Committee for Physicians in Training

AGENDA:

Call to Order

Roll Call

Consideration, discussion, and possible action concerning Graduate Medical Education permits

Adjourn

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, (512) 305-7016; fax: (512) 305-7008.

Filed: April 14, 1998, 2:23 p.m.

TRD-9805218



Texas Municipal Retirement System

Friday, April 24, 1998, 8:30 a.m.

1000 Red River

Austin

Board of Trustees

AGENDA:

1998 Texas Public Fund Trustees' Conference. Introduction and Orientation, The Board of Trustees will meet with the Boards of the Employees Retirement System of Texas, Texas County and District Retirement System, and Teacher Retirement System of Texas; Contemporary Issues in Plan Design; Break out Sessions of, Straight Talk on Social Security, Shareholder Voting Rights; How Important is Asset Association? Breakout Session of, What role Does Fixed Income Play in Plan Structure? Alternative Investments.

Adjourn until April 25, 1998, 8:30 a.m., Teacher Retirement System, 10 00 Red River, Austin, Texas.

Contact: Gary W. Anderson, P.O. Box 149153, Austin, Texas 78714-9153, (512) 476-7577.

Filed: April 14, 1998, 12:02 p.m.

TRD-9805209



Saturday, April 25, 1998, 8:30 a.m.

1000 Red River
Austin
Board of Trustees

AGENDA:

1998 Texas Public Fund Trustees' Conference. The Board of Trustees will continue its meeting with the Boards of the Employees Retirement System of Texas, Texas County and District Retirement System, and Teachers Retirement System at 1998 Texas Public Fund Trustees' Conference. Fiduciary Matters; Investment Implications of World Population and Demographic Change.

Contact: Gary W. Anderson, P.O. Box 149153, Austin, Texas 78714-9153, (512) 476-7577.

Filed: April 14, 1998, 12:02 p.m.

TRD-9805208



Texas Natural Resource Conservation Commission

Wednesday, April 22, 1998, 8:30 a.m., 9:30 a.m. and 1:00 p.m.

12100 Park 35 Circle

Austin

AGENDA:

The Commission will consider approving the following matters on the agenda: Executive Session; Hearing Request; Petroleum storage tank enforcement agreed orders; Municipal Solid Waste Enforcement Agreed Orders; Air Enforcement Agreed Orders; Public Water supply Enforcement Agreed Orders; Municipal Waste Discharge Enforcement Agreed Orders; Multi-Media Enforcement Agreed Order; Agricultural Enforcement Agreed Orders; Designation of Single Property; Industrial Waster Discharge Enforcement Agreed Order; Contracts; Rules; Executive Sessions; the Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time. (Registration for 9:30 agenda Starts 8:45 until 9:25). The commission will consider administrative law judges proposal for decisions for orders; and a motion for rehearing.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: April 13, 1998, 11:07 a.m.

TRD-9805142



Wednesday, April 22, 1998, 9:30 a.m.

12100 Park 35 Circle

Austin

REVISED AGENDA:

The Commission will consider approving the following matters on the addendum to the agenda: Water Utility Matter

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: April 14, 1998, 3:03 p.m.

TRD-9805223



Tuesday, April 28, 1998, 1:30 p.m.

Omni Marina Hotel, 707 North Shoreline Boulevard

Corpus Christi

Management Committee of the Corpus Christi Bay National Estuary Program

AGENDA:

I. Call to Order/Introductions/Minutes

II. Program Update

III. Presentation and Discussion of FY1999 Work Plan

IV. Presentation and Discussion of Draft Federal Consistency Strategy and Proposed List of Actions for "Continuing Review"

V. Additional Items/Adjourn

Contact: Richard Volk, 6300 Ocean Drive, Corpus Christi, Texas 78412, (512) 980-3420.

Filed: April 13, 1998, 3:51 p.m.

TRD-9805178



Tuesday, April 28, 1998, 1:30 p.m.

Omni Marina Hotel, 707 North Shoreline Boulevard

Corpus Christi

Policy Committee of the Corpus Christi Bay National Estuary Program

AGENDA:

I. Call to Order/Introductions/Approval of Minutes

II. Program Update

III. Presentation and Discussion of Draft FY1999 Work Plan

IV. Presentation and Discussion of Draft Federal Consistency Strategy and Proposed List of Actions for "Continuing Review"

V. Additional Items/Adjourn

Contact: Richard Volk, 6300 Ocean Drive, Corpus Christi, Texas 78412, (512) 980-3420.

Filed: April 13, 1998, 3:51 p.m.

TRD-9805177



Tuesday, April 28, 1998, 3:00 p.m.

The Central Library, 805 Comanche

Corpus Christi

Office of the Chief Clerk

AGENDA:

For an informal public meeting concerning an application by Mr. Ted Anderson, owner of the proposed Sun Suite Hotel, at 519 Everhart, Corpus Christi, Texas 78411, to the Texas Natural Resource Conservation Commission (TNRCC) for Proposed Permit No. MSW-CP62,005 to authorize the construction of an enclosed structure over a closed MSW landfill. The Subject site is a 95,474 sq. ft. tract situated

between South Padre Island Drive (SPID) and Tiger Lane behind the Outback Restaurant at 4227 SPID in Corpus Christi, Nueces County, Texas. The proposed hotel project will include the development of an approximate 13,000 sq. ft. first floor footprint enclosed structure, 1000 sq. ft. of landscaping, and the balance being the paved areas.

Contact: Annie Tyrone, P.O. Box 13087, Austin, Texas 78711-3087, 1-800-687-4040.

Filed: April 13, 1998, 10:53 a.m.

TRD-9805140



Board of Nurse Examiners

Tuesday, April 21, 1998, 9:00 a.m.

333 Guadalupe Street, Tower 3, Suite 460

Austin

Eligibility and Disciplinary Committee

AGENDA:

The Eligibility and Disciplinary Committee of the Board will meet to consider and take action on the following:

Review of the minutes of the February 10, 1998 meeting:

Eligibility Requests of Yolanda Evette Anderson, Petitioner for Declaratory Order; Karen Ann Ernst, Petitioner for Declaratory Order; James Edward Johnson, Petitioner for Declaratory Order, Cynthia Lorene Putty, Petitioner for Declaratory Order; and Gwendolyn Yvette Rubbell, Applicant for Initial Licensure

Conditional Eligibility Orders of the following Petitioners: Pamela Hall Seabolt, TX #561852, Petitioner for Reinstatement; and Nancy W. Wammack, TX #521773, Petitioner for Reinstatement.

Agreed Orders; Icie D. Ashe, TX #626244; Jan Marie Babin, TX #593454; Judy Ruth Benfield, TX #553791; Maribel T. Castro, TX #588661; Jackie M. Day, TX #599703; Mary Jo Gadek, TX #523113; Tina Annette Hamilton, TX #604104; Caryn Trinetta Iverson, TX #607024; Laurie Kripp Kassir, 601320; Monique Labodi, TX #642929; Michael Shaun McConnell, TX #572808; Craig T. McGinley, TX #583567; Michael Ray Nichols, TX #230022; Kathy Eileen Petty, TX #545478; Ola M. Porter, TX 500602; Marlene D. Puente, TX #610042; Martha Elva Ramos, TX #248771; Ginette Gisele Richard, TX #585923; Mary Louise Steuben, TX #435209; Kristin Ann Stewart, TX #529508; Diane Frances Viale, TX #529078; Shirley D. Webb, TX #618675.

Order Nunc Pro Tunc: Delia Guanzon Espino, TX #434532.

ALJ's Proposal for Decision; Judy Lynne Breuel, TX #550794, Ruth A. Johnson Clark, TX #218433; James Dewitt Ferguson, TX #606281; Kathy L. Barger Jones, TX #225785; Helen Grace Mack, TX #459167; Janice Gail Muench, TX #551677; Joel Lane Newton, TX #583790; Desiree A. Shaw, TX #508537; and Jennifer D. Smith, TX #513957.

Requests for Exceptions to Previous Board Orders: Linda Marie Nazimuddin, TX #440817.

Contact: Cheryl Sepulveda, Box 430, Austin, Texas 78767-0430, (512) 305-6824.

Filed: April 10, 1998, 2:35 p.m.

TRD-9805090



Texas Department of Public Safety

Wednesday, April 22, 1998, 10:30 a.m.

DPS Headquarters, 5805 North Lamar, Building A

Austin

Public Safety Commission

REVISED AGENDA:

Addition to previously posted agenda: Discussion and possible action regarding draft report by State Auditors

For ADA assistance or services, please contact Dorothy Wright, (512) 453-3929, two working days prior to the meeting.

Contact: Dudley M. Thomas, DPS, 5805 North Lamar Boulevard, Austin, Texas 78752, (512) 424-2000, Extension 3700.

Filed: April 14, 1998, 9:25 a.m.

TRD-9805191



Thursday, April 23, 1998, 3:00 p.m.

5805 North Lamar

Austin

Governor's Division of Emergency Management Drought Response and Monitoring Committee

AGENDA:

Welcome and Introductions

Technical Assistance and Planning Subcommittee Report

Drought and Water Supply Monitoring Subcommittee Report

Action Items: Review of last meeting minutes and On-Going strategies

Other Issues and Concerns

Adjournment

For ADA assistance or services, please contact Juan Perales, at (512) 424-2452, three working days prior to the meeting.

Contact: Juan Perales, 5805 North Lamar Boulevard, Austin, Texas 78773-0220 (512) 424-2452.

Filed: April 18, 1998, 1:13 p.m.

TRD-9804936



Public Utilities Commission

Tuesday, April 21, 1998, 9:30 a.m.

1701 North Congress Avenue

Austin

AGENDA:

Project No. 16251; Docket Nos 19000, 16196, 16455, 17065, 16189, 18977, 18509, and 17922; Project Nos. 18438, 18702, 18811, 18515, and 18516; Quarterly Financial Statistics Report; Docket Nos. 17641, 17809, 16905, 16906, 16938, 16947, 16948, 17128, 17176, 17191, 17195, and 17203, Project Nos. 18758 and 17296; Docket Nos. 18593, 18799, 18800, 18860, 18883, 18897, 18722, 18733, and 18779; Federal Telecommunications Act of 1996 and other actions taken by the Federal Communications Commission;

Activities in local telephone markets, including but not limited to correspondence and implementation of interconnection agreements approved by the Commission pursuant to PURA and FTA; Project No 18000 and 16536; Docket Nos. 16705, 17899, 18290, 18249, 18465, 18490, 17285, 18845, 17376, 17835, 17803, 18604, 18863, and 18183, Project Nos. 14789, 17549, 17555, and 19087; Electric industry restructuring, electric utility reliability, and customer service; Project Nos. 19120, 19121, and 17490; Customer service issues, including but not limited to correspondence and complaint issues; 1998 Operating Budget, project assignments, correspondence, staff reports, agency administrative issues, fiscal matters and personnel policy; Agency Business Plan; Adjournment for closed session to consider litigation and personnel matters; Reconvene for discussion and decisions on matters considered in closed session.

Contact: Diane Prior, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7007.

Filed: April 13, 1998, 4:30 p.m.

TRD-9805183



Wednesday-Friday, April 22-24, 1998, 9:30 a.m.

1701 North Congress Avenue

Austin

AGENDA:

Project No. 16251; Investigation into Southwestern Bell Telephone Company's Entry into In-Region InterLATA Service Under Section 271 of the Telecommunications Act of 1996; Adjournment for closed session to consider litigation and personnel matters; Reconvene for discussion and decisions on matters considered in closed session.

Contact: Diane Prior, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7007.

Filed: April 14, 1998, 3:34 p.m.

TRD-9805230



Railroad Commission of Texas

Wednesday, April 22, 1998, 8:45 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The commission will hold its monthly statewide hearing on oil and gas to determine the lawful market demand for oil and gas and to consider and/or take action on matters listed on the agenda posted with the Secretary of State's Office.

Contact: Kathy Way, P.O. Box 12967, Austin, Texas 78711, (512) 463-6729

Filed: April 10, 1998, 9:27 a.m.

TRD-9805075



Wednesday, April 22, 1998, 9:00 a.m.

William B. Travis Building, 1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

9:00 a.m. — Call to order by Chairman Charles R. Matthews; opening remarks (if any) by Chairman Matthews, Commissioner Barry Williamson, and Commissioner Carole Keeton Rylander

Presentation of award to Kenneth Lay.

9:15 a.m. to adjournment: Speakers comments to the Commission; closing remarks (if any) by Chairman Matthews, Commissioner Barry Williamson, and Commissioner Carole Keeton Rylander.

Contact: Donna Burks, P.O. Box 12967, Austin, Texas 78711, (512) 463-6889

Filed: April 10, 1998, 9:27 a.m.

TRD-9805076



Texas Rehabilitation Commission

Thursday, April 23, 1998, 9:00 a.m.

Brown Heatly Building, 4900 North Lamar Boulevard

Austin

Texas Rehabilitation Advisory Council

REVISED AGENDA:

Roll Call / Agenda Review / Announcements / TRAC Input: TRC's VR State and VR Strategic Plans / Break / Council Discussion — Issues for TRC's Sunset Review / Lunch.

Public Comment / council Issues Discussion, cont. TRAC Workgroups / Break / Resume Issues Discussion / Recess.

Contact: Barbara Ritter, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 424-4160.

Filed: April 8, 1998, 2:48 p.m.

TRD-9804950



Friday, April 24, 1998, 9:00 a.m.

Brown Heatly Building, 4900 North Lamar Boulevard

Austin

Texas Rehabilitation Advisory Council

REVISED AGENDA:

Approval of January 1998 Meeting Minutes / Chairperson's Report / TRAC Staff Report / TRC Client Satisfaction Survey Review / Break / Council Discussion: Sunset Recommendations / Lunch.

Recommendations / Action Items / Agenda Items for Next Meeting / Adjourn.

Contact: Barbara Ritter, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 424-4160.

Filed: April 8, 1998, 2:48 p.m.

TRD-9804951



Wednesday, May 5, 1998, 9:00 a.m.

Brown Heatly Building, 4900 North Lamar Boulevard, Room 5501

Austin

Comprehensive Rehabilitation Services (CRS) Advisory Committee

AGENDA:

10:00 a.m. — Call to Order

- I. Introductions
- II. Approval of Minutes
- III. Public Comments
- IV. Discussion of CRS Policy
- V. Other Discussion Items

5:00 p.m. — Adjourn

Contact: Mel Fajkus, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 424-4133.

Filed: April 14, 1998, 3:54 p.m.

TRD-9805231



Tuesday, May 12, 1998, 4:00 p.m.

Wayland Baptist University, Lubbock Center, 4601 83rd Street

Lubbock

AGENDA:

State Plan for Vocational Rehabilitation Services, Independent Living Services and the OR Strategic Plan

A. Welcome

Regional Director

Texas Rehabilitation Commission

B. Introduction

C. Overview of Town Meeting Purpose

How are We Doing in the Provision of Services?

OR Services

Transition Services

Independent Living Services

Supported Employment Services

D. Public Comment

Group Discussions:

What Can We Do Now to Improve Services and Service Delivery?

What Can We Do in the Future to Improve Services and Service Delivery?

E. Wrap-up

F. Concluding Remarks

Persons planning to attend this meeting needing ADA services or accommodation, please contact Lena Jackson at least five days prior to the meeting.

Contact: Lena Jackson, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 424-4113.

Filed: April 9, 1998, 10:11 a.m.

TRD-9804983



Thursday, May 14, 1998, 9:00 a.m.

Montgomery County Library, 104 IH45 North

Conroe

AGENDA:

State Plan for Vocational Rehabilitation Services, Independent Living Services and the OR Strategic Plan

A. Welcome

Regional Director

Texas Rehabilitation Commission

B. Introduction

C. Overview of Town Meeting Purpose

How are We Doing in the Provision of Services?

OR Services

Transition Services

Independent Living Services

Supported Employment Services

D. Public Comment

Group Discussions:

What Can We Do Now to Improve Services and Service Delivery?

What Can We Do in the Future to Improve Services and Service Delivery?

E. Wrap-up

F. Concluding Remarks

Persons planning to attend this meeting needing ADA services or accommodation, please contact Lena Jackson at least five days prior to the meeting.

Contact: Lena Jackson, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 424-4113.

Filed: April 9, 1998, 10:11 a.m.

TRD-9804984



Thursday, May 21, 1998, 5:30 p.m.

Texarkana Field Office, 401 North Baylor Street

Texarkana

AGENDA:

State Plan for Vocational Rehabilitation Services, Independent Living Services and the VR Strategic Plan

A. Welcome

Regional Director

Texas Rehabilitation Commission

B. Introduction

C. Overview of Town Meeting Purpose

How are We Doing in the Provision of Services?

VR Services

Transition Services

Independent Living Services

Supported Employment Services

D. Public Comment

Group Discussions:

What Can We Do Now to Improve Services and Service Delivery?

What Can We Do in the Future to Improve Services and Service Delivery?

E. Wrap-up

F. Concluding Remarks

Persons planning to attend this meeting needing ADA services or accommodation, please contact Lena Jackson at least five days prior to the meeting.

Contact: Lena Jackson, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 424-4113.

Filed: April 9, 1998, 10:11 a.m.

TRD-9804985



Stephen F. Austin State University

Monday, April 20, 1998, 11:30 a.m.

1936 North Street, Austin Building, Room 307

Nacogdoches

Board of Regents Finance Committee

AGENDA:

I. 1998-1999 Budget

II. Summer Budget

III. Financial Resolution

IV. Endowment Securities Resolution

V. Lab Fees

VI. Course Fees

VII. Athletic Benchmarking

VIII. Forest Resource Institute Computer Purchase

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962-6078, (409) 468-2201.

Filed: April 13, 1998, 10:38 a.m.

TRD-9805137



Monday, April 20, 1998, 1:30 p.m.

1936 North Street, Austin Building, Room 307

Nacogdoches

Board of Regents

AGENDA:

I. Opening Session — Committee of the Whole

II. Executive Session

A. Review of Pending Litigation (551.071)

1. Ginn v. SFA, et al

2. Weber v. NAH, Inc. et al

3. Trahan v. SFA

4. Fowler v. SFA

5. Dudley v. SFA

6. Hoover, et al v. Morales, et al

B. Personnel Matters Regarding Specific University Employees (551.074/551.075)

1. President

2. General Counsel

3. Director of Audit Services

III. Open Discussion of Tuesday Board Items

(Where appropriate, and permitted by law, Executive Sessions may be held for the above listed subjects).

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962-6078, (409) 468-2201.

Filed: April 13, 1998, 10:39 a.m.

TRD-9805138



Tuesday, April 21, 1998, 9:00 a.m.

1936 North Street, Austin Building, Room 307

Nacogdoches

Board of Regents

AGENDA:

I. Executive Session

A. Report on Pending Litigation

1. Pending lawsuits

B. Personnel Matters Regarding Specific University Employees (551.074/551.075)

1. President

2. General Counsel

(Possible action may be taken in Open Session on matters considered in Executive Session)

II. Approval of January 20, 1998 and March 30, 1998 Minutes

III. Revision of Rules and Regulations of the Board of Regents

IV. Election of Officers

V. Administration

A. Election of President

B. Election of General Counsel

C. Election of Director of Audit Services

VI. Personnel

A. Faculty and Staff Appointments for 1997-1998

B. Faculty and Staff Appointments for 1998-1999

C. Changes of Status

D. Promotions

E. Tenure

F. Regents Professorships for 1998-1999

G. Faculty Development Leaves

H. Retirements

- I. Voluntary Modification of Employment
- VII. Academic and Student Affairs
 - A. Faculty Workload Report
 - B. Acceptance of General Bulletins
 - C. Laboratory Fees
 - D. Course Fees
 - E. Incidental Fees
 - F. Distance Learning Fee
 - G. Proposal to Name Speech and Hearing Clinic
 - H. Proposal for SFA Rodeo Club Practice Area
 - I. Approval for Additions to Long Range Plan
 - J. Food Service Contract with ARAMARK
 - K. Room and Board Rates
- VIII. University Affairs
 - A. University Police Department Survey
- IX. Financial Affairs
 - A. Approval of the 1998–1999 Budget
 - B. Approval of Summer Budget
 - C. Approval of Resolution Approving Faye Sarofim to Manage and Rockwell and Wisely Endowment Securities
 - D. Resolution Authorizing Request for Financing
 - E. Athletic Benchmarking
 - F. Forest Resource Institute Computer Purchase
 - G. Housing System HVAC Projects
 - H. Budget changes Less than \$50,000
- X. Buildings and Grounds
 - A. Renovation of Mays Hall
- XI. University Policies and Procedures
 - A. Policy Revisions
- XII. Reports
 - A. Chair, Faculty Senate
 - B. President, Student Government Association
 - C. Vice President for University Advancement
 - D. President

(Where appropriate, and permitted by law, Executive Sessions may be held for the above listed subjects).

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962–6078, (409) 468–2201.
 Filed: April 13, 1998, 10:39 a.m.

TRD-9805139



Tuesday, April 21, 1998, 9:00 p.m.
 1936 North Street, Austin Building, Room 307
 Nacogdoches

Board of Regents

AGENDA:

Additional Agenda Item:

VII. Academic and Student Affairs

I. Texas Rangers Scholarship

(Where appropriate, and permitted by law, Executive Sessions may be held for the above listed subjects).

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962–6078, (409) 468–2201.

Filed: April 14, 1998, 3:04 a.m.

TRD-9805225



Texas State Technical College System

Wednesday, April 15, 1998, 10:00 a.m.

3801 Campus Drive, System Administration Building

Waco

Board of Regents Executive Committee Telephone Conference

AGENDA:

The TSTC Board of Regents Executive Committee will meet by telephone conference to consider and take action on the following agenda items: Appointment of General Counsel, Appointment of Vice Chancellor, Request to Advertise for Bids and Award a Purchase Order for Rail Repair Work at Amarillo, Request to Update the Appraisal of Property at Amarillo, Approval of Change order for Landfill at Amarillo, Proposed Modifications to the Lease with Fraser Industries in Amarillo, Approval of Request to Submit a non-competitive grant to the Telecommunications Infrastructure Fund Board, and Tuition and Fees for Fiscal Year 1999 effective September 1, 1998.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (254) 867–3964.

Filed: April 9, 1998, 1:42 p.m.

TRD-9805033



Wednesday, April 15, 1998, 10:10 a.m.

3801 Campus Drive, System Administration Building

Waco

Board of Regents Executive Committee Telephone Conference, Closed Telephone Conference Meeting

AGENDA:

The TSTC Board of Regents Executive Committee will meet by telephone conference in closed meeting in accordance with Chapter 551 of the Texas Government Code for the specific purpose provided in §§551.071 and 551.075 to discuss the Chancellor's contract and TSTC System Organization and Staffing.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (254) 867–3964.

Filed: April 9, 1998, 1:42 p.m.

TRD-9805034



University of Houston System

Thursday, April 16, 1998, 8:00 a.m.

4800 Calhoun, Hilton Hotel and Conference Center, Shamrock Room
Houston

Board of Regents

AGENDA:

Executive Session and Report from Executive Session, Approval of Minutes, Chancellor's Report, Chairman's Report, Report from Executive Committee, Honorary Degrees, Medal of Honor; university Policies on Post-Tenure Performance Review, Promotion in Academic Rank, Faculty Emeriti Appointments, Creation of the Department of Communication and Department of Biology and Biochemistry, Master of Science Degree in Finance, Combined Doctor of Optometry and Doctor of Philosophy Degree in Physiological Optics, Monthly Report of Contracts and Grants Cullen Distinguished Professorship; Gift Acceptance Reports; Award of Parking Lot Construction Contract, Football Game Guarantee Contract, Endowment Fund Statement of Investment Objectives and Policies. (See Agenda posted with the Secretary of State's office for details.)

Contact: Peggy Cervenka, 3100 Cullen, Suite 205, Houston, Texas
77204-6732, 1-713-743-3444.

Filed: April 9, 1998, 9:12 a.m.

TRD-9804978



The University of Texas System

Wednesday, April 22, 1998, 3:00 p.m.

7703 Floyd Curl Drive, Room 422A, U.T. Health Science Center
San Antonio

Animal Care and Use Committee

AGENDA:

1. Approval of Minutes
2. Protocol for Review (See Agenda)
3. Subcommittee reports
4. Other Business

Contact: Molly Greene, 7300 Floyd Curl Drive, San Antonio, Texas,
78284-7822, (210) 567-3717.

Filed: April 14, 1998, 3:03 p.m.

TRD-9805224



Texas Water Development Board

Thursday, April 16, 1998, 9:00 a.m.

Stephen F. Austin Building, Room 118, 1700 North Congress Avenue
Austin

AGENDA:

The Board will consider: minutes; committee, executive and financial reports; Guadalupe Blanco River Authority issues; selection of an Internal Auditor; extension of repayment period for Lorena; financial assistance to Archer Co. Municipal Utility District #1, Covington, Dallas Co. Water Control and Improvement District #6, Wortham, Mount Vernon, Newton, Canyon Lake Water Supply Corporation,

Wells Branch Municipal utility District, and Hudspeth Co. Water Treatment Assistance Program; publication of a request for statements of qualifications in the Texas Register with the intent of negotiating and executing a contract for a solicited water research study to survey water supply and wastewater infrastructure financing methods for political subdivisions; a contract with the Lower Colorado River Authority for a water research study; publication of proposed amendments to Chapter 357 to amend notice requirements for regional water planning groups; action relating to funding Economically Distressed Areas Program projects based upon Hidalgo County's enforcement of model political subdivision rules; authorizing the issuance, sale and delivery of up to \$250,000,000 Texas Water Financial Assistance Bonds and associated actions; amending Resolutions authorizing the Texas Water Development Board General Obligation Bonds, Series 1997A, 1997B, 1997D, 1997E and 1997F; contract for Depository Trust Company participant and custodial services for the Board's book-entry registered bond portfolio; amendment to the Sale and Servicing Agreement between the Board and Texas Water Resources Finance Authority; securing input from stakeholders and with proposed revisions to Chapter 383, Subchapter E, as it relates to determining the amount of grants and loans under the Economically Distressed Areas Program; publication of proposed amendments to Chapter 363, Subchapter B as it relates to financial assistance under the CWSRF program for a priority rating system and the Rural Hardship Communities Grant Program; and strategic and tactical planning, resource allocation and workload issues.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711,
(512) 463-7847.

Filed: April 8, 1998, 1:56 p.m.

TRD-9804947



Texas Water Resources Finance Authority

Thursday, April 16, 1998, 9:00 a.m.

Stephen F. Austin Building, Room 118, 1700 North Congress Avenue
Austin

AGENDA:

1. Consider approval of the minutes of the meeting of December 11, 1997.
2. Consider authorizing the Chairman to executive an amendment to the Sale and Servicing Agreement between the Authority and Texas Water Development Board.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711,
(512) 463-7847.

Filed: April 8, 1998, 1:56 p.m.

TRD-9804946



Texas Workers' Compensation Commission

Friday, April 17, 1998, 9:00 a.m.

4000 South IH35, Room 910-911, Southfield Building
Austin

Medical Advisory Committee

AGENDA:

1. Call to Order

2. Review and Possible Approval of the January 16, 1998 and March 20, 1998 Minutes
3. Items from Division Director
4. Update on the Utilization Review Rule
5. Briefing on Return to Work Guideline and focus groups comments
6. Report on Action Items
7. Announcement of Guideline Standardization Meeting immediately following the MAC meeting
8. Establish the next meeting date
9. Adjournment

Contact: Bob Marquette, 4000 South IH35, Austin, Texas 78704, (512) 440-5690.

Filed: April 9, 1998, 11:10 a.m.

TRD-9805016



Regional Meetings

Meetings filed April 8, 1998

Brazos River Authority, Lake Management Committee Board of Directors, met at Lake Supervisor's Office, Off FM 2353, Possum Kingdom Lake, April 16, 1998, at 10:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (254) 776-1441. TRD-9804945.

East Texas Council of Governments, Workforce Development Board, met at 3119 Estes Parkway, Longview, April 16, 1998 at 10:00 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9804972.

Education Service Center, Region 12, Board of Directors, met at 2101 West Loop 340, Waco, April 16, 1998 at 9:00 a.m. Information may be obtained from Harry J. Beavers or Vivian L. McCoy, P.O. Box 23409, Waco, Texas 76702-3409, (817) 666-0707. TRD-9804952.

Elm Creek Water Supply Corporation, Board, met at 508 Avenue, "E", Moody, April 13, 1998 at 7:00 p.m. Information Rita Foster, P.O. Box 538, Moody, Tx 76557, (254) 853-3838. TRD-9804948.

Lower Rio Grande Valley Development Council, Region "M" Water Planning Group, met at McAllen International Airport, East Conference Room, 2600 South Main Street, McAllen, April 15, 1998, at 11:00 a.m. Information may be obtained from Kenneth N. Jones, 311 North 15th Street, McAllen, Texas 78501-4705, (956) 682-3481, fax: (956) 631-4670. TRD-9804969.

Lower Rio Grande Valley Development Council, Region "M" Initial Coordinating Body, met at McAllen International Airport, East Conference Room, 2600 South Main Street, McAllen, April 15, 1998, at 12:30 p.m. Information may be obtained from Kenneth N. Jones, 311 North 15th Street, McAllen, Texas 78501-4705, (956) 682-3481, fax: (956) 631-4670. TRD-9804970.

North Central Texas Council of Governments, Workforce Development Board Nominating Committee, met at 616 Six Flags Drive, Arlington, April 14, 1998 at 1:00 p.m. Information may be obtained from Sharon Vassar, NCTCOG, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 695-9176. TRD-9804971.

Region "E" Regional Water Planning Advisory, met at Sul Ross State University, West Dining Room, East Highway 90, Alpine, April 17, 1998 at 1:00 p.m. (CST). Information may be obtained from Michele

Maley, 1100 North Stanton, Suite 610, El Paso, Texas 79902, (915) 533-0998. TRD-9804967.

San Antonio River Authority, Board of Directors, met with revised agenda, at 100 East Guenther Street, Boardroom, San Antonio, April 15, 1998 at 2:00 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (210) 227-1373. TRD-9804964.

Meetings filed April 9, 1998

Atascosa County Appraisal District, Appraisal Review board, met at 4th and Avenue J, Poteet, April 16, 1998 at 9:00 a.m. Information may be obtained from Curtis Stewart, P.O. Box 139, Poteet, Texas 78065-0139, (830) 742-3591. TRD-9805006.

Atascosa County Appraisal District, Board of Directors, met at 4th and Avenue J, Poteet, April 16, 1998 at 1:30 p.m. Information may be obtained from Curtis Stewart, P.O. Box 139, Poteet, Texas 78065-0139, (830) 742-3591. TRD-9805018.

Bastrop Central Appraisal District, Board of Directors, met at 1200 Cedar Street, Bastrop, April 16, 1998, 7:30 p.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 303-3536. TRD-9805005.

Bi-County Water Supply Corporation met at Arch Davis Road, FM 2254, Pittsburg, April 14, 1998 at 7:00 p.m. Information may be obtained from Janell Larson, P.O. Box 848, Pittsburg, Texas 75686, (903) 856-5840. TRD-9805003.

Bosque County Central Appraisal District, Board of Directors, met at 202 South Highway 6, Meridian, April 16, 1998 at 7:00 p.m. Information may be obtained from Janice Henry, P.O. Box 393, Meridian, Texas 76665-0393, (254) 435-2304. TRD-9805002.

Burnet Central Appraisal District, Board of Directors, met at 110 Avenue H, Suite 106, Marble Falls, April 16, 1998 at Noon. Information may be obtained from Barbara Ratliff, P.O. Drawer E, Burnet, Texas 78611, (512) 756-8291. TRD-9805027.

Coleman County Water Supply Corporation, Annual Membership Meeting, met at Hospitality Room, First Coleman National Bank, 100 Commercial Avenue, Coleman, April 14, 1998 at 2:30 p.m. Information may be obtained from Davey Thweatt, 214 Santa Anna Avenue, Coleman, Texas 76834, (915) 625-2133. TRD-9805029.

Coleman County Water Supply Corporation, Board of Directors, met at 214 Santa Anna Avenue, Coleman, April 14, 1998 at 3:30 p.m. Information may be obtained from Davey Thweatt, 214 Santa Anna Avenue, Coleman, Texas 76834, (915) 625-2133. TRD-9805030.

Deep East Texas Local Workforce Development Board, Planning/Budget / Education Advisory, met at 202 East Shepherd, Room 202, Lufkin, April 14, 1998, at 2:15 p.m. Information may be obtained from Charlene Meadows, P.O. Box 1423, Lufkin, Texas 75902, (409) 634-2247. TRD-9805066.

East Texas Council of Governments, Workforce Development Board Executive Committee, met at 3119 Estes Parkway, Longview, April 16, 1998 at 9:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9805059.

East Texas Council of Governments, Workforce Development Board , met at 3119 Estes Parkway, Longview, April 16, 1998 at 10:00 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9805023.

Education Service Center, Region One, Board of Directors, met at 1900 West Schunior, Edinburg, April 20, 1998 at 11:30 p.m.

Information may be obtained from Dr. Sylvia R. Hatton, 1900 West Schunior, Edinburg, Texas 78539, (956) 383-5611. TRD-9805053.

Education Service Center, Region VI, Joint Meeting (Board/Executive Committee) met with revised agenda, at One Waterwood, Huntsville, April 15, 1998 at 5:00 p.m. Information may be obtained from Bobby Roberts, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 295-9161. TRD-9804979.

Education Service Center, Region 12, Board of Directors, met with revised agenda, at 2101 West Loop 340, Waco, April 15, 1998 at 10:00 a.m. Information may be obtained from Harry J. Beavers or Vivian L. McCoy, P.O. Box 23409, Waco, Texas 76702-3409, (817) 666-0707. TRD-9805047.

Education Service Center, Region XIV, Board of Directors, met at 1850 Highway 351, Abilene, April 16, 1998 at 6:00 p.m. Information may be obtained from Taressa Huey, 1850 Highway 351, Abilene, Texas 79601, (915) 675-8608. TRD-9804981.

El Oso Water Supply Corporation, Board of Directors, met at Highway 99, Karnes City, April 14, 1998 at 7:30 p.m. Information may be obtained from Carolyn Wiatrek, P.O. Box 309, Karnes City, Texas 78118, (830) 780-3539. TRD-9805032.

Gonzales County Appraisal District, Board of Directors, met at 928 St. Paul Street, Gonzales, April 16, 1998 at 6:00 p.m. Information may be obtained from Lona Cleveland or Glenda Strackbein, 928 St. Paul, Gonzalez, Texas 78629, (830) 672-2879 or fax: (830) 672-8345. TRD-9805057.

Harris County Appraisal, Appraisal Review Board, met at 2800 North Loop West, Houston, April 17, 1998, 8:00 a.m. Information may be obtained from Bob Gee, 2800 North Loop West, Houston, Texas 77902, (713) 957-5222. TRD-9805025.

Heart of Texas Council of Governments, Local Workforce Development Board, met at 320 Franklin, Waco, April 16, 1998 at 5:30 p.m. Information may be obtained from Donna Tomlinson, 300 Franklin, Waco, Texas 76701, (254) 756-7822. TRD-9804987.

Heart of Texas Council of Governments, Executive Committee, met at 300 Franklin, Waco, April 23, 1998 at 10:00 a.m. Information may be obtained from Donna Tomlinson, 300 Franklin, Waco, Texas 76701, (254) 756-7822. TRD-9804986.

Hockley County Appraisal District, Board of Directors, met at 1103 Houston Street, Levelland, April 13, 1998 at 7:30 p.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654. TRD-9805056.

Lampasas County Appraisal District, Board of Directors, met at 109 East Fifth Street, Lampasas, April 16, 1998 at 7:00 p.m. Information may be obtained from Katrina Perry, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9805064.

Lometa Rural Water Supply Corporation, Board of Directors, met at 506 West Main Street, Lometa, April 13, 1998 at 7:00 p.m. Information may be obtained from Levi G. Cash III or Tina L. Hodge, P.O. Box 158, Lometa, Texas 76853, (512) 752-3505. TRD-9805031.

North Texas Regional Library System, Board of Directors, met at 1111 Foch Street, Fort Worth, April 23, 1998, 1:30 p.m. Information may be obtained from Marlin Anglin, 1111 Foch Street, Suite 100, Fort Worth, Texas 76107, (817) 335-6076. TRD-9805058.

North Texas Tollway Authority, Board of Directors, met at 8440 Freeport Parkway, Dallas/Fort Worth Airport Marriott, Irving, April 15, 1998 at 9:30 a.m. Information may be obtained from Jimmie G.

Newton, 3015 Raleigh Street, Dallas, Texas 75219, (214) 522-6200. TRD-9804976.

Nueces Soil and Water Conservation District, met at American Legion Building, Texas Avenue, Bishop, April 14, 1998 at 7:00 p.m. Information may be obtained from Joan D. Rumfield, 548 South Highway 77, Suite B, Robstown, Texas 78380, (512) 387-4116. TRD-9805020.

Palo Pinto Appraisal District, Board of Directors, met at 200 Church Avenue, Palo Pinto, April 16, 1998 at 3:00 p.m. Information may be obtained from Carol Holmes or Donna Rhoades, P.O. Box 250, Palo Pinto, Texas 76484, (949) 659-1239. TRD-9805037.

Red River Authority of Texas, Regional Water Planning Group, Area B, met at Nortex Regional Planning Commission, 4309 Jacksboro Highway, Galaxy Center #2, Wichita Falls, April 13, 1998 at 2:30 p.m. Information may be obtained from Ronald J. Glenn, 520 Hamilton Building, 900 Eighth Street, Wichita Falls, Texas, 76301-6894, (940) 723-0855. TRD-9805036.

Regional Water Planning Group, Region "O", Llano Estacado, Committee, met at 2930 Avenue Q, Board Room, Lubbock, April 16, 1998 at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9804977.

Riceland Regional Mental Health Authority, Executive Committee, Board of Trustees, met at 3007 North Richmond Road, Wharton, April 16, 1998 at 1:00 p.m. Information may be obtained from Marjorie Dornak, P.O. Box 869, 3007 North Richmond Road, Wharton, Texas 77488, (409) 532-3098. TRD-9805060.

South Plains Association of Governments, Executive Committee, met at 1323 58th Street, Lubbock, April 14, 1998 at 9:00 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Freedom Station, Lubbock, Texas 794452-3730, (806) 762-8721. TRD-9805038.

South Plains Association of Governments, Board of Directors, met at 1323 58th Street, Lubbock, April 14, 1998 at 10:00 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Freedom Station, Lubbock, Texas 794452-3730, (806) 762-8721. TRD-9805039.

Spindletop 2001 Commission, Beaumont Subcommittee, met at the Art Museum of Southeast Texas, Main Street, Beaumont, April 17, 1998 at Noon. Information may be obtained from Jan May, (409) 866-7179 or (409) 833-5100. TRD-9805026.

West Central Texas Workforce Development Board, Planning and Oversight Committee, met at 1850 Highway 351, Abilene, April 15, 1998 at 9:00 a.m. Information may be obtained from Mary Ross, 1025 E.N. 10th Street, Abilene, Texas 79601, (915) 672-8544. TRD-9805068.

West Central Texas Workforce Development Board, met at 1850 Highway 351, Abilene, April 15, 1998 at 10:30 a.m. Information may be obtained from Mary Ross, 1025 E.N. 10th Street, Abilene, Texas 79601, (915) 672-8544. TRD-9805069.

Wood County Appraisal District, Board of Directors, met at 210 Clark Street, Quitman, April 16, 1998 at 1:30 p.m. Information may be obtained from Lois McKibben or Rhonda Powell, P.O. Box 518, Quitman, Texas 75783-0518, (903) 763-4891. TRD-9804975.

Meetings filed April 10, 1998

Alamo Area Council of Governments, Management Committee, met at 118 Broadway, Suite 400, San Antonio, April 15, 1998 at 10:00

a.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (210) 362-5200. TRD-9805081.

Ark-Tex Council of Governments, (ATCOG), Chief Elected Officials, met at Titus County Civic Center, 1800 North Jefferson, Mt. Pleasant, April 20, 1998 at 1:00 p.m. Information may be obtained from Sandie Brown, P.O. Box 5307, Texarkana, Texas 75505, (903) 832-8636. TRD-9805088.

Ark-Tex Council of Governments, (ATCOG), Executive Committee, met at Mt. Pleasant Chamber of Commerce, 1604 Jefferson, Mt. Pleasant, April 30, 1998 at 2:00 p.m. Information may be obtained from Sandie Brown, P.O. Box 5307, Texarkana, Texas 75505, (903) 832-8636. TRD-9805089.

Barton Springs/Edwards Aquifer Conservation District, Board of Directors Called Meeting/Executive Session, met at 1124A Regal Row, Austin, April 14, 1998 at Noon. Information may be obtained from Bill E. Couch, 1124A A Regal Row, Austin, Texas 78748, (512) 282-8441, fax: (512) 282-7016. TRD-9805073.

Colorado River Municipal Water District, Board of Directors, met at 400 East 24th Street, Big Spring, April 16, 1998 at 10:00 a.m. Information may be obtained from John W. Grant, P.O. Box 869, Big Spring, Texas 79721, (915) 267-6341. TRD-9805098.

Dallas Area Rapid Transit, Administrative Committee, met at 1401 Pacific Avenue, Conference Room "C", First Floor, Dallas, April 14, 1998 at Noon. Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9805092.

Dallas Area Rapid Transit, Operations Committee, met at 1401 Pacific Avenue, Conference Room "C", First Floor, Dallas, April 14, 1998 at 2:00 p.m. Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9805093.

Dallas Area Rapid Transit, External Communications Committee, met at 1401 Pacific Avenue, Conference Room "D", Dallas, April 14, 1998 at 2:00 p.m. Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9805094.

Dallas Area Rapid Transit, Committee of the Whole, met at 1401 Pacific Avenue, Conference Room "C", First Floor, Dallas, April 14, 1998 at 4:00 p.m. Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9805095.

Dallas Area Rapid Transit, Board of Directors, met at 1401 Pacific Avenue, Board Room, Dallas, April 14, 1998 at 6:30 p.m. Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9805096.

Manville Water Supply Corporation, Board, met at 108 North Commerce Street, Coupland, April 16, 1998 at 7:00 p.m. Information may be obtained from Tony Graf, P.O. Box 248, Coupland, Texas 78615, (512) 272-4044. TRD-9805082.

Lower Colorado River Authority, Planning and Public Policy Committee, met at 3701 Lake Austin Boulevard, Hancock Building, Board Conference Room, Austin, April 14, 1998 at 10:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3304. TRD-9805071.

Red River Authority of Texas, Board of Directors, met at Holiday Inn Hotel and Suites, 401 Broad Street, Wichita Falls, April 15, 1998 at 10:00 a.m. Information may be obtained from Ronald J. Glenn, 520

Hamilton, Building, 900 Eighth Street, Wichita Falls, Texas 76301-6894, (940) 723-0855. TRD-9805072.

Rockwall County Central Appraisal District, Board of Directors, met at 106 North San Jacinto, Rockwall, April 14, 1998 at 7:30 p.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, (972) 771-2034. TRD-9805077.

Upper Rio Grande Workforce Development Board, met at 5919 Brook Hollow, El Paso, April 16, 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-9805083.

Meetings filed April 13, 1998

Angelina and Neches River Authority, ANRA Board of Directors, met at 210 Lufkin Avenue, Lufkin, April 17, 1998 at 10:00 a.m. Information may be obtained from Thomas D. Burr, P.O. Box 387, Lufkin, Texas 75901, (409) 632-7795, fax: (409) 632-2564. TRD-9805136.

Central Texas Council of Governments, Executive Committee, met at 302 East Central Avenue, April 16, 1998 at 11:00 a.m. Information may be obtained from A.C. Johnson, (254) 939-1801. TRD-9805104.

Coryell City WSD, Board of Directors, met at 9440 FM 929, Gatesville, April 16, 1998 at 7:30 p.m. Information may be obtained from Helen Swift, 9440 FM 929, Gatesville, Texas 76528, (254) 865-6089. TRD-9805176.

Deep East Texas Council of Governments, Board of Directors and Grants Application Review Committee, met at Highway 96 North, Shelby County Center County Club, Center, April 23, 1998 at 11:00 a.m. Information may be obtained from Walter G. Diggles, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704. TRD-9805119.

Education Service Center, Region XIV, Board of Directors, met at 1850 Highway 351, Abilene, April 16, 1998 at 6:00 p.m. Information may be obtained from Taressa Huey, 1850 Highway 351, Abilene, Texas 79601, (915) 675-8608. TRD-9805117.

Grayson Appraisal District, Board of Directors, met at 205 North Travis, Sherman, April 22, 1998 at Noon. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9805105.

Grayson Appraisal District, Appraisal Review Board, met at 205 North Travis, Sherman, April 23, 1998 at 9:00 a.m. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9805143.

Houston-Galveston Area Council, Projects Review Committee, met at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, April 21, 1998 at 8:30 a.m. Information may be obtained from Rowena Ballas, 3555 Timmons Lane, Suite 500, Houston, Texas 77027, (713) 627-3200. TRD-9805170.

Kendall Appraisal District, Agriculture Advisory Committee, met at 121 South Main Street, Boerne, April 20, 1998 at 7:00 p.m. Information may be obtained from Leta Schlinke or Helen Tamayo, P.O. Box 788, Boerne, Texas 78006, (830) 249-8012, fax: (830) 249-3975. TRD-9805103.

Kendall Appraisal District, Appraisal Review Board, met at 121 South Main Street, Boerne, April 21, 1998 at 9:00 a.m. Information may be obtained from Leta Schlinke, P.O. Box 788, Boerne, Texas 78006, (830) 249-8012, fax: (830) 249-3975. TRD-9805122.

Lake Livingston Water Supply and Sewer Service Corporation, Board of Directors, met at 622 South Washington, Livingston, April 16, 1998 at 10:00 a.m. Information may be obtained from M.D.

Simmons, P.O. Box 1149, Livingston, Texas 77351, (409) 327-3107, fax: (409) 327-8959. TRD-9805132.

Meetings filed April 14, 1998

Bell County Tax Appraisal District, Board of Directors, met at 411 East Central Avenue, Belton, April 21, 1998 at 7:00 p.m. Information may be obtained from Carl Moore, P.O. Box 390, Belton, Texas 76513, (254) 939-5841. TRD-9805216.

Bexar Appraisal District, Appraisal Review Board, met at 535 South Main Street, San Antonio, April 17, 1998 at 9:00 a.m. Information may be obtained from Sally Kronenthal, P.O. Box 830248, San Antonio, Texas 78283-0248, TRD-9805217.

Brazos River Authority, Water Utilization Committee, Board of Directors, met at 4400 Cobbs Drive, Waco, April 20, 1998 at 9:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (254) 776-1441. TRD-9805214.

Brazos River Authority, Administration and Audit Committee, Board of Directors, met at 4400 Cobbs Drive, Waco, April 20, 1998 at 10:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (254) 776-1441. TRD-9805213.

Comal Appraisal District, Appraisal Review Board, will meet at 178 East Mill Street, #102, New Braunfels, April 30, 1998 at 9:00 a.m. Information may be obtained from Lynn E. Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222; (830) 625-8597. TRD-9805235.

Education Service Center, Region III, Board of Directors, met at 1905 Leary Lane, Victoria, April 20, 1998 at 10:00 a.m. Information may be obtained from Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901, (512) 573-0731. TRD-9805226.

Education Service Center, Region III, Board of Directors, met at 1905 Leary Lane, Victoria, April 20, 1998 at 1:30 p.m. Information may be obtained from Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901, (512) 573-0731. TRD-9805227.

Golden Crescent Workforce Development Board, met at 2401 Houston Highway, Victoria, April 16, 1998 at 6:30 p.m. Information may be obtained from Laura G. Sanders, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9805185.

Gulf Bend Center, Board of Trustees, met at 1502 East Airline, Victoria, April 20, 1998 at 3:30 p.m. Information may be obtained from Agnes Moeller, 1502 East Airline, Victoria, Texas 77901, (512) 582-2309. TRD-9805232.

Gulf Bend Center, Board of Trustees, met at 1502 East Airline, Victoria, April 21, 1998 at 3:30 p.m. Information may be obtained from Agnes Moeller, 1502 East Airline, Victoria, Texas 77901, (512) 582-2309. TRD-9805233.

Gulf Bend Center, Board of Trustees, met at 1502 East Airline, Victoria, April 22, 1998 at 3:30 p.m. Information may be obtained from Agnes Moeller, 1502 East Airline, Victoria, Texas 77901, (512) 582-2309. TRD-9805234.

Henderson County Appraisal District, Board of Directors, met at 1751 Enterprise Street, Athens, April 21, 1998 at 5:30 p.m. Information may be obtained from Lori Fetterman, 1751 Enterprise Street, Athens, Texas 75751, (903) 675-9296. TRD-9805211.

Houston-Galveston Area Council, General Assembly, met at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, April 21, 1998 at 10:00 a.m. Information may be obtained from Mary Ward, P.O. Box 22777, Houston, Texas 77227, (713) 627-3200. TRD-9805187.

Johnson County Rural Water Supply Corporation, Special Board Meeting, was held at Corporation Office, 2849 Highway 171 South, Cleburne, April 16, 1998 at 6:00 p.m. Information may be obtained from Dianna Jones, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9805188

Mills County Appraisal District, Board of Directors, met at Mills County Courthouse, Jury Room, Fisher Street, Goldthwaite, April 21, 1998 at 6:30 p.m. Information may be obtained from Bill Presley, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253. TRD-9805207.

North Texas Local Workforce Development Board met at 4309 Jacksboro Highway, Suite 200, Wichita Falls, April 23, 1998 at Noon. Information may be obtained from Mona W. Statser, 4309 Jacksboro Highway, Suite 106, Wichita Falls, Texas 76302, (940) 322-5281, fax: (940) 322-2683. TRD-9805215.

Lower Colorado Regional Water Planning Group, Region K, met at 1405 Willow Street, Bastrop, April 22, 1998 at 12:30 p.m. Information may be obtained from Judge Peggy Walicek, 804 Pecan Street, Bastrop, Texas 78602, (512) 303-2579. TRD-9805200.

Meetings filed April 15, 1998

Dallas Central Appraisal District, Appraisal Review Board, will meet at 2949 North Stemmons Freeway, Second Floor Community Room, Dallas, April 29, 1998 at 8:30 a.m. Information may be obtained from Rick Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9805237.

Dewitt County Appraisal District, Board of Directors, met at 103 Bailey, Cuero, April 21, 1998 at 7:30 p.m. Information may be obtained from Alice Rickman, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD-9805263.

Education Service Center, Region VIII, Board of Directors, met at Alps Restaurant, 106 East Burton Road, Mt. Pleasant, April 23, 1998 at 6:30 p.m. Information may be obtained from Scott Ferguson, P.O. Box 1894, Mt. Pleasant, Texas 75456, (903) 572-8551. TRD-9805251.

Education Service Center, Region XV, Regional Advisory Committee, met at 612 South Irene Street, San Angelo, April 21, 1998 at 10:00 a.m. Information may be obtained from Clyde Warren, P.O. Box 5199, San Angelo, Texas 76902, (915) 658-6571. TRD-9805260.

Education Service Center, Region XV, Board of Directors, met at 612 South Irene Street, San Angelo, April 21, 1998 at 1:30 p.m. Information may be obtained from Clyde Warren, P.O. Box 5199, San Angelo, Texas 76902, (915) 658-6571. TRD-9805261.

Lower Rio Grande Valley Development Council, Hidalgo County Metropolitan Planning Organization, met at TxDOT District Office, 600 West Expressway US 83, Pharr, April 23, 1998 at 7:00 p.m. Information may be obtained from Edward L. Molitor, 311 North 15th Street, McAllen, Texas (956) 682-3481. TRD-9805242.

Pecan Valley MHMR Region, Board of Trustees, met at 108 Pirate Drive, Granbury, April 22, 1998, at 8:15 a.m. Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (254) 965-7806. TRD-9805279.

Red River Authority of Texas, Board of Directors, met at Holiday Inn Hotel and Suites, 401 Broad Street, Wichita Falls, May 13, 1998 at 10:00 a.m., rescheduled from April 10 and April 15, 1998. Information may be obtained from Ronald J. Glenn, 900 Eighth Street, Hamilton Building, Suite 520, Wichita Falls, Texas 76301-6894, (940) 723-0855. TRD-9805280.

Regional Water Planning Group "C", will meet at City of Greenville Civic Center, 5501 South Highway 69, Greenville, April 29, 1998 at 2:00 p.m. Information may be obtained from Carl W. Riehn, P.O. Box 2408, Wylie, Texas 75098, (972) 442-5405. TRD-9805255.

Regional Water Planning Group "D", will meet at City of Greenville Civic Center, 5501 South Highway 69, Greenville, April 29, 1998 at 2:00 p.m. Information may be obtained from Tony N. Williams, P.O. Box 698, Marshall, Texas 75671, (903) 935-4421. TRD-9805266.

Rockwall County Central Appraisal District, met at 106 North San Jacinto, Rockwall, April 16, 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-9805240.

San Antonio River Authority, Regional Water Planning Group L, met at 100 East Guenther Street, Boardroom, San Antonio, April 21, 1998 at 1:00 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (210) 227-1373. TRD-9805246.

Uvalde County Appraisal District, Ag Advisory Board, met at 209 North High Street, Uvalde, April 21, 1998 at 9:00 a.m. Information may be obtained from Alida E. Lopez, 209 North High Street, Uvalde, Texas 78801, (830) 278-1106, extension 16. TRD-9805249.

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.

Office of the Attorney General

Publication after Entering into Major Consulting Services Contract

This publication is filed pursuant to Texas Government Code 2254.030.

DESCRIPTION OF ACTIVITIES OF PRIVATE CONSULTANT:

The Office of the Attorney General (the "OAG") has entered into a major consulting services contract for the following services:

The OAG administers millions of dollars of federal funds for the Child Support (Title IV- D) and Medicaid (Title XIX) programs.

The OAG recoups its indirect costs from these federal programs based on rates approved by the United States Department of Health and Human Services ("HHS"). Contractor will review the indirect cost methodologies of the OAG to determine areas of cost recovery which will maximize revenue from the recovery of indirect costs and will develop indirect cost rates throughout the OAG, as appropriate. Contractor will prepare Indirect Cost Allocation Plans for FY98 (based on actual expenditures) and for FY99 (based on budgeted expenditures) in accordance with OMB Curricular A-87, for submission to HHS for federal approval and will negotiate approval of those plans with HHS. Contractor will also analyze existing legal billing rates of the OAG for purposes of reconciling those existing rates with actual costs of the OAG in providing the legal services and will provide to the OAG a report of that reconciliation. Contractor will develop the FY99 billing rates for legal services which will be used to directly bill state negotiating HHS approval of the FY99 billing rates. Finally, Contractor will provide guidance to the OAG in the implementation of these plans and billing rates.

NAME AND BUSINESS ADDRESS OF PRIVATE CONSULTANT:

The private consultant engaged by the OAG for these activities is David M. Griffin and Associates, Ltd., whose business address is 13601 Preston Road, Suite 400W, Dallas, Texas 75240.

TOTAL VALUE AND TERM OF THE CONTRACT:

The total value of the contract is \$48,000. The term of the contract began on March 31, 1998, and will terminate on August 31, 1998,

unless federal approval is still pending for the plans. In such case, the contract will continue until August 31, 1999 for the sole purpose of obtaining the necessary federal approval, upon availability of legislative appropriations.

DATES ON WHICH REPORTS ARE DUE:

The Indirect Cost Allocation Plans must be submitted to HHS no later than June 30, 1998. The final report regarding the FY99 billing rates for legal services must be submitted to the OAG no later than August 31, 1998. The report which reconciles the existing legal billing rates with the actual costs of providing the legal services must be submitted to the OAG no later than August 31, 1998.

TRD-9805065

Sarah Shirley

Assistant Attorney General

Office of the Attorney General

Filed: April 9, 1998



Comptroller of Public Accounts

Notice of Consultant Contract Award

In accordance with the provisions of Chapter 2254, Subchapter B of the Texas Government Code, the Comptroller of Public Accounts announces this notice of consultant contract award.

The consultant proposal request was published in the December 19, 1997, issue of the *Texas Register* (22 TexReg 12606).

The consultant will assist the Comptroller in conducting a detailed analysis of the recruitment, retention, and financial aid programs and practices at selected public institutions of higher education, and will produce periodic progress reports and assist in producing a final report. These reports shall include analyses, findings and recommendations.

The contract is awarded to MGT of America, 2425 Torreya Drive, Tallahassee, Florida 32303. The total dollar value of the contract is not to exceed \$189,530.00 in the aggregate. The effective date of the contract was March 31, 1998, and it extends through August 31, 1999. MGT of America, Inc. is to assist the Comptroller in preparing a final report which will be made public on or about October 1, 1998.

TRD-9804973
Walter Muse
Legal Counsel
Comptroller of Public Accounts
Filed: April 8, 1998

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Office of Consumer Credit Commissioner

Notices 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 04/13/98 - 04/19/98 is 18% for Consumer ¹/Agricultural/Commercial ²/credit thru \$250,000.

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 04/13/98 - 04/19/98 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-9804974
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 9, 1998

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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 04/20/98 - 04/26/98 is 18% for Consumer ¹/Agricultural/Commercial ²/credit thru \$250,000.

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 04/20/98 - 04/26/98 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-9805248
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 15, 1998

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General Land Office

Notice of Contract Award

Pursuant to §§2254.021, et seq., Texas Government Code, the General Land Office (GLO) files this notice of a contract award to Janet Wiiki, CIH, CSP, doing business as ICU Environmental Health & Safety, 26022 Oak Ridge Drive, The Woodlands, Texas, 77380. A Request for Proposals for these consulting services was published in the January 2, 1998 issue of the *Texas Register* (23 TexReg 248).

The consultant will analyze the policies and procedures related to the responsibilities of the GLO Oil Spill Prevention and Response Program and will provide advice and make recommendations for fulfillment of these responsibilities in a manner best calculated to minimize the risks for response equipment and to the health and safety of response personnel. This award has been denominated as GLO Contract Number 98-239 R and compensation shall not exceed the amount of \$15,000.00. Contract period begins on March 15, 1998, and terminates August 31, 1998.

A minimum of seven complete copies of the final report and other required work products shall be provided to GLO no later than August 15 1998.

TRD-9805192
Garry Mauro
Commissioner
General Land Office
Filed: April 14, 1998

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General Services Commission

Notice to Bidders for HVAC Renovation

SEALED BIDS WILL BE RECEIVED BY GENERAL SERVICES COMMISSION (GSC), FACILITIES CONSTRUCTION AND SPACE MANAGEMENT DIVISION (FCSM), P. O. BOX 13047, AUSTIN, TEXAS, 78711-3047, TELEPHONE (512) 463-3417, ON TUESDAY, MAY 12, 1998, AT 3:00PM FOR:

Project Number 96-049-303, HVAC Renovation at Room 3-100, William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas 78701. The approximate cost for this project is \$100,000.00.

Bid Receipt Location: Bids will be submitted to the General Services Commission at the Central Services Building, Bid Room 180, 1711 San Jacinto, Austin, TX 78701 or mailed to P. O. Box 13047, Austin, Texas 78711-3047. Clearly mark on the outside project number and title and that envelope contains a sealed bid.

Contractor Qualifications: Prime contractors are required to submit a Contractor's Qualifications Form on GSC's form no later than 5:00PM, on Tuesday, May 5, 1998, to document compliance with contractor's qualification requirements for this project. A copy of GSC's Contractor's Qualifications Form can be obtained by calling FCSM at (512) 463-3417 or the Engineer. Information is to be used in determining if a contractor is qualified to receive a contract award for the project. A review by FCSM of contractor's qualifications statements is required prior to obtaining bid documents from the Engineer.

Bid Documents: Plans and specifications will be available after Wednesday, April 15, 1998, for prime contractors from Kent Consulting Engineers, 3006 Bee Caves Road, Suite A-220, Austin, Texas 78746-5540, telephone 328-6164, Fax 328-4037, upon receipt of a refundable deposit of \$50.00 per set. Bid documents will be available for review at the FCSM office, 1711 San Jacinto, Suite 202, Austin, Texas 78701, Tel. (512) 463-3417, the Engineer's offices, and the Plan Rooms of Associated General Contractors, F. W. Dodge Corporation, and the Associated Builders and Contractors.

Pre-Bid Conference: There will be a Pre-Bid Conference on Tuesday, May 5, 1998, at 3:00PM, at the project site. Meet in the lobby of the Hobby State Office Building.

BIDS ARE TO BE MADE IN ACCORDANCE WITH STATE PROCEDURES.

TRD-9805102
Judy Ponder
General Counsel
General Services Commission
Filed: April 10, 1998



Notice of Bidders for Rebid Elevator Modifications at Criss Cole Rehabilitation Center

SEALED BIDS WILL BE RECEIVED BY GENERAL SERVICES COMMISSION (GSC), FACILITIES CONSTRUCTION AND SPACE MANAGEMENT DIVISION (FCSM), P. O. BOX 13047, AUSTIN, TEXAS, 78711-3047, TELEPHONE (512) 463-3417, ON TUESDAY, MAY 19, 1998, AT 11:00 AM FOR:

Project No. 97-007-318, Rebid Elevator Modifications at Criss Cole Rehab. Center, 4800 North Lamar Boulevard, Austin, Texas 78756. The approximate cost for this project is \$200,000.00.

Bid Receipt Location: Bids will be submitted to the General Services Commission at the Central Services Building, Bid Room 180, 1711 San Jacinto, Austin, TX 78701 or mailed to P. O. Box 13047, Austin, Texas 78711-3047. Clearly mark on the outside project number and title and that envelope contains a sealed bid.

Contractor Qualifications: Prime contractors are required to submit a Contractor's Qualifications Form on GSC's form no later than 5:00 p.m. on Tuesday, May 12, 1998, to document compliance with contractor's qualification requirements for this project. A copy of GSC's Contractor's Qualifications Form can be obtained by calling FCSM at (512) 463-3417 or the Engineer. Information is to be used in determining if a contractor is qualified to receive a contract award for the project. A review by FCSM of contractor's qualifications statements is required prior to obtaining bid documents from the Engineer.

Bid Documents: Plans and specifications will be available after Wednesday, April 22, 1998, for prime contractors from Martinez, Wright and Mendez, Consulting Engineers, 1106 Clayton Lane, Suite 400W, Austin, Texas 78723, telephone: 453-0767, Fax: 453-1734, upon receipt of a refundable deposit of \$50.00 per set. Bid documents will be available for review at the FCSM office, 1711 San Jacinto, Suite 202, Austin, Texas 78701, Telephone (512) 463-3417, the Engineer's offices, and the Plan Rooms of Associated General Contractors, F. W. Dodge Corporation, and the Associated Builders and Contractors.

Pre-Bid Conference: There will be a Pre-Bid Conference on Tuesday, May 12, 1998, at 10:00 a.m., at the project site. Meet in the lobby of the Criss Cole Rehab. Center.

BIDS ARE TO BE MADE IN ACCORDANCE WITH STATE PROCEDURES.

TRD-9805206
Judy Ponder
General Counsel
General Services Commission
Filed: April 14, 1998



Notice to Bidders-New Facilities for State Aircraft Pooling Board

SEALED BIDS WILL BE RECEIVED BY GENERAL SERVICES COMMISSION (GSC), FACILITIES CONSTRUCTION AND SPACE MANAGEMENT DIVISION (FCSM), P. O. BOX 13047, AUSTIN, TEXAS, 78711-3047, TELEPHONE (512) 463-3417, ON THURSDAY, MAY 21, 1998, AT 3:00PM FOR:

Project Number 96-007-303, New Facilities for State Aircraft Pooling Board, Austin-Bergstrom International Airport, 10335 McWhirk Boulevard, Austin, Texas 78719. The approximate cost for this project is \$5,000,000.00.

Bid Receipt Location: Bids will be submitted to the General Services Commission at the Central Services Building, Bid Room 180, 1711 San Jacinto, Austin, TX 78701 or mailed to P. O. Box 13047, Austin, Texas 78711-3047. Clearly mark on the outside project number and title and that envelope contains a sealed bid.

Contractor Qualifications: Prime contractors are required to submit a Contractor's Qualifications Form on GSC's form no later than 5:00PM, on Tuesday, May 14, 1998, to document compliance with contractor's qualification requirements for this project. A copy of GSC's Contractor's Qualifications Form can be obtained by calling FCSM at (512) 463-3417 or the Architect. Information is to be used in determining if a contractor is qualified to receive a contract award for the project. A review by FCSM of contractor's qualifications statements is required prior to obtaining bid documents from the Architect.

Bid Documents: Plans and specifications will be available after Monday, April 27, 1998, for prime contractors from Cox Design Associates, 4201 Bee Caves Road, Building A-101, Austin, Texas 78746, telephone 327-4149, fax 327-7679, upon receipt of a refundable deposit of \$100.00 per set. Bid documents will be available for review at the FCSM office, 1711 San Jacinto, Suite 202, Austin, Texas 78701, telephone (512) 463-3417, the Architect's offices, and the Plan Rooms of Associated General Contractors, F. W. Dodge Corporation, and the Associated Builders and Contractors.

Pre-Bid Conference: There will be a Pre-Bid Conference on Thursday, May 14, 1998, at 2:00PM, at the existing State Aircraft Pooling Board facility, 4900 Old Manor Road, Austin, Texas 78723.

BIDS ARE TO BE MADE IN ACCORDANCE WITH STATE PROCEDURES.

TRD-9805101
Judy Ponder
General Counsel
General Services Commission
Filed: April 10, 1998



Golden Crescent Workforce Development Board

Request for Proposals (RFP) & Request for Quotations (RFQ)

The Golden Crescent Workforce Development Board (GCWDB) is seeking qualified bidders to participate in two procurement events. First, GCWDB is seeking proposals for the staffing and management of its workforce centers under an RFP process, incorporating, at a minimum, JTPA, JOBS/TANF, and FSE&T Second, GCWDB is seeking qualified agencies to submit quotations to provide training services under job training programs funded by the Board under an RFQ. Archetype, Incorporated has been selected as an independent consulting firm to manage the procurement processes for the Board under both the RFP and the RFQ. Copies of the RFP and RFQ may be obtained by faxing a request to Don Shepard, President of Archetype, Incorporated, at (512) 343-7392, or at the backup fax

number of (512) 450-0931. Proposals will be accepted until 5:00 P.M. on May 29, 1998 at the offices of Mark Schiffgens, CPA at 940 E. 51st Street, in Austin, Texas, 78751. A bidder's conference will be held on May 1, 1998 at the GCWDB offices at 11:00 A.M., located at 2401 Houston Highway, in Victoria, Texas, to release the RFP and RFQ and answer any questions regarding the bidding process. This bidder's conference is not mandatory and interested parties that are unable to travel to the conference may pose questions via fax at the number provided above until one week before the proposals are due. Answers to questions submitted by individual agencies will be shared, via fax, to all prospective bidders, usually within one week of receipt by Archetype, Inc.. GCWDB reserves the right to accept or reject any proposals.

TRD-9805265

Judge Helen R. Walker

Chief Elected Official

Golden Crescent Workforce Development Board

Filed: April 15, 1998



Texas Department of Health

Notice of Request for Proposals for Diabetes Awareness and Education in the Community Project

PURPOSE: The Texas Department of Health (department) is accepting requests for proposals (RFP) from community-based organizations (CBO's) wishing to increase diabetes awareness and education within their community. The Diabetes Awareness and Education in the Community (DAEC) project will target Hispanic Americans, African Americans, the elderly and other groups at risk for developing Type 2 Diabetes. This project will develop the following products: (1) an assessment of the organization's capacity to design, implement a DAEC; (2) a community wide assessment that establishes base line data; and (3) a plan of action for local enhancement of the DAEC project during year two. The DAEC must provide evidence that the performing agency is meeting the following objectives: (1) staffing patterns with qualified staff designated to the DAEC; (2) consensus on community-wide priorities that describe population based objectives compatible with the healthy communities 2000 model standards; (3) increase the organization's credibility, and establish a specific efforts and accomplishments performance system; (4) identification and recruitment of program champions within the organizational structure and the community; (5) increase the visibility of the DAEC to at least 15% of the target population; (6) increase the communities understanding of diabetes by at least 10% from baseline; (7) significant systems change within the applicant's organizational structure and in the community; (8) intellectual capital development within the organizational structure and the community; (9) applicant's infrastructure and performance improvement; (10) increase access to health care and education services from baseline; and (11) achieve established workload measure by reaching the negotiated people through awareness activities.

ELIGIBLE APPLICANTS: Eligible applicants include local health departments and not-for-profit organizations. Individuals are not eligible to apply. Eligible applicants must demonstrate congruence between health promotion/prevention activities and the applicants organizational mission.

AVAILABLE FUNDS: Approximately \$1,000,000 is expected to be available to fund ten projects for approximately twelve months. The maximum award per applicant is up to \$100,000. The specific dollar amount to be awarded to the selected applicants will depend upon the

merit and scope of the proposed project. It is expected that funding will remain level throughout the project period.

SELECTION CRITERIA: Applicants will be funded in order of ranking; however, all applications receiving recommendations for funding may not be funded as the amount of total funding available is limited. Higher ranking projects in individual regions may not be funded in order to ensure that diabetes prevention services are available in other areas of the state. Applicants may not receive the amount requested due to the limitation of funds and in order to provide services in other areas. Final budgets will be decided by department staff based on reviewer recommendations and negotiations with the applicant. The department reserves the right to make funding decisions based on the need to provide diabetes prevention services across geographic areas and to allocate funding based on an analysis of resources already available in a particular community in order to avoid duplication of services. Analysis may include data such as other state or federally-funded projects present and diabetes prevalence data. If two or more applications targeting the same population in the same geographic location receive the same score, preference will be given to the applicant that has not received Texas Diabetes Program and Council funding within the last three years. In the event of a tie and one of the tied applicants is a public health department, the grant will be awarded to the public health department in accordance with state law.

DEADLINE: Applications will be considered to be "on time" if they are (1) received on or before the established deadline date or (2) sent on or before the established deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Late competing applications not accepted for processing will be returned to the applicant. The department will not accept applications by facsimile transmission. Applications received after the due date and time shall not be considered for review.

SUBMISSION: The original and three copies must be received on or before 5:00 P.M., Central Standard Time, on June 22, 1998, by Debra F. Owens, M.S., R.D., L.D., Texas Department of Health Diabetes Program and the Texas Diabetes Council, 1100 West 49th Street, Tower Building Room 401, Austin, Texas 78756-3199. Application review will be completed by August 31, 1998, with written notification being sent to all applicants, shortly thereafter.

REVIEW AND AWARD CRITERIA: Each application will be screened for minimum eligibility, completeness, and satisfactory fiscal and administrative history. Applications which are deemed ineligible or incomplete will not be reviewed. Applications which arrive after the deadline for submission will not be reviewed. Eligible complete applications will be reviewed by a panel of reviewers, and scored according to the following criteria: clarity and appropriateness of the application; extent of the applicant's experience and capacity; applicant's description of the service area; service delivery plan and budget; and involvement of the applicant's senior level management and other diabetes stakeholders in the development, implementation, and institutionalization of the DAEC project in their community.

FOR INFORMATION: For a copy of the RFP, and other information, contact Ms. Debra F. Owens, Texas Diabetes Program/Council, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, Telephone (512) 459-7490 or at E-mail:Debra.Owens@tdh.state.tx.us.

TRD-9805257

Susan K. Steeg



Notice of Request for Proposals for Examination of Fitters and Dispensers of Hearing Instruments

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments issues an invitation for applications from applicants experienced in examination administration. The applicant selected will be able to develop, generate, and score an extensive multiple-choice examination of fitters and dispensers of hearing instruments. The examination will test candidates in all areas of knowledge pertaining to the fitting and dispensing of hearing instruments.

The written examination to be developed will consist of 200 test items and will be administered by Texas Department of Health (department) personnel, under the direction of the department's psychometrician. Answers to examination items will be placed on machine scannable answer sheets and scored in a mutually agreeable period of time. Approximately sixty candidates per year are expected to take the examination, scheduled twice a year in Austin, Texas. The applicant will develop, generate, and score examinations for a three-year period, beginning in the fall of 1998.

Selection of the applicant will be based on the applicant's demonstration of competence in examination development, validation, generation, and score reporting. Applications shall indicate total examination costs as well as a breakdown to reflect actual costs per candidate.

Contractors interested in submitting a proposal shall contact Bobby D. Schmidt, Executive Director, State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, 1100 West 49th Street, Austin, Texas, 78756-3183; telephone (512)834-6657 or fax (512)834-6677 for information regarding the full proposal. Proposals will not be considered from bidders failing to obtain this information. Proposals are due in this office no later than 5:00 p.m., Central Standard Time, on May 22, 1998.

TRD-9805110
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 13, 1998



Notice of Request for Proposals for Projects to Provide Abstinence Education

Introduction

The Texas Department of Health (department), Abstinence Education Program, announces a Request for Proposals (RFP) for the Title V Abstinence Education Grant funding for Federal Fiscal Year 1998-1999. The RFP will be released on April 29, 1998. Proposals will be awarded on a competitive basis.

Purpose

The purpose of the funding is to provide abstinence education information to children, adolescents, and parents across the state and for programs to promote abstinence from sexual activity with a focus on those groups which are most likely to bear children out-of-wedlock.

Eligible Applicants

Eligible applicants include current department abstinence education contractors, nonprofit/for-profit organizations, private/public organizations, governmental entities (including city, county, and state), institutions of higher learning, independent school districts, faith-based organizations, and current department contractors.

Availability of Funds

Between 2 and 3 million dollars will be available to fund new abstinence education contractors. The funds were appropriated through federal welfare reform legislation, the Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104-193), to be administered through Title V of the Social Security Act, the Maternal and Child Health Block Grant. Congress appropriated \$50 million per year beginning October 1, 1997 to conduct abstinence education nationwide. Texas is eligible to receive up to \$4,922,091 per year in federal funds, contingent on a state match of \$3,691,568. Applicants must provide the match. The required match is at a rate of three dollars for every four dollars in federal abstinence funds. Applicants must clearly specify what local match dollars will be provided as part of their proposal in order to be considered.

Project and Budget Periods

Contracts will be funded for twelve months beginning October 1, 1998, and ending September 30, 1999. There is no set cap on individual budgets.

General Purpose and Program Goals

The federal legislation states that the purpose of the allotment is to "enable the State to provide abstinence education, and at the option of the State, where appropriate, mentoring, counseling, and adult supervision to promote abstinence from sexual activity with a focus on those groups which are most likely to bear children out-of-wedlock."

The term "abstinence education," as defined by Section 912 of the federal legislation, means an educational or motivation program which: (1) has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity; (2) teaches abstinence from sexual activity outside marriage as the expected standard for all school age children; (3) teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems; (4) teaches that a mutually faithful monogamous relationship in the context of marriage is the expected standard of human sexual activity; (5) teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects; (6) teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child's parents, and society; (7) teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and (8) teaches the importance of attaining self-sufficiency before engaging in sexual activity.

Note: By federal law, funds may not be used for family planning services.

Review and Award Criteria

Each application will first be screened for completeness and timeliness. Proposals which are deemed incomplete or arrive after the deadline will not be reviewed. Proposals will be reviewed by a team of reviewers. The proposals will be evaluated using the criteria and review process described in the RFP.

Deadline

Proposals prepared according to instructions in the RFP package must be received by the department by 5:00 p.m., Central Standard Time, on June 6, 1998.

To Obtain a Copy of the RFP

Contact Shelley Bjorkman, Coordinator, Abstinence Education Program, at (512) 458-7321 or you may pick up a copy at the Texas Department of Health, Associateship for Health Care Delivery, Room M-362, 1100 West 49th Street, Austin, Texas 78756. You may also obtain a copy from the Abstinence Education Web site: http://www.tdh.state.tx.us/abstain/ab_home.htm.

TRD-9805275
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 15, 1998



Notice of Revocation of Certificates of Registration

The Texas Department of Health (department), having duly filed complaints pursuant to *Texas Regulations for Control of Radiation*, Part 13 (25 Texas Administrative Code §289.112), has revoked the following certificates of registration: Marion George Ford, Jr., D.D.S., Houston, R06268, April 1, 1998; Charles L. Moughon, D.D.S., Mineral Wells, R14249, April 1, 1998; Arthur W. Coleman, D.D.S. and Associates, Houston, R20380, April 1, 1998; Tanglewood Dental Group, Houston, R06298, April 1, 1998; Advanced Radiology Services, Inc., Houston, R22632, April 1, 1998; Quint/Stevens and Associates, Los Angeles, California, R22314, April 1, 1998.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9805022
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 9, 1998



Health and Human Services Commission

Notice of Public Hearing-Substitute Care Provider Standards

Section 531.047, Texas Government Code, requires the Health and Human Services Commission (HHSC), in consultation with the Department of Protective and Regulatory Services, the Texas Juvenile Probation Commission, and the Texas Department of Mental Health and Mental Retardation, to adopt rules requiring a provider of substitute care services to implement outcome standards that will be included in the client's individualized treatment or service plan. The provider will be held accountable for achieving these performance standards. HHSC is proposing a rule that establishes such standards in this issue of the *Texas Register*. HHSC will conduct a public hearing to receive public comments on the proposed rule.

The public hearing will be held on Monday, June 1, 1998, beginning at 2:00 p.m. in Public Hearing Room (125), East Tower of the John H. Winters Human Services Building at 701 West 51st Street, Austin, Texas. Written comments regarding substitute care provider outcome standards may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be delivered by U.S. mail

or express delivery to the attention of Stella Bryant, Texas Health and Human Services Commission, P. O. Box 13247, Austin, Texas 78711. Hand deliveries will be accepted at 4900 North Lamar Boulevard, Fourth Floor, Austin, Texas 78751. Alternatively, written comments may be delivered via facsimile to Ms. Bryant at (512) 424-6587.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Mr. Ron Dowling of the Texas Department of Human Services at MC-W425, P. O. Box 149030, Austin, Texas 78714-9030, telephone number (512) 438-4817.

TRD-9805179
Marina S. Henderson
Executive Deputy Commissioner
Health and Human Services Commission
Filed: April 13, 1998



Public Notice

The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 96-15, Amendment Number 516.

The amendment revised the State plan to redefine Mental Health Rehabilitative Services, to eliminate duplication of services covered under this and other portions of the plan, and to more clearly define the population eligible for rehabilitative services. The amendment is effective January 1, 1997.

If additional information is needed, please contact Ron Gernsbacher, Texas Department of Mental Health-Mental Retardation at (512) 206-5752.

TRD-9805221
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: April 14, 1998



Texas Department of Housing and Community Affairs

Notice of Administrative Hearing

Legal Division

Friday, May 1, 1998, 9:00 a.m.

State Office of Administrative Hearings, Stephen F. Austin Building, 1700 North Congress Avenue, 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 v. Dallas County Community Action Committee, Inc. in accordance with the CSBG Act, 42 U.S.C. §9901 et seq. and Title 10 Texas Government Code §2105.302. This is a hearing to determine whether cause exists for the Texas Department of Housing and Community Affairs to terminate CSBG funding to the Dallas County Community Action Committee, Inc.

Contact: Betty Marks, General Counsel, P.O. Box 13941, Austin, Texas 78711-3941, 512-475-3902.

TRD-9805212

Larry Paul Manley
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 14, 1998



Notice of Administrative Hearing MHD1998000020D

Manufactured Housing Division

Monday, April 27, 1997, 1:00 p.m.

State Office of Administrative Hearing, Stephen F. Austin Building,
1700 North Congress, 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. Michael Bradley dba Bradley Mobile Home Service to hear alleged violations that the Respondent violated the Act, §7(j)(6) and the Rules, §80.28(a) by not properly submitting Monthly Installation Summary Reports showing the number of homes installed. SOAH 332-98-0573. Department MHD1998000020D.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

TRD-9805278

Larry Paul Manley
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 15, 1998



Notice of Administrative Hearing MHD1997002092D

Manufactured Housing Division

Wednesday, April 29, 1998, 1:00 p.m.

State Office of Administrative Hearing, Stephen F. Austin Building,
1700 North Congress, 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. Jerry Smith dba Lovington Mobile Home to hear alleged violations of the Act, §§7(d) and 17(b) and Rules §80.125(e) regarding obtaining, maintaining or possessing a valid installer's license. SOAH 332-98-0574. Department MHD1997002092D.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

TRD-9805277

Larry Paul Manley
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 15, 1998



Texas Department of Insurance

Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for admission to Texas for AMERICAN COMPENSATION INSURANCE COMPANY, a foreign property and casualty company. The home office is in Bloomington, Minnesota.

Application to change the name of PRESBYTERIAN HEALTH-CARE SYSTEM D/B/A PRESBYTERIAN VILLAGE NORTH to TEXAS HEALTH SYSTEM D/B/A PRESBYTERIAN VILLAGE NORTH, a domestic CCRC company. The home office is located in Dallas, Texas.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Kathy Wilcox, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-9805084

Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: April 10, 1998



Notice of Applications by Small Employer Carriers to be Risk-Assuming Carriers

Notice is given to the public of the application of the listed small employer carriers to be risk-assuming carriers under Texas Insurance Code Article 26.52. A small employer carrier is defined by Chapter 26 of the Texas Insurance Code as a health insurance carrier that offers, delivers or issues for delivery, or renews small employer health benefit plans subject to the chapter. A risk-assuming carrier is defined by Chapter 26 of the Texas Insurance Code as a small employer carrier that elects not to participate in the Texas Health Reinsurance System. The following small employer carriers have applied to be risk-assuming carriers:

The Mega Life and Health Insurance Company

The Chesapeake Life Insurance Company

The applications are subject to public inspection at the offices of the Texas Department of Insurance, Financial Monitoring Unit, 333 Guadalupe, Hobby Tower 3, 3rd Floor, Austin, Texas.

If you wish to comment on this application to be a risk-assuming carrier, you must submit your written comments within 60 days after publication of this notice in the Texas Register to Caroline Scott, Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted to Mike Boerner, Managing Actuary, Actuarial Division of the Financial Program, Mail Code 304-3A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. Upon consideration of the application, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the application to be a risk-assuming carrier.

TRD-9804966

Bernice Ross
Deputy Chief Clerk

Texas Department of Insurance
Filed: April 8, 1998



Kleberg County

Request for Comments and Proposals from Parties Interested in Providing Additional Medicaid Beds in Kleberg County

House Bill 606, which was passed by the 75th Texas Legislature, permits a County Commissioners' Court of a rural county (defined as a county with a population of 100,000 or less) with no more than two nursing homes to request that the Texas Department of Human Services (TDHS) contract for additional Medicaid nursing facility beds in that county. This may be done without regard to the occupancy rate of available beds in the county.

The Kleberg County Commissioners' Court is considering requesting that the TDHS contract for more Medicaid nursing facility beds in Kleberg County. The Commissioners' Court is soliciting comments from all interested parties on the appropriateness of such a request. Further, the Commissioners' Court seeks to determine if qualified entities are interested in submitting proposals to provide these additional Medicaid nursing facility beds.

Comments and proposals should be submitted to Pete De La Garza, P.O. Box 752, Kingsville, Texas 78364, **PHONE** —(512) 595-8585, **FAX** (512) 592-0838, before 5:00 p.m. C.S.T., on May 11, 1998.

TRD-9805247
Pete De La Garza
Kleberg County Judge
Kleberg County
Filed: April 15, 1998



Texas Lottery Commission

Request for Proposals-Lottery Security Audit

The purpose of this Request for Proposals ("RFP") is to obtain proposals for a comprehensive study and evaluation of all aspects of the Texas Lottery's security systems and procedures. This will include a study and evaluation of the security systems and procedures of the Texas Lottery Operator, GTECH Corporation and the Texas Lottery's instant ticket manufacturer, BABN Technologies Corporation. The goal of these services is to insure the security and integrity of the operation of the Texas Lottery.

Proposers responding to this RFP are expected to provide the Texas Lottery with information, evidence and demonstrations that will permit awarding a contract in a manner that best serves the interests of the Texas Lottery.

Schedule of Events

The time schedule for awarding a contract under this RFP is shown as follows. The Texas Lottery reserves the right to amend the schedule. If significant changes are made, all potential Proposers will be notified.

RFP Issued-April 24, 1998.

Letter of Intent to Propose Due-May 5, 1998 (4:00 p.m., CT) (Late Letters of Intent will not be considered).

Written Questions Due-May 12, 1998 (4:00 p.m. CT)

Answers To Questions Issued-May 15, 1998

Proposal Due Date-May 22, 1998 (4:00 p.m., CT) (Late Proposals will not be considered.)

Announcement of Apparent Successful Proposer-June 1, 1998

Security Audit Commences-June 8, 1998.

To obtain a copy of the RFP, please contact: Ridgely C. Bennett, Deputy General Counsel, Texas Lottery Commission, Post Office Box 16630, Austin, Texas 78761-6630. (512) 344-5123 or by Fax (512) 344-5189.

TRD-9805262
Ridgely C. Bennett
Deputy General Counsel
Texas Lottery Commission
Filed: April 15, 1998



Texas Department of Mental Health and Mental Retardation

Announcement of State Plan Amendment

The Texas Department of Mental Health and Mental Retardation (TDMHMR) announces its intention to submit Amendment Number 547, Transmittal Number 98-08, to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act.

This amendment removes the four part Diagnosis and Evaluation as a covered Medicaid reimbursed service. This change in the State Plan would result in no significant impact on state or local government.

Copies of the amendment are available for public inspection in the Office of Policy Development, 909 West 45th Street, Austin, Texas or by contacting Linda Logan, director, Policy Development, P.O. Box 12668, Austin, Texas 78711-2668, (512) 206-4516 or through contacting your local mental retardation authority.

Issued in Austin, Texas on April 15, 1998. Linda Logan Agency Liaison Office of Policy Development Texas Department of Mental Health and Mental Retardation For More Information: 512/206-4516

TRD-9805273
Charles M. Cooper
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: April 15, 1998



Texas Natural Resource Conservation Commission

Notice of Application for Amendment to Certificate and Adjudication pursuant to Texas Water Code, §11.122 requiring notice to Interjacent Appropriators

Notice was mailed 4-9-98 on Application No. 14-1346B to amend Certificate of Adjudication No. 14-1346, as amended. Certificate of Adjudication No. 14-1346 was issued to Lois McGlothlin on March 12, 1980, and authorizes, with a time priority of March 31, 1911, the diversion and use of not to exceed 86 acre-feet of water per annum from a specific point on the Concho River, Colorado River Basin, Tom Green County, Texas. Water is authorized to be diverted at a maximum rate of 3.33 cfs (1500 gallons per minute) to irrigate 86 acres of land in Tom Green County, approximately 12.5 miles northeast of San Angelo, Texas. Commission records

have been changed to indicate ownership of the certificate by Wilma Faye Crownover. Certificate No. 14-1346, as amended on March 7, 1990, authorizes John R. Scott, pursuant to a lease agreement, use of the water authorized by Mrs. Crownover's Certificate No. 14-1346 and authorizes two diversion points approximately 0.8 miles upstream of Mrs. Crownover's land and diversion point. The two specific diversion points are on the Concho River and Big Crowncrest Creek (tributary of the Concho River). Diverted water is authorized to be used for irrigation of 109.77 acres of land within 237.071 acres, approximately 12 miles northeast of San Angelo, Texas. (The two diversion points and the land to be irrigated are also authorized under John R. Scott's Certificate No. 14-1343, as amended, with a time priority of December 22, 1917.) The lease agreement and a Special Condition in the amendment to Certificate No. 14-1346, as amended, indicates that the amendment was to expire on December 31, 1997. This application submitted by Wilma Faye Crownover (pursuant to a lease agreement dated November 3, 1997 between Wilma Fay Crownover and John R. Scott) seeks to amend Certificate No. 14-1346, as amended, by extending the term to expire December 31, 2007, unless terminated earlier by the parties.

The Executive Director may issue an amendment to the Certificate of Adjudication on or after May 15, 1998, unless a written hearing request is filed in the Chief Clerk's Office of the TNRCC on or before May 5, 1998. 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; and (5) the location of your property relative to the applicant's operations.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a hearing is held, it will be a legal proceeding similar to civil trials in state district court.

Requests for hearing must be submitted in writing to the Chief Clerk's Office, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. Written public comments may also be submitted to the Chief Clerk's Office on or before May 5, 1998. For information concerning technical aspects of the permit, contact Kellye Rila, MC 160, at the same above PO Box address. For information concerning hearing procedures or citizen participation, contact the Public Interest Counsel, MC 103, at the same PO Box address. 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-9805269

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: April 15, 1998



Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to 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 May 24, 1998. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, 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 May 24, 1998. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in writing.

(1)COMPANY: Coastline Contractors, Incorporated; DOCKET NUMBER: 97-0880-AIR-E; IDENTIFIER: Account Number JC-0043-V; LOCATION: Evadale, Jasper County, Texas; TYPE OF FACILITY: abrasive blasting and surface coating plant; RULE VIOLATED: 30 TAC §116.110(a) and the Act, §382.0518(a) and §382.085(b), by operating the plant without first obtaining a permit or satisfying the conditions of a permit exemption; PENALTY: \$3,200; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(2)COMPANY: Commercial Metals-Austin Incorporated; DOCKET NUMBER: 97-1023-AIR-E; IDENTIFIER: Account Number TH-0067-C; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: metal shredding and recycling plant; RULE VIOLATED: 30 TAC §101.4 and the Act, §382.085(a) and (b), by creating a nuisance condition through the discharge of particulate matter in the form of synthetic and natural fibers; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 1921 Cedar Bend, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(3)COMPANY: Floyd Harrison dba Eules Auto Sales; DOCKET NUMBER: 98-0022-AIR-E; IDENTIFIER: Account Number TA-2840-W; LOCATION: Eules, Tarrant County, Texas; TYPE OF FACILITY: used car dealership; RULE VIOLATED: 30 TAC §114.1(c)(1) and (2) and the Act, §382.085(b), by offering for sale a vehicle with missing and inoperable emission control equipment and/or devices; PENALTY: \$550; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(4)COMPANY: Fornax Industries, Incorporated; DOCKET NUMBER: 98-0010-MWD-E; IDENTIFIER: Permit Number 12528-001; LOCATION: Channelview, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 12528-001 and the Code, §26.121, by exceeding the total suspended solids daily average concentration permit limit; PENALTY:

\$3,000; ENFORCEMENT COORDINATOR: Claudia Chaffin, (512) 239-4717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5)COMPANY: Robert Villanueva dba P & C Motors, Inc.; DOCKET NUMBER: 97-1155-AIR-E; IDENTIFIER: Account Number DB-3383-E; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: used car sales; RULE VIOLATED: 30 TAC §114.1(c)(1) and the Act, §382.085(b), by offering for sale a vehicle with missing required emission control systems or devices; PENALTY: \$500; ENFORCEMENT COORDINATOR: Michael De La Cruz, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(6)COMPANY: Loyal Lybarger, Sr., d/b/a Ponderosa Mobile Home Park; DOCKET NUMBER: 98-0001-PWS-E; IDENTIFIER: Public Water Supply Number 1012957; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public drinking water; RULE VIOLATED: 30 TAC §290.120(b) and (c) and the Code, §341.031, by failing to submit a sample site selection form and by failing to submit water samples for lead and copper analysis; PENALTY: \$313; ENFORCEMENT COORDINATOR: Katharine Wheatley, (512) 239-4757; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7)COMPANY: Darrell Hall dba Shannon Estates Subdivision; DOCKET NUMBER: 97-1112-PWS-E; IDENTIFIER: Public Water Supply Number 0930052; LOCATION: Bedlas, Grimes County, Texas; TYPE OF FACILITY: public drinking water; RULE VIOLATED: 30 TAC §290.46(a), (e), (f)(1)(A), (m), (u), and (w), by failing to submit plans and specifications, by failing to operate the system under a "D" certified water works operator, by failing to maintain a free chlorine residual of 0.2 milligrams per liter, by failing to initiate a maintenance program for cleanliness, by failing to maintain a minimum pressure of 35 pounds per square inch, and by failing to post a legible sign; 30 TAC §290.41(c)(3)(A), (J), (K), (N), and (O), by failing to submit well completion data, by failing to provide well sealing block, by failing to seal the wellheads, by failing to provide the wellhead casing vents, by failing to provide flow meters, and by failing to provide intruder resistant fences; 30 TAC §290.42(e)(8), by failing to seal the hypochlorinator solution container; 30 TAC §290.44(d)(4), by failing to provide metering devices at each service connection; and 30 TAC §290.106(a)(2), by failing to submit the required number of suitable bacteriological samples; PENALTY: \$3,740; ENFORCEMENT COORDINATOR: Bhasker Reddi, (512) 239-6646; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7807, (254) 751-0335.

(8)COMPANY: TexPac Hide & Skin; DOCKET NUMBER: 98-0172-AIR-E; IDENTIFIER: Account Number TA-2754-Q; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: hide processing plant; RULE VIOLATED: 30 TAC §101.4 and the Act, §382.085(a) and (b), by discharging one or more air contaminants in such concentration and of such duration as to create odors that interfered with the normal use and enjoyment of neighboring property; PENALTY: \$3,125; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

TRD-9805189

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: April 14, 1998



Notice of Public Hearing-(LEV Rules)

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code Annotated, §382.017 (Vernon's 1992); Texas Government Code Annotated, Subchapter B, Chapter 2001 (Vernon's 1993); and 40 Code of Federal Regulations, §51.102, of the United States Environmental Protection Agency (EPA) regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (commission) will conduct a public hearing to receive testimony regarding revisions to 30 TAC Chapter 114 and to the SIP concerning low emission vehicle (LEV) fleet requirements.

This proposal is necessary to implement the requirements of Senate Bill (SB) 681, Acts of the 75th Legislature, 1997. These regulations set forth the LEV requirements for mass transit fleets in each of the serious and above nonattainment areas, and for local government and private fleets operated primarily within the serious and above nonattainment areas. These rules will satisfy the state requirements to adopt rules to implement SB 681.

The affected fleets are required to ensure that their fleet vehicle purchases are LEV-certified according to a prescribed schedule. They may use any vehicle/fuel combination that is certified by the EPA to the LEV standards to meet the requirements of these rules. The proposed rules require affected fleets to register with the commission, report the status of the LEVs in their fleets biennially, and keep records of the data required to be submitted to the agency. The rules allow exceptions from the fleet implementation schedule requirements if the fleets demonstrate that they are unable to comply with the program for specified reasons.

Public hearings on this proposal will be held in Austin on May 19, 1998, at 10:00 a.m. in Building F, Room 2210, at the commission complex, located at 12100 North IH-35, Park 35 Circle, Austin; and in Irving at the City of Irving Central Library Auditorium, located at 801 West Irving Boulevard. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearings; however, an agency staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearings.

Written comments may be mailed to Ms. Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., May 26, 1998. For further information on this proposal, please contact Mr. Alan Henderson, Air Policy and Regulations Division, at (512) 239-1510.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-9805046

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: April 9, 1998



Notice of Public Hearing (Transportation Conformity)

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code Annotated, §382.017 (Vernon's 1992); Texas Government Code Annotated, Subchapter B, Chapter 2001 (Vernon's 1993); and 40 Code of Federal Regulations, §51.102, of

the United States Environmental Protection Agency (EPA) regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (commission) will conduct a public hearing to receive testimony regarding revisions to 30 TAC Chapter 114 and to the SIP concerning Transportation Conformity.

The proposed rule and associated SIP revisions would incorporate recent EPA changes to the federal transportation conformity rule, which requires all transportation plans, programs, and projects in nonattainment or maintenance areas to conform to the SIP. Other proposed amendments would simplify transportation control measure requirements and clarify the transportation conformity determination process. The proposed revisions are required by the Federal Clean Air Act. If the revisions are not adopted, the nonattainment/maintenance areas of the state may subject to EPA highway sanctions resulting in a loss of federal highway funding.

A public hearing on this proposal will be held in Austin on May 13, 1998, at 3:00 p.m. in Building F, Room 5108, at the commission complex, located at 12100 North IH-35, Park 35 Circle, Austin. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments may be mailed to Ms. Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., May 26, 1998. For further information on this proposal, please contact Mr. Alan Henderson, Air Policy and Regulations Division, at (512) 239-1510, or Ms. Cathy Stephens, Air Quality Planning and Assessment Division at (512) 239-1749.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-9805045
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: April 9, 1998



Provisionally-Issued Temporary Permits to Appropriate State Water Listed below are permits issued during the period of April 14, 1998

Application No. TA-7937 by Young Contractors, Inc. for diversion of 10 acre-feet in a 1-year period for industrial (roadway construction) use. Water may be diverted from 5 diversion points, No. 1 the crossing of FARM-TO-MARKET ROAD 2095 and Alligator Creek; No. 2 the crossing of FARM-TO-MARKET ROAD 2095 and Cox Hollow Creek; No. 3 the crossing of FARM-TO-MARKET ROAD 2095; and Cannonsnap Creek; No. 4 the crossing of FARM-TO-MARKET ROAD 1600 and the Little River and No. 5 the crossing of FARM-TO-MARKET ROAD 437 and Donahoe Creek, Brazos River Basin, Milam County, Texas.

Application No. TA-7938 by Hunter Industries, Inc. for diversion of 1 acre-foot in a 1-year period for industrial (roadway construction) use. Water may be diverted from Ryan Creek, Brazos River Basin, approximately 10 miles southeast of Caldwell, Burleson County, Texas at the crossing of State Hwy 36 and Ryan Creek.

Application No. TA-7939 by Lone Star Pipeline Co. for diversion of 1 acre-foot in a 6 month period for industrial (hydrostatic testing) use. Water may be diverted from Ash Creek, Trinity River Basin, approximately 16 miles southeast of Hillsboro, Hill County, Texas at the crossing of FARM-TO-MARKET ROAD 308 and Ash Creek.

Application No. TA-7940 by Albert wastewater treatment facilities. Green for diversion of 2 acre-feet in a 1-year period for irrigation (pecan orchard) use. Water may be diverted from an unnamed tributary of the San Marcos River, Guadalupe River Basin, approximately 21 miles northeast of Seguin, Guadalupe County, Texas, property is owned by the applicant and is near the crossing of FARM-TO-MARKET ROAD 1979 and the San Marcos River.

Application No. TA-7944 by Young Contractors, Inc. for diversion of 10 acre-feet in a 6 month period for industrial (roadway construction) use. Water may be diverted from Mud Creek, Brazos River Basin, approximately 4 miles southwest of Franklin, Robertson County, Texas at the crossing of FARM-TO-MARKET ROAD 1644 and Mud Creek.

Application No. TA-7945 by Big Creek Construction, LTD for diversion of 10 acre-feet in a 1-year period for industrial (roadway construction) use. Water may be diverted from Buttermilk Creek, Brazos River Basin, approximately 15.5 miles southwest of Belton, Bell County, Texas at the crossing of FARM-TO-MARKET ROAD 2843 and Buttermilk 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, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-3300.

TRD-9805268
Eugenia K. Brumm, Ph.D.
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: April 15, 1998



Public Notice

The Texas Natural Resource Conservation Commission (TNRCC or the Commission) is required under the Texas Solid Waste Disposal Act, Health and Safety Code, Chapter 361, to publish general notice of a requested public meeting regarding the proposed listing of a facility on the state Superfund registry. A public meeting has been requested regarding the intent to list the POLY-CYCLE

INDUSTRIES, INC. (Palmer) facility on the state Superfund registry. The original notice of intent to list this facility was published in the Ellis County Press on March 5, 1998, and in the March 6, 1998, issue of the *Texas Register* (23 TexReg 2621-2622).

The facility known as the Poly-Cycle Industries, Inc. (Palmer), covers approximately 10 acres and is west of State Highway 75, 0.5 miles north of Palmer, Ellis County, Texas, at the northern end of Main Street. The Poly-Cycle (Palmer) facility previously operated under three separate identities: as the Stripling Sales Group until 1981, the New Rocky Point Foundation in 1982 and most recently as Poly-Cycle Industries, Inc. From approximately 1929 until the early 1960s, the site was a brick manufacturing facility. Beginning in the late 1970's until 1983, the site was used as lead battery treatment/recycling facility. Operations at the facility ceased in 1983. Waste piles consisting of approximately 80 million pounds of lead battery chips, a waste lead sulphate sludge pile and two surface impoundments are the identified sources of hazardous substances at the site. Historic and current analyses of soil samples collected indicate heavy contamination with lead.

A public meeting has been scheduled for June 2, 1998 at 7:00 p.m., City of Palmer, 113 Jefferson, Palmer, Texas, for the purpose of obtaining additional information regarding the facility relative to the eligibility of the facility for listing on the state registry and the identification of potentially responsible parties. Further information about the public meeting may be obtained from Janie Montemayor, TNRCC, Community Relations Coordinator, (800) 633-9363 (within Texas only) or (512) 239-3844.

The Executive Director of the TNRCC prepared a brief summary of the Commission's records regarding this site. This summary, and a portion of the records for the site, is available for inspection and copying during the business hours of the City of Palmer, 113 Jefferson, Palmer, Texas, (972) 845-3288. Copies of the complete public record file may be obtained during regular business hours at the TNRCC, Central Records Center, Building D, Room 190, 12100 Park 35 Circle, Austin, Texas 78753; telephone (800) 633-9363 (within Texas only) or (512) 239-2920.

Copying of file information is subject to payment of a fee.

TRD-9805258

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: April 15, 1998

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Nortex Regional Planning Commission

Request for Proposal

The Nortex Regional Planning Commission is soliciting proposals for an audit of all grants and programs of the Commission. This proposal will serve as a basis for a three-year period beginning October 1, 1997-September 30, 1998 and the subsequent two fiscal years ending in 1999 and 2000.

The audit must be conducted under the guidelines of generally accepted auditing standards and other guidelines as presented in the Commission's request for proposals. The proposals will be reviewed by the Commission and a contract will be awarded on the basis of the firm's experience, firm knowledge of the work to be performed, and the proposed audit cost by year. Small, female-owned, and minority-owned firms are encouraged to submit.

Requests for proposal packages may be obtained by contacting, Joyce Reynolds, Director of Finance, Nortex Regional Planning Commission, P.O. Box 5144, Wichita Falls, Texas 76307-5144, (940) 322-5281. Proposals packages will not be faxed or e-mailed. All proposals must be received no later than 4:30 p.m., Central Standard Time, June 5, 1998. Proposals received after the specified date and time not be considered.

TRD-9805236

Dennis Wilde

Executive Director

Nortex Regional Planning Commission

Filed: April 14, 1998

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North Texas Tollway Authority

Advertisement for Construction (Road)

PRESIDENT GEORGE BUSH TURNPIKE — PUBLIC ADVERTISEMENT

Sealed bids for Construction of Grading, Drainage, Pavement, Walls, Shoulders and Structures, Coit Road to U.S. 75, for the President George Bush Turnpike in Collin County, Texas, covered by Contract DNT-314, will be received at the office of the North Texas Tollway Authority (the "NTTA"), P.O. Box 190369, 3015 Raleigh Street, Dallas, TX 75219-0369, (214) 522-6200, until 1:30 p.m., C.D.S.T., April 30, 1998, and then publicly opened and read.

Specifications may be seen for examination and information at the office of the NTTA, 3015 Raleigh Street, P.O. Box 190369, Dallas, TX 75219-0369 and at the offices of the General Consulting Engineer, HNTB Corporation, 14114 Dallas Parkway, Suite 630, Dallas, TX 75240. Proposals may be obtained from the North Texas Tollway Authority, address above, upon payment of \$50.00 Dollars for half size plans and \$75.00 Dollars for full size plans, which sum will not be refunded. The usual rights are reserved.

TRD-9805120

James W. Griffin

Chief Engineer

North Texas Tollway Authority

Filed: April 13, 1998

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Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On April 7, 1998, American Telco, Inc., filed an application with the Public Utility Commission of Texas (PUC) to amend its facilities-based service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate No. 60004. The Applicant has merged with Dobson Wireline Company and seeks to reflect its sale to a non-certificated entity nunc pro tunc.

The Application: Application of American Telco, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 19142.

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 April 29, 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 19142.

TRD-9805061
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 9, 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 April 10, 1998, for a facilities-based service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of New Millennium Communications Corporation for a Service Provider Certificate of Operating Authority, Docket Number 19157 before the Public Utility Commission of Texas.

Applicant states it intends to provide customers an alternative to monopoly service providers in local telephone markets throughout the United States. The Applicant also states it intends to take advantage of converging communications and data networking technologies to provide enhanced voice and data services to customers worldwide.

Applicant's requested SPCOA geographic area includes the city of Dallas within the state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than April 29, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9805238
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 15, 1998



Public Notices of Interconnection Agreement

On April 7, 1998, Allegiance Telecom of Texas, Inc. and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under §252(j) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001- 63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19143. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may

file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 19143. 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 May 5, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19143.

TRD-9805062
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 9, 1998



On April 7, 1998, Faithnet Telecommunications, 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 19144. 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 19144. 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 May 5, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19144.

TRD-9805063
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 9, 1998

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Central for Rural Health Initiatives

Requests for Proposals

The Center for Rural Health Initiatives is issuing a Request for Proposals ("RFP") for the Medically Underserved Community-State Matching Incentive Program. The purpose of this RFP is to provide

the applicant with the information necessary to apply for matching grant funds under the provisions of this program.

The purpose of this program is to increase the number of physicians providing primary care in medically underserved communities, particularly rural.

Use of Funds: The funds can be used to establish a medical office and ancillary facilities for diagnosing and treating patients. The optimum use of funds would be for the purchase of equipment and furnishings that would establish a new practice site. The site will continue to serve the primary care needs of the community beyond the grant period, and the physician will agree to practice for a minimum of two years.

Amount of Awards: The funding available for support of this program during fiscal year 1998 is \$250,000. Approximately 10 projects will be funded. Under the requirements of this program the state grants funds of up to \$25,000 to match the contributions by community groups to cover start-up costs for new physicians.

Eligible Applicants: An eligible community must be in an underserved area as determined by the U.S. Department of Health and Human Services or the Texas Department of Health. The community must make a commitment of at least \$15,000 in contributions toward the project and contract with a physician eligible to participate in this program.

Eligible physicians include those in family/general practice, general pediatrics, general internal medicine, or general obstetrics/gynecology. The physician must be licensed to practice in the State of Texas, have completed an accredited residency program, and have contracted with the community to provide full-time primary care for at least two years. A physician who completed residency within the last ten years will be given priority consideration.

Evaluation and Selection: The Center will prioritize the eligible communities to assure that the neediest are provided grants. The prioritization process will quantify indicators of need that may include, but are not limited to, the following: no practicing primary care physicians; only one primary care physician and a population of at least 2,000; no federally or state-funded primary care clinic; no practicing physician assistants or nurse practitioners; the participating physician will be the only physician practicing in one of the primary care specialties; a large minority population, if the participating physician is a member of the same minority group; designation by the United States Department of Health and Human Services as a primary care Health Professional Shortage Area (HPSA) for at least the last five years; a population-to-primary care provider ratio in the top 25% of all counties in the state; poverty rates above the state average; and median family incomes at least 25% below the state average.

Deadline: Completed applications are due by May 29, 1998. Announcement of the selected applicants will be made by June 5, 1998.

Contract Period: The budget period for applications funded under this RFP will be June 1, 1998 - August 31, 1998.

Contact Person: To obtain the application, please contact: Janet Leubner, Rural Health Specialist, Center for Rural Health Initiatives, P.O. Drawer 1708, Austin, Texas 78767-1708, (512) 479-8891.

TRD-9805259
Laura Jordan
Executive Director
Center for Rural Health Initiatives
Filed: April 15, 1998

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Texas A&M University System, Board of Regents

Request for Proposal: Hearing Aid Discount Program

The Texas A&M University System announces a Request for Proposals (RFP) to offer a discount hearing aid program to its employees and retirees. This program must be provided on a value-added basis at no administrative cost to the System or the individuals who use the services.

Firms wishing to respond to this request should be able to demonstrate experience and qualifications necessary to provide the services and products to support this program. The program should include discounted hearing aids, fitting, repair and adjustments. An extensive network of credentialed providers that covers the state of Texas is required. The RFP instructions that detail information about this program is available upon request from the System.

The deadline for submitting proposals in response to this request will be 4:00 p.m. on May 4, 1998.

The A&M System reserves the right to accept or reject any or all proposals submitted. It is under no legal requirement to execute a resulting contract or agreement on the basis of this advertisement. The System intends to use responses as a basis for evaluation-and further negotiation of specific project details and will base its choice on demonstrated competence, superior qualifications and evidence of conformance with the RFP criteria.

This RFP does not commit the A&M System to pay any costs incurred prior to execution of a service agreement. Issuance of this material in no way obligates the System to pay any costs incurred in the preparation of a response. The System specifically reserves the right to vary all provisions set forth at any time prior to execution of a service agreement where the System deems it to be in its best interest.

To obtain copies of the RFP instructions please submit a written request to Mr. Steven W. Hassel, Director, Benefit Programs, System Human Resource Office, The Texas A&M University System, John B. Connally Building, 301 Tarrow Street, 5th Floor, College Station, Texas, 77840-7896, FAX (409) 845-5281. For questions or further information regarding this notice, contact Mr. Steven W. Hassel or Ms. Shannon Cashion at (409) 845-2026.

TRD-9805151

Vickie Burt

Executive Secretary to the Board

Texas A&M University System, Board of Regents

Filed: April 13, 1998

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Texas Department of Transportation

Notice of Invitation - Odessa District:

The Texas Department of Transportation (TxDOT) intends to enter into contracts with two professional engineers pursuant to Texas Government Code, Chapter 2254, Subchapter A, and 43 TAC §§9.30-9.43, to provide the following services. A Prime Provider and any Subproviders proposed on the Team must be precertified by the deadline date for receiving the letter of interest for each of the advertised work category(s) unless the work category is a non-listed work category. To qualify for contract award, a selected prime engineer must perform a minimum of 30% of the actual 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.

Historically Underutilized Business (HUB) Goal: The goal for HUB participation for the work to be performed under these contracts is 10% of the contract amount.

Contract Numbers: 06-845P5001 and 06-845P5002 - The precertified work categories and percentage of the work per category are: 1.5.1. - Feasibility Studies (60%), 14.2.1 - Geotechnical Testing (20%), and 18.1.1 - Value Engineering (20%).

Scope of Work: This notice involves two contracts, and two Prime Providers will be selected. These Prime Providers are referred to as Consultant "A" and Consultant "B".

Consultant "A" will collect Visual Pavement Distress Data as required by TxDOT Pavement Management Information System (PMIS) Rater's Manual on all Interstate System roadbeds (approximately 306 centerline miles) and will collect Visual Pavement Distress Data as required by the PMIS on 15% of non-interstate roadbeds (approximately 500 roadbed miles). The visual pavement data will be used to audit Consultant "B" as well as validate Highway 20 priority ranking. Prepare action plans (priority ranking) as directed by TxDOT on Interstate Highway 20 in the Odessa District. The Odessa District will provide automated rut measurement, ride measurement, and traffic data. The consultant may be required to collect falling weight deflectometer data on the Interstate System. The collection and testing of sub-grade soil samples for design triaxials will be required on Interstate Highway 20. Interstate action plan will be assigned as a work order to assist the Odessa District in prioritizing pavement maintenance, restoration and rehabilitation needs using traffic data, distress scores, maintenance costs, distress history, supervisor interviews, engineer judgment, and other available data.

Consultant "B" will collect Visual Pavement Distress Data as required by the PMIS on 100% of the District's roadbeds (approximately 3,900 roadbed miles). The data collection shall be performed according to the latest PMIS Rater's Manual. The total data collection will involve an estimated 3,900 roadbed miles in twelve counties in the Odessa District and four partial counties bordering the Odessa District. Approximately 92% of the total roadbed miles are rural sections. The data collection will be performed on dry pavement during daylight hours (from one hour after sunrise to one hour before sunset) in different types of terrain and levels of traffic congestion. The District Consultant Selection Team has determined the range of scores for providers that are considered equally qualified to perform the work to be not less than 700 points out of 900 maximum.

Long List Criteria: TxDOT will consider the following criteria in its review of all interested providers.

1. Past Performance Scores - Minimum requirements: The Team must provide two separate satisfactory written references on individual Team members for conducting visual pavement ratings. Preferred requirements: The Team must provide three separate satisfactory written references on individual Team members, two for preparing visual pavement ratings and one for developing action plans for like management review.
2. Project Requirements (Team Capability Experience): Feasibility Studies (1.5.1.) - Minimum requirements: The nominated Team member must be precertified in this work category. Preferred requirements: In addition to the above minimum requirements, the

Project Manager must satisfactorily demonstrate his/her knowledge of pavement distress data and how they would use pavement distress ratings to help determine the present condition of the pavement's surface.

Geotechnical Testing (14.2.1) - Minimum requirements: The nominated Team member must be precertified in this work category. Preferred requirements: In addition to the minimum requirements, the Project Manager must satisfactorily explain or demonstrate his/her understanding of classifying materials and/or identifying their physical properties as they relate to pavement design and management.

Value Engineering (18.1.1) - Minimum requirements: The nominated Team member must be precertified in this work category. Preferred requirements: In addition to the minimum requirements, the Project Manager must satisfactorily explain or demonstrate his/her understanding of the use of the collected or furnished data in preparing a priority ranking plan that is the most cost effective use of resources to accomplish the given functions.

3. Special (Similar) Project Related Experience of Project Manager and Team Members:

Feasibility Studies (1.5.1) - "Special (Similar) Project Related Experience" in this category is not applicable for these contracts.

Geotechnical Testing (14.2.1) - "Special (Similar) Project Related Experience" in this category is not applicable for these contracts.

Value Engineering (18.1.1) - "Special (Similar) Project Related Experience" in this category is not applicable for these contracts.

4. Evidence of Compliance with Assigned HUB Goal - A provider gets three points for meeting the assigned goal or zero points for not meeting the assigned goal.

Deadline: A letter of interest notifying TxDOT of the provider's intent to submit a proposal will be accepted by fax at (915) 498-4760, or by hand delivery to TxDOT, Odessa District, 3901 East Highway 80, Odessa, Texas 79761-0501. Letters of interest will be received until 5:00 p.m. on May 8, 1998.

Letter of Interest Requirements: The letter of interest is limited in length to three 8 1/2 x 11 inch pages, 12 pitch font size, single sided with no attachments or appendices, plus references (these are in addition to the letter of interest), and must include the contract numbers 06-845P5001 and 06-845P5002; an organizational chart (wire diagram no smaller than 10 pitch font size) containing the names of the nominees, addresses of the providers, telephone and fax numbers of the individual members 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 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, including references for related projects.

Agency Contact: Requests for additional information regarding this notice of invitation should be addressed to Arthur L. Waguespack at (915) 498-4735 or fax (915) 498-4760.

TRD-9805256
Bob Jackson

Acting General Counsel
Texas Department of Transportation
Filed: April 15, 1998

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Texas Workforce Commission

Notice of Public Hearing

TO ALL PERSONS INTERESTED IN THE PROPOSED "COMMUNITIES IN SCHOOLS RULES" UNDER CONSIDERATION BY THE TEXAS WORKFORCE COMMISSION

The Texas Workforce Commission (Commission) will conduct a PUBLIC HEARING on the proposed Communities In Schools Rules to receive comments on the proposed rules as published in the *Texas Register* on February 27, 1998 at 23 Tex Reg 1925 beginning at:

1:30 P.M.

May 6, 1998 at

101 East 15th Street

6th Floor, Room 644

Austin, Texas 78778

Persons wishing to present comments at the public hearing may do so by advising the Commission of their intent prior to the hearing date with correspondence addressed to Sandra Smith, 101 East 15th Street, Room 526BT, Austin, Texas 78778, or by completing a registration form which will be available at the entrance to Room 644 on the day of the public hearing.

Speakers are encouraged to provide written copies of their comments. While any person with relevant comments will be provided an opportunity to present them during the hearing, the Commission reserves the right to restrict statements in terms of time or repetitive content.

Persons needing special accommodations or having any questions should contact Sandra Smith.

A complete copy of the proposed rules may be obtained on the Internet at the following website:

<http://www.sos.state.tx.us/texreg/archive/February27998>

TRD-9805270

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Filed: April 15, 1998

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Notice of State "Welfare to Work" Plan

TO ALL PERSONS INTERESTED IN THE STATE "WELFARE TO WORK" PLAN UNDER CONSIDERATION BY THE TEXAS WORKFORCE COMMISSION FOR SUBMISSION TO THE U.S. DEPARTMENT OF LABOR

The Texas Workforce Commission (Commission) is accepting comments on the proposed State "Welfare to Work" Plan. A complete copy of the State "Welfare to Work" Plan may be obtained, starting April 22, 1998, on the Internet at the following website:

<http://www.twc.state.tx.us/welfare/welf.html>

Comments must be submitted no later than noon, May 1, 1998, to Jill Schamberger, Welfare Reform Division, 101 East 15th Street,

Room 440T, Austin, Texas 78778, fax (512)463-7379. Comments may also be submitted via e-mail to Ms. Schamberger at jill.schamberger@twc.state.tx.us.

TRD-9805271

J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Filed: April 15, 1998



Request for Proposals

A. Introduction.

The Texas Workforce Commission (Commission) is providing the following information regarding a request for proposals for the Job Training Partnership Act (JTPA) Follow-up Survey Project. The emphasis of the JTPA Follow-up Survey Project will be on the 13-week post program data collection related to the post program experiences of former JTPA program participants. In addition to conducting the follow-up surveys, the contractor will provide ongoing reporting related to the project to the Commission.

The Commission is under no legal requirement to execute a resulting contract on the basis of making this Request for Proposals. The information provided herein serves only as a means of identifying the various contractor alternatives and estimates of costs for the services requested by the Commission.

B. Eligible Proposers.

Eligible Proposers are non-profit organizations, institutions of higher education, private companies, and individuals as appropriate for the project. Historically Underutilized Businesses (HUBs) are encouraged to submit a proposal.

C. Available Funding.

The Texas Workforce Commission estimates the funding amount for this project to be \$420,000.00.

D. Funding Restrictions.

Funds must be used only for program activities approved by the Commission. Grant funds must not be used to supplant other funding or used to duplicate services. Permission must be secured from the Commission before changes can be made in activities performed.

E. Selection, Notification, and Negotiation Process.

All proposals will be evaluated on a competitive basis. The Commission anticipates completing the selection process no later than June 30, 1998. Proposers selected for grant award will be notified immediately after the selection process is completed. The Commission reserves the right to vary any provisions of this RFP prior to the execution of a contract. In addition, the Commission may execute amendments to contracts when the Commission deems such variances or amendments are in the best interest of the State of Texas.

F. Length of Contract.

The contract period is for twelve months - beginning July 1, 1998 through June 30, 1999.

G. Agency Contact and Due Date.

To request a proposal packet, please contact: Shu-Ching Chen at (512) 463-2661. You may also request a packet by writing to Ms. Chen at the Texas Workforce Commission, Workforce Development Division, 101 East 15th Street, Room 252T Austin, Texas 78778-0001. Proposals will be due on May 29, 1998, 4:00 p.m., at the aforementioned address.

A list of funded grantees will be published in the Texas Register following contract completion.

TRD-9805272

J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Filed: April 15, 1998



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