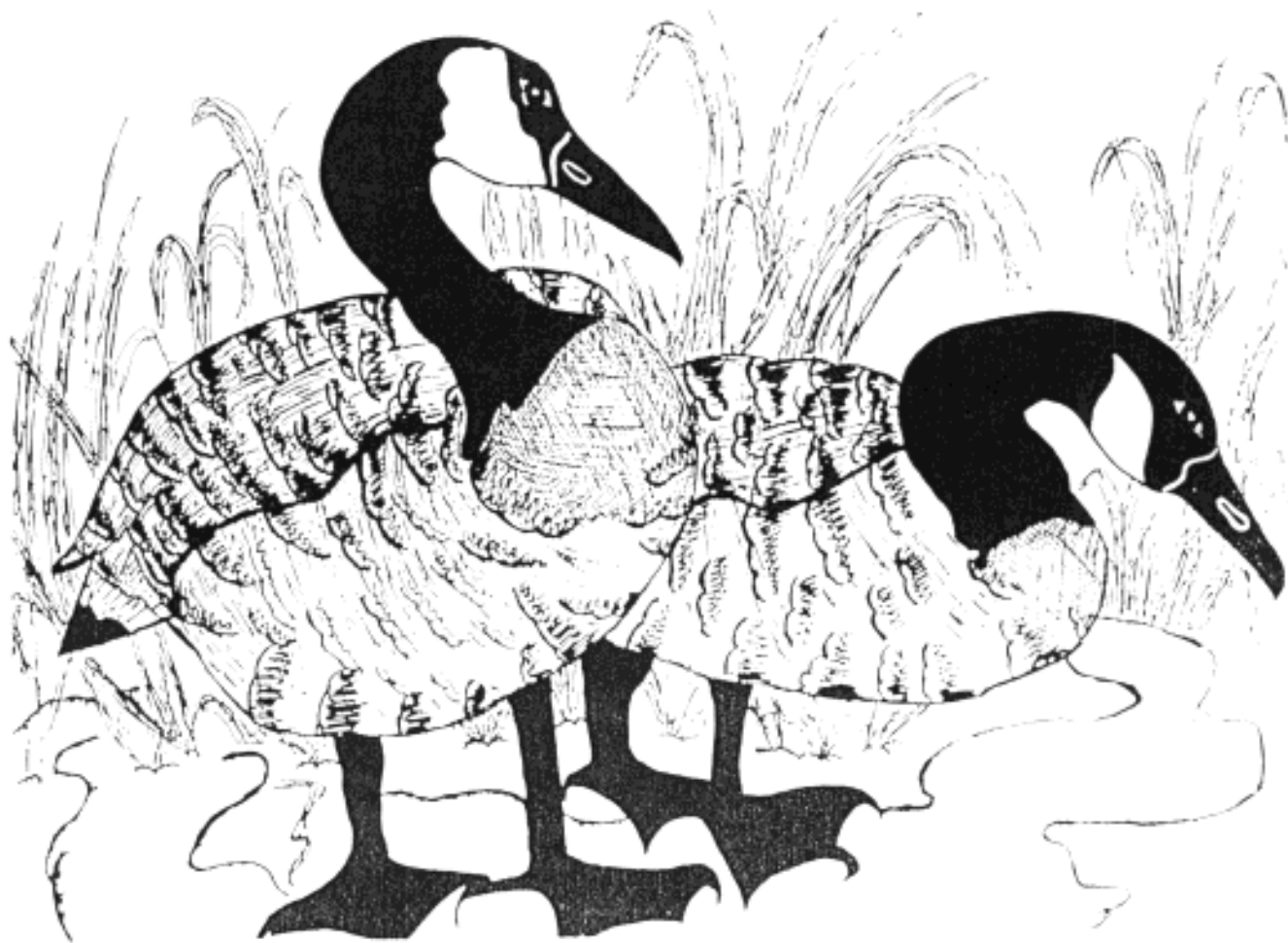


# TEXAS REGISTER

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***12th Grade***

***Hitchcock High School***

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Request for Opinions.....5279

**PROPOSED RULES**

**Office of the Secretary of State**

Texas Register

1 TAC §91.63 ..... 5281

1 TAC §§91.131, 91.133, 91.135, 91.137 ..... 5282

**Department of Information Resources**

Planning and Management of Information Resources  
Technologies

1 TAC §201.13 ..... 5283

**Texas Agriculture Resources Protection Authority**

General Rules

4 TAC §101.2, §101.20..... 5291

**Texas State Library and Archives Commission**

General Policies and Procedures

13 TAC §2.52 ..... 5291

**Public Utility Commission of Texas**

Substantive Rules

16 TAC 23.104 ..... 5293

Substantive Rules Applicable to Electric Service  
Providers

16 TAC §25.84 ..... 5296

16 TAC §25.271 ..... 5297

16 TAC §25.272 ..... 5301

16 TAC §25.273 ..... 5302

16 TAC §25.274 ..... 5303

Substantive Rules Applicable to Telecommunications  
Service Providers

16 TAC §26.213 ..... 5305

**Texas Motor Vehicle Commission**

Warranty Performance Obligations

16 TAC §107.8 ..... 5308

**Texas Real Estate Commission**

Provisions of the Real Estate License Act

22 TAC §535.400, §535.403 ..... 5309

**Texas Department of Health**

Early and Periodic Screening, Diagnosis, and Treatment

25 TAC §33.263 ..... 5311

25 TAC §§33.301-33.309, 33.314-33.318, 33.320, 33.322-33.327  
5311

25 TAC §§33.301–33.309, 33.312–33.318..... 5311

25 TAC §§33.331–33.338 ..... 5315

25 TAC §§33.331–33.334, 33.351–33.358..... 5315

**Texas Department of Insurance**

Agent’s Licensing

28 TAC §§19.2001–19.2021 ..... 5317

Trade Practices

28 TAC §§21.2301–21.2306 ..... 5328

**Texas Department of Public Safety**

Traffic Law Enforcement

37 TAC §§3.22–3.24 ..... 5330

37 TAC §3.91 ..... 5331

**Texas Commission on Fire Protection**

Standards for Certification

37 TAC §§421.1, 421.3, 421.5, 421.7, 421.9 ..... 5331

Fire Suppression

37 TAC §§423.1, 423.3, 423.5, 423.7, 423.9, 423.11..... 5334

37 TAC §§423.1, 423.3, 423.5, 423.7, 423.9, 423.11, 423.13 .... 5335

37 TAC §§423.201, 423.203, 423.205, 423.207, 423.209 ..... 5337

37 TAC §§423.201, 423.203, 423.205, 423.207, 423.209 ..... 5338

37 TAC §§423.301, 423.303, 423.305, 423.307, 423.309 ..... 5340

Fire Protection Instructor

37 TAC §§425.1, 425.3, 425.5, 425.7, 425.9 ..... 5342

Fire Instructors

37 TAC §§425.1, 425.3, 425.5, 425.7, 425.9 ..... 5343

Fire Protection Personnel Instructors

37 TAC §425.201 ..... 5344

Fire Instructors

37 TAC §§425.201, 425.203, 425.205, 425.207, 425.209 ..... 5345

Fire Protection Instructor

37 TAC §§425.301, 425.303, 425.305, 425.307, 425.309 ..... 5347

Fire Instructors

37 TAC §425.301 ..... 5347

Fire Protection Instructor

37 TAC §425.401 ..... 5348

Fire Instructor

37 TAC §425.401 ..... 5348

Certified Training Facilities

37 TAC §§427.1, 427.3, 427.5, 427.7, 427.9, 427.11, 427.13, 427.15,  
427.17, 427.19 ..... 5349

Minimum Standards for Fire Inspectors	37 TAC §§429.1, 429.3, 429.5, 429.7, 429.9.....	5353	37 TAC §§473.1, 473.3, 473.5, 473.7, 473.9.....	5380	
Minimum Standards for Fire and Arson Investigator	37 TAC §§431.1, 431.3, 431.5, 431.7, 431.9, 431.11.....	5355	Volunteer Fire Fighter Instructor and Instructor Training	37 TAC §§475.1, 475.3, 475.5, 475.7, 475.9, 475.11.....	5380
Fire Investigation	37 TAC §§431.1, 431.3, 431.5, 431.7, 431.9, 431.11.....	5356	Volunteer Fire Investigator	37 TAC §§476.1, 476.3, 476.5, 476.7, 476.9.....	5381
Firefighter Safety	37 TAC §431.201 §431.203.....	5358	Volunteer Fire Fighter Training Facilities	37 TAC §§477.1, 477.3, 477.5, 477.7, 477.9, 477.11, 477.13 ....	5381
Fees	37 TAC §§435.1, 435.3, 435.5, 435.7 .....	5359	Volunteer Fire Inspector	37 TAC §§478.1, 478.3, 478.5, 478.7, 478.9.....	5382
Examinations for Certification	37 TAC §§437.1, 437.3, 437.5, 437.7, 437.9, 437.11, 437.13, 437.15, 437.17.....	5361	Examinations for Volunteer Fire Fighter Certification	37 TAC §§479.1, 479.3, 479.5, 479.7, 479.9, 479.11, 479.13 ....	5382
Continuing Education	37 TAC §§437.1, 437.3, 437.5, 437.7, 437.9, 437.11, 437.13, 437.15 5361		Volunteer Fire Fighter Certification Fees	37 TAC §§481.1, 481.3, 481.5, 481.7, 481.9, 481.11.....	5383
Certification Curriculum Manual	37 TAC §§439.1, 439.3, 439.5, 439.7, 439.9, 439.11, 439.13, 439.15, 439.17.....	5363	Volunteer Fire Fighter Safety	37 TAC §§483.1, 483.3, 483.5.....	5383
Administrative Inspections and Penalties	37 TAC §§439.1, 439.3, 439.5, 439.7, 439.9, 439.11, 439.13, and 439.15.....	5364	Volunteer Fire Fighter Continuing Education	37 TAC §§485.1, 485.3, 485.5, 485.7, 485.9, 485.11.....	5384
Part-Time Fire Protection Employee	37 TAC §§441.1, 441.3, 441.5, 441.7, 441.9, 441.11, 441.13, 441.15 5368		Eligibility for Volunteer Fire Fighter Certification as Fire Protection Personnel	37 TAC §487.1, §487.3.....	5384
Head of a Fire Department	37 TAC §§441.1, 441.3, 441.5, 441.7, 441.9, 441.11, 441.13, 441.15, 441.17.....	5369	Volunteer Fire Department Inspections	37 TAC §§489.1, 489.3, 489.5, 489.7, 489.9.....	5385
Fire Cause and Origin Investigator	37 TAC §§443.1, 443.3, 443.5, 443.7, 443.9.....	5371	<b>Texas Department of Human Services</b>		
Standards for Volunteer Certification	37 TAC §§443.1, 443.3, 443.5, 443.7, 443.9.....	5371	Income Assistance Services	40 TAC §§3.704, 3.705.....	5385
Volunteer Certification Curriculum Manual	37 TAC §§445.1, 445.3, 445.5, 445.7, 445.9, 445.11, 445.13, 445.15, 445.17, 445.19, 445.21.....	5372	Medicaid Eligibility	40 TAC §3.902.....	5387
Volunteer Fire Fighter	37 TAC §§445.1, 445.3, 445.5, 445.7, 445.9, 445.11, 445.13, 445.15, 445.17, 445.19.....	5373	<b>Texas Rehabilitation Commission</b>	40 TAC §15.503.....	5389
Volunteer Fire Fighter	37 TAC §§445.201, 445.203, 445.205, 445.207 .....	5375	Contract Administration	40 TAC §106.3.....	5390
Volunteer Fire Fighter	37 TAC §§447.1, 447.3, 447.5.....	5375	<b>Texas Workforce Commission</b>		
Volunteer Fire Fighter	37 TAC §449.1 .....	5377	General Administration	40 TAC §800.51.....	5391
Volunteer Fire Fighter	37 TAC §451.1, §451.3.....	5378	Proprietary Schools	40 TAC §§807.1–807.6.....	5393
Volunteer Fire Fighter	37 TAC §§471.1, 471.3, 471.5, 471.7 .....	5379	Proprietary Schools	40 TAC §807.3.....	5395
Volunteer Fire Fighter	37 TAC §§472.1, 472.3, 472.5, 472.7, 472.9.....	5379	Proprietary Schools	40 TAC §§807.11–807.17 .....	5396
Volunteer Fire Fighter	37 TAC §§472.1, 472.3, 472.5, 472.7, 472.9.....	5379	Proprietary Schools	40 TAC §§807.31–807.37 .....	5397
Volunteer Fire Fighter	37 TAC §§472.1, 472.3, 472.5, 472.7, 472.9.....	5379	Proprietary Schools	40 TAC §§807.51–807.53 .....	5399

40 TAC §§807.61–807.65 .....	5400
40 TAC §§807.81–807.84 .....	5401
40 TAC §§807.91–807.104 .....	5402
40 TAC §807.101 .....	5405
40 TAC §§807.111–807.113 .....	5406
40 TAC §§807.121–807.131 .....	5407
40 TAC §§807.121–807.126 .....	5407
40 TAC §§807.141–807.147 .....	5408
40 TAC §§807.161–807.164 .....	5410
40 TAC §§807.171–807.175 .....	5411
40 TAC §§807.191–807.194 .....	5412
40 TAC §§807.211–807.214 .....	5414
40 TAC §807.221, §807.222 .....	5414
40 TAC §§807.231–807.235 .....	5415
40 TAC §807.251, §807.252 .....	5416

**Texas Department of Transportation**

Bridge Division

43 TAC §7.41 .....	5418
43 TAC §7.61 .....	5418
43 TAC §7.71 .....	5418

Traffic Operations

43 TAC §§25.70–25.72, 25.74–25.76 .....	5418
---	------

**WITHDRAWN RULES**

**Texas Department of Human Services**

Nursing Facility Requirements for Licensure and Medicaid Certification

40 TAC §19.2009 .....	5423
-----------------------	------

Nurse Aides

40 TAC §94.11 .....	5423
---------------------	------

**ADOPTED RULES**

**Advisory Commission on State Emergency Communications**

Regional Plans - Standards

1 TAC §251.7 .....	5425
--------------------	------

**Railroad Commission of Texas**

Oil and Gas Division

16 TAC §3.30 .....	5427
--------------------	------

**Texas Alcoholic Beverage Commission**

Administration

16 TAC §31.5 .....	5434
--------------------	------

**Texas Real Estate Commission**

Provisions of the Real Estate License Act

22 TAC §535.71 .....	5435
22 TAC §535.81 .....	5435
22 TAC §§535.92, 535.93, 535.95 .....	5435
22 TAC §535.101 .....	5436
22 TAC §§535.111–535.113 .....	5436
22 TAC §§535.121–535.123 .....	5437
22 TAC §535.131, §535.133 .....	5437
22 TAC §§535.141, 535.143, 535.144, 535.146, 535.150, 535.154–535.160 .....	5437
22 TAC §535.300 .....	5438

**Texas Natural Resource Conservation Commission**

Memoranda of Understanding

30 TAC §7.117 .....	5438
---------------------	------

Industrial Solid Waste and Municipal Hazardous Waste

30 TAC §335.28 .....	5439
----------------------	------

**Texas Parks and Wildlife Department**

Law Enforcement

31 TAC §§55.801–55.807 .....	5440
------------------------------	------

**Texas Department of Human Services**

Medicaid Eligibility

40 TAC §15.435 .....	5440
40 TAC §§15.460, 15.475 .....	5441

Nursing Facility Administrators

40 TAC §§18.1, 18.11–18.14 .....	5444
40 TAC §§18.1, 18.11–18.14 .....	5445

Nursing Facility Requirements for Licensure and Medicaid Certification

40 TAC §§19.2322, 19.2324 .....	5450
40 TAC §§19.2322, 19.2324 .....	5451

**Texas Rehabilitation Commission**

Informal and Formal Appeals by Applicants/Clients of Decisions by a Rehabilitation Counselor or Agency Official

40 TAC §104.5 .....	5451
---------------------	------

**Texas Department of Protective and Regulatory Services**

Child Protective Services

40 TAC §700.316 .....	5452
40 TAC §700.2501 .....	5452

General Licensing Procedures

40 TAC §§725.1501–725.1508, 725.1515–725.1520 .....	5453
---	------

40 TAC §§725.1527–725.1533 .....	5458	Thursday, May 21, 1998, 10:00 a.m.....	5478
<b>EXEMPT FILINGS</b>		<b>State Cemetery Committee</b>	
<b>Texas Department of Insurance</b>		Tuesday, May 19, 1998, 10:00 a.m.....	5478
PROPOSED ACTION.....	5461	<b>Coastal Coordination Council</b>	
<b>RULE REVIEW</b>		Wednesday, May 13, 1998, 1:30 p.m.....	5478
<b>Proposed Rule Reviews</b>		<b>Council on Competitive Government</b>	
Public Utility Commission of Texas.....	5463	Tuesday, May 19, 1998, 9:30 a.m.....	5479
Texas Real Estate Commission.....	5463	<b>Corpus Christi Bay National Estuary Program</b>	
Texas Rehabilitation Commission.....	5463	Thursday, May 21, 1998, 3:00 p.m.....	5479
Texas Workforce Commission.....	5464	<b>Office of Court Administration</b>	
<b>Adopted Rule Reviews</b>		Thursday, May 14, 1998, 10:00 a.m.....	5479
Office of the Texas State Chemist/Texas Feed and Fertilizer Control Service .....	5464	Tuesday, June 2, 1998, 10:00 a.m.....	5479
<b>TABLES AND GRAPHICS</b>		<b>Texas Court Reporters Certification Board</b>	
<b>Tables and Graphics</b>		Friday, May 15, 1998, 5:00 p.m.....	5480
Tables and Graphics.....	5465	<b>State Board of Dental Examiners</b>	
<b>OPEN MEETINGS</b>		Thursday, June 4, 1998, 1:30 p.m.....	5480
<b>Texas State Board of Public Accountancy</b>		Thursday, June 4, 1998, 2:30 p.m. until conclusion.....	5480
Thursday, May 14, 1998, 9:00 a.m.....	5475	Friday, June 5, 1998, 8:00 a.m., (until conclusion).....	5480
<b>State Office of Administrative Hearings</b>		<b>Texas Department of Economic Development</b>	
Thursday, May 28, 1998, 9:00 a.m.....	5475	Friday, May 15, 1998, 11:40 a.m.....	5481
<b>Texas Department on Aging</b>		Friday, May 15, 1998, 1:45 p.m.....	5481
Tuesday, June 2, 1998, 10:00 a.m.....	5475	<b>State Employee Charitable Campaign</b>	
<b>Texas Department of Agriculture</b>		Thursday, May 14, 1998, 10:00 a.m.....	5481
Wednesday, May 27, 1998, 9:00 a.m.....	5476	<b>General Land Office</b>	
<b>Texas Agricultural Experiment Station</b>		Tuesday, May 19, 1998, 11:30 a.m.....	5482
Wednesday, May 20, 1998, 9:00 a.m.....	5476	<b>Office of the Governor-Criminal Justice Division</b>	
<b>Texas Commission on Alcohol and Drug Abuse</b>		Friday, May 22, 1998, 9:00 a.m.....	5482
Thursday, May 21, 1998, 11:00 a.m.....	5476	<b>Texas Department of Health</b>	
May 22, 1998, 11:00 a.m.....	5476	Thursday, May 14, 1998, 10:30 a.m.....	5482
<b>Anatomical Board of the State of Texas</b>		Thursday, May 14, 1998, 1:00 p.m.....	5482
Friday, June 5, 1998, 10:00 a.m.....	5476	Thursday, May 14, 1998, 2:00 p.m.....	5482
<b>The State Bar of Texas</b>		Thursday, May 14, 1998, 3:00 p.m.....	5483
Friday, May 15, 1998, 8:30 a.m.....	5477	Thursday, May 14, 1998, 4:00 p.m.....	5483
<b>Texas Commission for the Blind</b>		Friday, May 15, 1998, 8:30 a.m.....	5483
Friday, May 15, 1998, 9:00 a.m.....	5477	Friday, May 15, 1998, 10:00 a.m.....	5483
<b>Texas School for the Blind and Visually Impaired</b>		<b>Texas Health Reinsurance System</b>	
Thursday, May 21, 1998, 8:15 a.m.....	5477	Wednesday, May 20, 1998, 10:00 a.m.....	5484
Thursday, May 21, 1998, 9:00 a.m.....	5478	<b>Texas Healthy Kids Corporation</b>	
Thursday, May 21, 1998, 9:00 a.m.....	5478	Monday, May 18, 1998, 9:30 a.m.....	5484
		<b>Texas Higher Education Coordinating Board</b>	

Wednesday, May 14, 1998, 9:00 a.m.....	5484	Friday, May 15, 1998, 10:30 a.m.....	5491
<b>Texas Historical Commission</b>		Friday, May 15, 1998, 11:00 a.m.....	5491
Wednesday, May 20, 1998, 1:30 p.m.....	5485	Friday, May 15, 1998, 1:00 p.m.....	5492
<b>Texas Department of Housing and Community Affairs</b>		Friday, May 15, 1998, 2:00 p.m.....	5492
Monday, May 18, 1998, 8:30 a.m.....	5485	Friday, May 15, 1998, 3:00 p.m.....	5492
Monday, May 18, 1998, 9:00 a.m.....	5485	<b>Texas Natural Resource Conservation Commission</b>	
Monday, May 18, 1998, 9:45 a.m.....	5485	Monday, May 18, 1998, 8:30 a.m.....	5493
Monday, May 18, 1998, 10:00 a.m.....	5485	Wednesday, May 20, 1998, 8:30, 9:30 a.m. and 1:00 p.m.....	5493
Monday, May 18, 1998, 12:00 p.m.....	5486	Wednesday, May 20, 1998, 9:30 a.m.....	5493
<b>State Independent Living Council</b>		Friday, May 29, 1998, 9:00 a.m.....	5493
Thursday, May 21, 1998, 9:00 a.m.....	5486	Wednesday, July 15, 1998, 9:30 a.m.....	5493
Thursday, May 21, 1998, 11:00 a.m.....	5486	Wednesday, July 15, 1998, 9:30 a.m.....	5493
Thursday-Friday, May 21–22, 1998, 1:00 p.m. and 8:00 a.m. (respectively) .....	5486	<b>Board of Nurse Examiners</b>	
<b>Texas Department of Insurance</b>		Wednesday, May 20, 1998, 10:00 a.m.....	5494
Tuesday, May 19, 1998, 9:30 a.m.....	5487	<b>Texas Council on Offenders with Mental Impairments</b>	
Wednesday, May 20, 1998, 10:00 a.m.....	5487	Friday, May 29, 1998, 9:00 a.m.....	5494
Tuesday, June 9, 1998, 9:00 a.m.....	5487	<b>Texas On-Site Waste Treatment Research Council</b>	
Wednesday, June 10, 1998, 9:00 a.m.....	5487	Wednesday, May 20, 1998, 1:00 p.m.....	5494
Thursday, June 11, 1998, 1:00 p.m.....	5488	Wednesday, May 20, 1998, 1:00 p.m.....	5495
<b>Interagency Council on Early Childhood Intervention</b>		<b>Texas Board of Pardons and Paroles</b>	
Wednesday, May 20, 1998, 9:30 a.m. ....	5488	Wednesday, May 20, 1998, 1:00 p.m.....	5495
<b>Board of Law Examiners</b>		Thursday, May 21, 1998, 8:00 a.m.....	5495
Thursday, June 11, 1998, 11:00 a.m.....	5488	<b>Texas Peanut Producers Board</b>	
<b>Board for Lease of University Lands</b>		Tuesday, May 19, 1998, 10:00 a.m.....	5496
Tuesday, May 19, 1998, 10:00 a.m.....	5488	<b>Texas Board of Physical Therapy Examiners</b>	
<b>Texas Department of Licensing and Regulation</b>		Monday, May 18, 1998, 9:00 a.m.....	5496
Thursday, May 14, 1998, 9:30 a.m.....	5488	<b>Texas State Board of Plumbing Examiners</b>	
Monday, May 18, 1998, 9:30 a.m.....	5489	Thursday, May 21, 1998, 8:00 a.m.....	5496
<b>Texas State Board of Medical Examiners</b>		<b>Texas Department of Protective and Regulatory Services</b>	
Thursday, May 14, 1998, 9:00 a.m. and Saturday, May 16, 1998, 8:30 a.m. (respectively.).....	5489	Friday, May 29, 1998, 10:00 a.m.....	5496
Thursday, May 14, 1998, 10:30 a.m.....	5489	<b>Texas Public Finance Authority</b>	
Thursday, May 14, 1998, 10:30 a.m.....	5489	Wednesday, May 20, 1998, 10:30 a.m.....	5497
Thursday-Friday, May 14–15, 1998, 11:00 a.m. and 3:30 p.m. (respectively) .....	5490	<b>Public Utility Commission of Texas</b>	
Thursday, May 14, 1998, 1:00 p.m.....	5490	Friday, May 15, 1998, 1:00 p.m.....	5497
Thursday, May 14, 1998, 1:00 p.m.....	5490	<b>Texas Racing Commission</b>	
Friday, May 15, 1998, 8:30 a.m.....	5490	Friday, May 15, 1998, 10:00 a.m.....	5497
Friday, May 15, 1998, 9:30 a.m.....	5491	<b>Railroad Commission of Texas</b>	
Friday, May 15, 1998, 10:00 a.m.....	5491	Friday, May 22, 1998, 9:00 a.m.....	5497
		<b>Rural Community Health System</b>	
		Tuesday, May 26, 1998, 6:30 p.m.....	5498

<b>Texas State Soil and Water Conservation Board</b>	
Wednesday, May 20, 1998, 1:00 p.m. ....	5498
<b>Texas Department of Transportation</b>	
Thursday, June 4, 1998, 11:40 a.m. ....	5498
<b>University of Houston</b>	
Monday, May 18, 1998, 1:00 p.m. ....	5498
<b>The University of Texas System</b>	
Tuesday, May 12, 1998, 1:00 p.m. (Executive Session) .....	5498
Tuesday, May 12, 1998, 2:00 p.m. ....	5499
Wednesday—Thursday, May 13–14, 1998, 1:30 p.m. and 8:45 a.m. (respectively).....	5499
<b>Texas Water Development Board</b>	
Wednesday, May 20, 1998, 3:30 p.m. ....	5499
Thursday, May 21, 1998, 9:00 a.m. ....	5499
<b>Texas Water Resources Finance Authority</b>	
Thursday, May 21, 1998, 9:00 a.m. ....	5500
<b>Texas Workforce Commission</b>	
Tuesday, May 19, 1998, 9:00 a.m. ....	5500
<b>Texas Council on Workforce and Economic Competitiveness</b>	
Tuesday, May 19, 1998, 9:30 a.m. ....	5500
Tuesday, May 19, 1998, 10:00 a.m. ....	5501
Tuesday, May 19, 1998, 10:30 a.m. ....	5501
<b>Texas Youth Commission</b>	
Wednesday, May 20, 1998, 4:30 p.m. ....	5501
Wednesday, May 20, 1998, 5:00 p.m. ....	5501
Wednesday, May 20, 1998, 5:30 p.m. ....	5501
Thursday, May 21, 1998, 8:00 a.m. ....	5502
Thursday, May 21, 1998, 9:00 a.m. ....	5502
Regional Meetings.....	5502
<b>IN ADDITION</b>	
<b>Office of the Attorney General</b>	
Notice of Request for Proposals .....	5509
<b>Coastal Coordination Council</b>	
Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program .....	5509
<b>Office of Consumer Credit Commissioner</b>	
Notice Of Rate Ceilings.....	5510
Request for Interpretation of Subtitle 2, Title 79.....	5510
<b>Texas Court Reporters Certification Board</b>	
Certification of Court Reporters.....	5511
<b>Texas Department of Criminal Justice</b>	
Notice of Solicitation - Cancellation .....	5511
<b>Interagency Council on Early Childhood Intervention</b>	
Notice of Public Hearings.....	5511
<b>Texas Education Agency</b>	
Open-Enrollment Charter Guidelines and Application .....	5512
Request for Applications Concerning Even Start Family Literacy Program, 1998–1999 .....	5513
Request for Applications Concerning 1998–2000 Staff Development and Parent Training for Campus Deregulation and Restructuring to Improve Student Achievement Grant Program.....	5513
<b>Fire Fighters’ Pension Commission</b>	
Request for Proposal for Master Trust Custodial Services .....	5514
<b>General Land Office</b>	
Notice of Contract Award .....	5515
<b>Texas Health and Human Services Commission</b>	
Provider Contract Provisions - Senate Bill 30 .....	5515
<b>Texas Department of Housing and Community Affairs</b>	
Housing Trust Fund-Notice of Funding Availability .....	5516
Housing Trust Fund/State Energy Conservation Office, Housing Partnership Program, Notice of Funding Availability.....	5517
Notice of Public Hearing .....	5517
<b>Texas Department of Insurance</b>	
Insurer Services .....	5517
Third Party Administrator Application.....	5518
<b>Texas Department of Mental Health and Mental Retardation</b>	
Awarding of Contract .....	5518
<b>Texas Natural Resource Conservation Commission</b>	
Notice of Application for Amendment to Certificate of Adjudication Pursuant to Texas Water Code §11.122 Requiring Notice to Interjacent Appropriators .....	5518
Notice of Availability/Invitation to Comment.....	5519
Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions.....	5521
Extension of Deadline for Written Comments.....	5522
Proposal for Decision .....	5522
Provisionally-Issued Temporary Permits to Appropriate State Water.....	5522
Public Notice.....	5523
<b>Texas Parks and Wildlife Department</b>	
Request for Proposals: National Recreation Trails Fund.....	5524



**Public Utility Commission of Texas**

Notice of Application for Amendment to Service Provider Certificate of Operating Authority .....5524

Notice of Application for Approval of Preliminary Integrated Resource Plan .....5525

Notices of Application for Service Provider Certificate of Operating Authority .....5525

Notice of Intent to File Pursuant to P.U.C. Substantive Rule §23.27 5525

Public Notice of NPA Relief Recommendations for the Metropolitan Houston (713/281) NPAs, the Metropolitan Dallas (214/972) NPAs, and the Austin/Corpus Christi Area (512) NPA.....5525

Public Notice of Proposal for Implementing Number Conservation Measures in the Fort Worth and San Antonio Exchanges .....5526

**Riceland Regional Mental Health Authority**

Request for Proposal .....5527

**Teacher Retirement System of Texas**

Consultant Contract Award .....5527

**Texas Department of Transportation**

Notice of Invitation-BRINSAP Section.....5527

Notice of Invitation - Design Division.....5528

Notice of Invitation - Pharr District.....5529

**Texas Water Development Board**

Request for Statement of Qualifications from Consultants Water Research Study on Financing Methods for Water and Wastewater Infrastructure.....5531

# OFFICE OF THE 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 records 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, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 936-1730.

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Request for Opinions

**RQ-1127.** Request from the Honorable Edmund Kuempel, Chair, State Recreational Resources, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding whether the Daughters of the Republic of Texas is subject to the Open Meetings Act, Chapter 551, Government Code.

**RQ-1128.** Request from the Honorable Mike Moncrief, Chair, General Investigating Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, regarding authority of a home-rule city to conduct police civil service entrance examinations at different locations.

**RQ-1129.** Request from the Honorable Jerry Patterson, Chair, Veterans Affairs and Military Installations, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, regarding use of economic development funds by the City of League City.

**RQ-1130.** Request from the Honorable Pete P. Gallego, Chair, Committee on General Investigating, Texas House of Representatives,

P.O. Box 2910, Austin, Texas 78768-2910, regarding whether a district judge may simultaneously serve as a trustee of an independent school district.

**RQ-1131.** Request from the Honorable Jerry Patterson, Chair, Veterans Affairs and Military Installations, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, regarding whether a retired military officer may carry a firearm under the provisions of section 28 of article 4413 (29EE), V.T.C.S.

**RQ-1132.** Request from the Honorable Warren Chisum, Chair, Committee on Environmental Regulation, Texas House of Representatives P.O. Box 2910 Austin, Texas 78768-2910, regarding authority of the Parks and Wildlife Department to release information under the Central Texas Rare Species Conservation Plan, and related Questions.

TRD-9807879



# PROPOSED RULES

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

**Symbology in proposed amendments.** New language added to an existing section is indicated by the text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

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## TITLE 1. ADMINISTRATION

### Part IV. Office of the Secretary of State

#### Chapter 91. Texas Register

#### Subchapter B. Electronic Filing Procedures

##### 1 TAC §91.63

The Office of the Secretary of State proposes an amendment to §91.63, concerning Submission Forms. The proposal amends §91.63 by adding a new TR-1 submission form for publishing notice of administrative rules review under the General Appropriations Act, House Bill 1, Article IX, Section 167, passed by the 75th Texas Legislature.

The amendment is proposed under the Texas Government Code, §2002.017, which authorizes the Secretary of State to adopt rules to ensure the effective administration of the Texas Register, including the format of documents required to be filed for publication.

The amendment complements proposed new sections §§91.131, 91.133, 91.135, and 91.137, concerning procedures for publishing notice of administrative rules review under Section 167.

Dan Procter, director of the Texas Register, has determined that for each year of the first four years the amendment to §91.63 and new §§91.131, 91.133, 91.135, and 91.137 as proposed will be in effect, the fiscal implications for the state will be an increase of approximately \$200,000 in printing, postage, and related publication costs. There will be additional costs to state agencies that prepare rules for review under the amendment and new sections. There will be no cost to state government for the fifth year the amendment as proposed will be in effect. There will be no fiscal implications for local government as a result of enforcing or administering the amendment.

Mr. Procter also has determined that for each year the amendment as proposed will be in effect the public benefit anticipated as a result of the amendment will be the increased opportunity for public comment on state agencies' rules, and the repeal of any obsolete or invalid rules. Because Section 167

imposes requirements on state agencies rather than persons, there will be no economic cost incurred by persons, and there will be no effect on small businesses.

Comments on the proposal may be submitted in writing to Dan Procter, director, Texas Register Section, Office of the Secretary of State, 1019 Brazos, Room 245, Austin, Texas 78711-3824, or by e-mail to [dprocter@sos.state.tx.us](mailto:dprocter@sos.state.tx.us).

The amendment is proposed under the Texas Government Code, §2002.017 which authorizes the Secretary of State to adopt rules to ensure the effective administration of the Texas Register, including the format of documents required to be filed for publication.

The General Appropriations Act, House Bill 1, Article IX, Section 167, passed by the 75th Texas Legislature, is implemented by the proposal.

##### *§91.63. Submission Forms.*

(a) One typed submission form certified and signed by the agency liaison and certifying official accompanies each document submitted to the Texas Register. The document types corresponding forms are listed in paragraphs (1)-(6) [(5)] of this subsection:

(1) TR-1 - rule review;

(2) [(1)] TR-2 - rule submissions;

(3) [(2)] TR-3 - open meeting submissions;

(4) [(3)] TR-4 - miscellaneous submissions;

(5) [(4)] TR-5 - Governor, Attorney General, Secretary of State, Texas Ethics Commission, and Department of Banking submissions; and

(6) [(5)] TR-6 - notification pursuant to the Insurance Code, Chapter 5, Subchapter L.

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

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

Filed with the Office of the Secretary of State, on May 19, 1998.  
TRD-9808122

Clark Kent Ervin  
Assistant Secretary of State  
Office of the Secretary of State  
Earliest possible date of adoption: June 21, 1998  
For further information, please call: (512) 463-5562

## Subchapter D. Administrative Rules Review

### 1 TAC §§91.131, 91.133, 91.135, 91.137

The Office of the Secretary of State proposes new §§91.131, 91.133, 91.135, and 91.137, concerning procedures for publishing notice of administrative rules review under the General Appropriations Act, House Bill 1, Article IX, Section 167, passed by the 75th Texas Legislature.

Section 167 provides no new rulemaking authority to the Secretary of State to interpret or implement the law. These new sections are proposed under the Texas Government Code, §2002.017 and §2002.055, which authorizes the Secretary of State to adopt rules to ensure the effective administration of the Texas Register and the Texas Administrative Code, including the format of documents required to be filed for publication.

The proposed new sections establish a Rules Review section in the *Texas Register*. The Rules Review section will contain notices of agencies' plans to review rules and the notices that specify which chapters of existing rules are proposed for review or readopted under Section 167. The Rules Review section will contain no rule text. A new Date of Review will be added to each chapter in the Texas Administrative Code after an agency readopts chapters under these procedures. A new TR-1 submission for agencies to use in filing notices under these procedures is proposed under §91.63 of this title (relating to Submission Forms).

Dan Procter, director of the Texas Register, has determined that for each year of the first four years the sections as proposed will be in effect the fiscal implications for the state will be an increase of approximately \$200,000 in printing, postage, and related publication costs. There will be additional costs to state agencies that prepare rules for review under these procedures. There will be no cost to state government for the fifth year these sections as proposed will be in effect. There will be no fiscal implications for local government as a result of enforcing or administering these sections.

Mr. Procter also has determined that for each year the sections as proposed will be in effect the public benefit anticipated as a result of the amendment will be the increased opportunity for public comment on state agencies' rules and the repeal of any obsolete or invalid rules. Because Section 167 imposes requirements on state agencies rather than persons, there will be no economic cost incurred by persons, and there will be no effect on small businesses.

Comments on the proposal may be submitted in writing to Dan Procter, director, Texas Register Section, Office of the Secretary of State, 1019 Brazos, Room 245, Austin, Texas 78711-3824, or by e-mail to [dprocter@sos.state.tx.us](mailto:dprocter@sos.state.tx.us).

The new sections are proposed under the Texas Government Code, §2002.017 and §2002.055 which authorize the Secretary of State to adopt rules to ensure the effective administration of the Texas Register and the Texas Administrative Code, including the format of documents required to be filed for publication.

The General Appropriations Act, House Bill 1, Article IX, Section 167, passed by the 75th Texas Legislature, is implemented by the proposal.

#### §91.131. Scope of Rules Review.

(a) The General Appropriations Act, House Bill 1, Article IX, Section 167, directs state agencies to develop plans to review their rules and to determine, at a minimum, whether the reasons for adopting the rules still exist.

(b) Agencies may follow the procedures contained in this subchapter to comply with the notice requirements of Section 167.

#### §91.133. Plan to Review.

(a) August 31, 1998 is the deadline for publishing notice of a rules review plan in the *Texas Register*. To assure publication of notices before the deadline, agencies must file the rules review plans with the Texas Register by 5:00 p.m. Friday August 7, 1998. Notices of rules review plans that are submitted to the Texas Register after August 7 may miss the August 31 publication deadline required by Section 167. Agencies also must file rules review plans with the Governor and the Legislative Budget Board. The Secretary of State does not forward the plans to the Governor and the Legislative Budget Board.

(b) Section 167 does not address content of the plan. Examples of rules review plans submitted by state agencies are available at under the Secretary of State's web site (<http://www.sos.state.tx.us/texreg/index.html>) or write or phone the Texas Register office.

(c) Submit a rules review plan in electronic format as a file separate from rules or other documents.

(1) Use file transfer protocol (FTP), e-mail, or 3 1/2 inch diskettes, to deliver the file to the Texas Register. Submit files in the American Standard Code for Information Interchange (ASCII) or in Hypertext Markup Language (HTML) format. In an ASCII file, insert "<p>" before each paragraph. Tables, lists, and any special symbols must be in HTML format.

(2) Name the file as follows: "plan.agency code". Example: plan.004.

(d) Submit a completed TR-1 form as described in §91.63 of this title (relating to Submission Forms).

(e) The text of plans will not appear in the *Texas Register*. Each issue of the *Texas Register* will contain notice in the Rules Review section of any plans filed since the previous issue. Readers will be referred to the internet posting for the text of plans.

#### §91.135. Notice of Intention to Review (proposed review).

(a) This procedure is necessary for chapters which contain rules that were in effect before September 1, 1997. This procedure is optional for chapters that became effective after September 1, 1997. This procedure is unnecessary for chapters repealed by a state agency.

(b) The notice of intention to review shall include:

(1) the Texas Administrative Code title number, part number, and chapter numbers. Section numbers may be listed.

(2) an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist.

(3) a request for comments on the chapter from any interested person; and

(4) any other statement that an agency determines is required by law or explains the agency's intentions.

(c) Submit a notice of intention to review (proposed review) in electronic format as an ASCII file separate from rules or other documents. Insert "<p>" before each paragraph.

(1) Use file transfer protocol (FTP), e-mail, or 3 1/2 inch diskettes, to deliver the file to the Texas Register. Submit files in the American Standard Code for Information Interchange (ASCII) format.

(2) Name the file as follows: "review.agency code". Example: review.004. For more than one review, use numbers in the file name. Example: review1.004, review2.004, review3.004.

(d) Submit a completed TR-1 form as described in §91.63 of this title (relating to Submission Forms).

(e) Do not include the text of rules. The text is available in the Texas Administrative Code.

(f) Agencies may submit notices concurrently for publication in the Rules Review section and the Proposed Rules, Adopted Rules, Emergency Rules, and Withdrawn Rules sections of the Texas Register.

§95.137. Notice of Readoption (adopted review).

(a) This procedure is necessary for chapters which contain rules that were in effect before September 1, 1997. This procedure is optional for chapters that became effective after September 1, 1997. This procedure is unnecessary for chapters repealed by a state agency.

(1) Agencies may submit a notice of readoption (adopted review) 30 days after publication of the Notice of intention to review (proposed review).

(2) The Reviewed Date is the date this notice is filed with the Texas Register.

(b) A notice of readoption shall include:

(1) the Texas Administrative Code title number, part number, and chapter numbers. Section numbers may be listed;

(2) the publication date and page number for the notice of intention to review (proposed review);

(3) a summary of public comments regarding the readoption or a statement that the agency received no comments;

(4) any other statement that an agency determines is required by law or explains the agency's intentions.

(c) Submit a notice of readoption (adopted review) in electronic format as an ASCII file separate from rules or other documents. Insert "<p>" before each paragraph.

(1) Use file transfer protocol (FTP), e-mail, or 3 1/2 inch diskettes, to deliver the file to the Texas Register. Submit files in the American Standard Code for Information Interchange (ASCII) format.

(2) Name the file as follows: "review.agency code". Example: review.004. For more than one review, use numbers in the file name. Example: review1.004, review2.004, review3.004.

(d) Submit a completed TR-1 form as described in §91.63 of this title (relating to Submission Forms).

(e) Do not include the text of rules. The text is available in the Texas Administrative Code.

(f) Agencies may submit notices concurrently for publication in the Rules Review section and the Proposed Rules, Adopted

Rules, Emergency Rules, and Withdrawn Rules sections of the Texas Register.

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 May 19, 1998.

TRD-9808123

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: June 21, 1998

For further information, please call: (512) 463-5562

## Part X. Department of Information Resources

### Chapter 201. Planning and Management of Information Resources Technologies

#### 1 TAC §201.13

The Department of Information Resources proposes an amendment to §201.13, concerning information security. The proposed amendment is a substantial revision of the current information security standards portion of the department's rules regarding information resources standards, and incorporates recommendations made by the Information Resources Asset Protection Council. The purpose and effect of the amendment is to clarify, refine and update the current information security standards and to remove obsolete provisions.

The amendment is proposed in accordance with Texas Government Code §2054.051(b), which requires the department to develop and publish standards relating to information resource management by state agencies, and Texas Government Code §2054.052(a), which provides that the department may adopt rules as necessary to implement its responsibilities.

Mr. Edward Serna, director of the Oversight Operations Division, has determined that for each year of the first five years the proposed amendment will be in effect, there will be no fiscal implications for state government as a result of enforcing or administering the amendment. There will be no foreseeable fiscal implications for local government as a result of enforcing or administering the amendment.

Mr. Serna has determined that for each year of the first five years the proposed amendment will be in effect, there will be a benefit to the public in that the standards for information security for state agencies will be clearer and easier to follow, thus resulting in greater security for the state's information resources. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to C. J. Brandt, Jr., General Counsel, Department of Information Resources, P.O. Box 13564, Austin, Texas 78711, no later than 5 p.m., within 30 days after publication. Envelopes must be clearly marked "Formal Comment to Proposed Action Enclosed."

The amendment is proposed under Texas Government Code §2054.052(a), which authorizes the department to adopt rules

as necessary to carry out its responsibility under the Information Resources Management Act.

Texas Government Code §2054.051 is affected by the proposed amendment.

§201.13. *Information Resource Standards.*

- (a) (No change.)
- (b) Information Security Standards.

(1) Applicability. The following rule constitutes required minimum security standards for the protection of information resources for agencies of the State of Texas. All agencies are required to have an information resources security program consistent with these standards. Copies of this standard may be obtained from the Department of Information Resources, P. O. Box 13564, Austin, Texas 78711, or from the Department's Internet web page at <http://www.dir.state.tx.us>.

(2) Definitions. The following words and terms, when used with this subsection, shall have the following meanings, unless the context clearly indicates otherwise.

(A) Access - To approach, view, instruct, communicate with, store data in, retrieve data from, or otherwise make use of information resources.

(B) Confidential Information - Information that is excepted from disclosure requirements under the provisions of the Texas Public Information Act or other applicable state or federal law.

(C) Control - A protective action, device, policy, procedure, technique, or other measure that reduces exposure.

(D) Custodian of an Information Resource - A person responsible for implementing owner-defined controls and access to an information resource.

(E) Information Security Function - The elements, structure, objectives, and resources that establish an agency-level information resources security program.

(F) Mission Critical Information - Information that is defined by the agency to be essential to the agency's function(s).

(G) Owner of an Information Resource - A person responsible:

(i) for a business function and

(ii) for determining controls and access to information resources supporting that business function.

(H) Security Risk Analysis - The process of identifying and documenting vulnerabilities and applicable threats to information resources.

(I) Security Risk Assessment - The process of evaluating the results of the risk analysis by projecting losses, assigning levels of risk, and recommending appropriate measures to protect information resources.

(J) Security Risk Management - Decisions to accept exposures or to reduce vulnerabilities by either mitigating risks or applying cost effective controls.

(K) Security Incident or Breach - An event which results in unauthorized access, loss, disclosure, modification, or destruction of information resources whether accidental or deliberate.

(L) User of an Information Resource - An individual or automated application authorized to access an information resource in accordance with the owner-defined controls and access rules.

(3) Policy. It is the policy of the State of Texas that:

(A) Information resources residing in the various agencies of state government are strategic and vital assets belonging to the people of Texas. These assets must be available and protected commensurate with the value of the assets. Measures shall be taken to protect these assets against accidental or unauthorized access, disclosure, modification or destruction, as well as to assure the availability, integrity, utility, authenticity and confidentiality of information. Access to state information resources must be appropriately managed.

(B) The agency head is responsible for the protection of information resources.

(C) All individuals are accountable for their actions relating to information resources. Information resources shall be used only for intended purposes as defined by the agency and consistent with applicable laws.

(D) Risks to information resources must be managed. The expense of security safeguards must be commensurate with the value of the assets being protected.

(E) The integrity of data, its source, its destination, and processes applied to it must be assured. Changes to data must be made only in authorized and acceptable ways.

(F) Information resources must be available when needed. Continuity of information resources supporting critical governmental services must be ensured in the event of a disaster or business disruption.

(G) Security requirements shall be identified, documented and addressed in all phases of development or acquisition of information resources.

(H) Agencies must ensure adequate controls and separation of duties for tasks that are susceptible to fraudulent or other unauthorized activity.

(4) Classification of Information. Owners, with the agency head's concurrence, are responsible for classifying program information. Agencies are responsible for defining all information classification categories except the Confidential Information category, which is defined in paragraph (2) of this subsection, and establishing the appropriate controls for each.

(5) Management and Staff Responsibilities. The agency head or his or her designated representative(s) shall review and approve ownership and the attendant responsibilities.

(A) Owners, custodians, and users of information resources. Owners, custodians and users of information resources shall be identified, and their responsibilities defined and documented by the agency. In cases where information resources are used by more than one major program, the owners shall reach consensus and advise the information security function as to the designated primary owner. The following distinctions among owner, custodian, and user responsibilities should guide determination of these roles:

(i) Owner Responsibilities. Owners are responsible and authorized to: approve access and formally assign custody of an asset; judge the asset's value; specify data control requirements and convey them to users and custodians; and ensure compliance with applicable controls. Owners must specify appropriate controls, based



on risk assessment, to protect the state's information resources from unauthorized modification, deletion or disclosure. Controls extend to outsourced contracts. Owners must confirm that controls are in place to ensure the accuracy and completeness of data. Owners shall assign custody of assets and provide appropriate authority to implement security controls and procedures. Owners are the authority on appropriate level of controls and the timing of their implementation.

(ii) Custodian responsibilities. Custodians of information resources, including entities providing outsourced services to state agencies must:

(I) implement the controls specified by the owner(s);

(II) provide physical and procedural safeguards for the information resources;

(III) assist owners in evaluating the cost-effectiveness of controls and monitoring; and

(IV) implement the monitoring techniques and procedures for detecting, reporting and investigating breaches in information security.

(iii) User responsibilities. Users of information resources shall use the resource only for its defined purposes and comply with established controls.

(B) The information security function. Each agency head or his or her designated representative shall institute an information security function to administer the agency information security program.

(i) It shall be the duty and responsibility of this function to recommend policies and establish procedures and practices, in cooperation with owners and custodians, necessary to ensure the security of information assets against unauthorized or accidental modification, destruction or disclosure.

(ii) The information security function shall document and maintain an up-to-date information security program. The security program shall include written descriptions of information resources security responsibilities, assigned personnel resources, policies, guidelines, data security classification schemes, standards and procedures for the protection of information resources. The information security program must be approved by the agency head.

(iii) The security function is responsible for monitoring the effectiveness of defined controls for critical information.

(iv) The security function shall report, at least biennially, to the agency head or his or her designated representative the status and effectiveness of information resources security controls.

(C) A review of the agency's information security program for compliance with these standards will be performed at least biennially by individual(s) independent of the information security function and designated by the agency head or the information resources manager.

#### (6) Managing Risks.

(A) A security risk analysis shall be performed and documented. The security risk analysis shall be updated at least biennially. Security risk assessment results shall be presented to the agency head or his or her designated representative. The agency head shall make the final security risk management decisions to accept exposures. The agency head must approve the security risk management plan.

(B) Each agency shall maintain a disaster recovery plan for information resources. The disaster recovery plan will:

(i) contain measures which address the impact and magnitude of loss or harm that will result from an interruption;

(ii) identify recovery resources and establish a source for each;

(iii) contain step-by-step instructions for implementing the plan;

(iv) be maintained to ensure currency, and

(v) be tested at least annually.

(C) Mission critical data shall be backed up on a scheduled basis and stored off site.

#### (7) Personnel and Contractor Practices.

(A) All agency personnel, and employees of independent contractors who may be deemed to be custodians or users, shall formally acknowledge that they will comply with the security policies and procedures of the agency. Information resource users who do not complete a formal acknowledgment shall not be granted access to information resources. The agency head or their designated representative will determine the method of acknowledgement and how often this acknowledgment must be renewed.

(B) Agencies shall use non-disclosure agreements to document the acceptance by agency and contractor employees of special agency information security requirements.

(C) Agencies shall provide an ongoing information resources security awareness education program for users whose duties bring them into contact with mission critical information resources. Scheduled training shall also be provided by the agency.

(D) State agencies shall use new employee orientation to introduce information resource security awareness and inform new employees of information security policies and procedures. If an employee leaves or changes employment, security privileges shall be appropriately modified to protect information resources.

#### (8) Physical Security.

(A) Physical access to mission critical information resource facilities shall be managed and documented.

(B) Reviews of physical security measures for compliance with these standards shall be conducted periodically by the agency head or designated representatives.

(C) Information resources shall be protected from environmental hazards. Designated employees shall be trained to monitor environmental control procedures and equipment and shall be trained in desired response in case of emergencies or equipment problems.

(D) Emergency procedures shall be developed and regularly tested.

#### (9) Information Safeguards.

(A) Access. Access shall be managed to ensure authorized use of information resources. Security risk assessment shall be the basis of decisions and policies regarding managed access to information resources.

(B) Confidentiality of data and systems.

(i) Confidential information shall be accessible only to authorized users. Information containing any confidential data shall be identified, documented, and protected in its entirety.

(ii) Information resources assigned from one agency to another shall be protected in accordance with the conditions imposed by the providing agency.

(C) Identification/Authentication.

(i) Each user of information resources shall be assigned a unique personal identifier or user identification except for situations where risk analysis demonstrates no need for individual accountability of users. User identification shall be authenticated before the system may grant that user access.

(ii) A user's access authorization shall be removed or appropriately modified when the user's employment or role status changes.

(iii) Systems shall contain authentication functions that comply with documented security risk management decisions.

(iv) Systems which use passwords shall be based on the existing federal standard on password usage.

(v) For written electronic communications sent to a state agency where the identity of a sender or the contents of a message must be authenticated, the use of digital signatures is also encouraged. Agencies should refer to Texas Government Code, §2054.060, section 201.14 of this title, and guidelines issued by the Department for further information.

(D) Encryption. Encryption techniques for storage and transmission of information shall be used based on documented agency security risk management decisions.

(E) Ability to Audit.

(i) Automated systems must provide the means whereby authorized personnel have the ability to audit and establish individual accountability for any action that can potentially cause access to, generation of, modification of, or effect the release of confidential information.

(ii) Appropriate audit trails shall be maintained to provide accountability for updates to mission critical information, hardware and software and for all changes to automated security or access rules.

(iii) Appropriate audit trails shall be maintained for all changes to automated security or access rules.

(iv) Based on risk assessment, a sufficiently complete history of transactions shall be maintained to permit an audit of the system by tracing the activities of individuals through the system.

(F) Security breaches.

(i) Security breaches shall be investigated promptly and documented.

(ii) If criminal action is suspected, the agency must contact the appropriate law enforcement and investigative authorities immediately.

(G) Systems development and testing.

(i) Test functions shall be kept either physically or logically separate from production functions. Copies of production data shall not be used for testing unless the data has been declassified or unless all state and contractor employees involved in testing are otherwise authorized access to the data.

(ii) Appropriate information security and audit controls shall be incorporated into new systems. Each phase of systems acquisition shall incorporate and document corresponding development or assurances of security and auditable controls.

(iii) All security-related information resource changes shall be approved by the owner through a quality assurance process before implementation.

(10) Data Communication Systems.

(A) Network resource controls shall be implemented commensurate with the security risk analysis.

(B) System identification screens shall include warning statements unless documented security risk analysis indicates otherwise. Warning statements shall address the following topics:

(i) unauthorized use is prohibited;

(ii) usage may be subject to security testing and monitoring; and

(iii) misuse is subject to criminal prosecution.

~~[(1) Applicability. The following rule constitutes required minimum security standards for the protection of automated information resources for agencies of the state of Texas. The department requests each agency to complete implementation of an information resources security program consistent with these standards on or before September 1, 1997, in accordance with the implementation schedule of paragraph (12) of this subsection. Beginning with the agency information resources strategic plan to be submitted on January 1, 1993, agencies shall include in each biennial strategic plan for information resources an overview of their current information security posture and their future plans for completing development of a security program, consistent with these standards and implementation schedule, over each current strategic planning cycle. To assist in the interpretation and implementation of these standards, the department has developed the Information Resources Security and Risk Management Policy, Standards and Guidelines manual which is available on request from the Department of Information Resources, P.O. Box 13564, Austin, Texas 78711.]~~

~~[(2) Classification of information. The state's automated information files and databases are essential and vital public resources which must be protected from unauthorized modification, deletion, or disclosure. Subject to executive management review, agency program managers have responsibility for the information assets utilized in carrying out the programs under their direction and accordingly are responsible for classifying program information.]~~

~~[(A) For purposes of this subsection, two classifications of information are defined which require special protective precautions:]~~

~~[(i) confidential information—information maintained by state agencies that is exempt from disclosure under the provisions of the Texas Open Records Act or other state or federal law; and]~~

~~[(ii) sensitive information—information maintained by state agencies that requires special precautions, as determined by agency standards and risk management decisions, to assure its accuracy and integrity by utilizing error checking, verification procedures, and/or access control to protect it from unauthorized modification or deletion.]~~

~~[(B) As defined in subparagraph (A)(ii) of this paragraph, sensitive information may be either public or confidential and~~

requires a higher than normal assurance of accuracy and completeness. Likewise, confidential information may also be considered sensitive, requiring special measures to ensure its accuracy. Thus, the controlling factor for confidential information is dissemination, while the controlling factor for sensitive information is that of integrity.]

{(3) Policy. It is the policy of the state of Texas that:}

{(A) Automated information and information resources residing in the various agencies of state government are strategic and vital assets belonging to the people of Texas. These assets require a degree of protection commensurate with their value. Measures shall be taken to protect these assets against accidental or unauthorized disclosure, modification, or destruction, as well as to assure the security, reliability, integrity, and availability of information.]

{(B) The protection of assets is a management responsibility.]

{(C) Access to state information resources must be strictly controlled. State law requires that state owned information resources be used only for official state purposes.]

{(D) Information which is sensitive or confidential must be protected from unauthorized access or modification. Data which is essential to critical state functions must be protected from loss, contamination, or destruction.]

{(E) Risks to information resources must be managed. The expense of security safeguards must be appropriate to the value of the assets being protected, considering value to both the state and a potential intruder.]

{(F) The integrity of data, its source, its destination, and processes applied to it must be assured. Changes to data must be made only in authorized and acceptable ways.]

{(G) In the event a disaster or catastrophe disables information processing and related telecommunication functions, the ability to continue critical governmental services must be assured. Information resources must be available when needed.]

{(H) Security needs must be considered and addressed in all phases of development or acquisition of new information processing systems.]

{(I) Security awareness and training of employees is one of the most effective means of reducing vulnerability to errors and fraud and must be continually emphasized and reinforced at all levels of management. All individuals must be accountable for their actions relating to information resources.]

{(J) Agency information security programs must be responsive and adaptable to changing vulnerabilities and technologies affecting state information resources.]

{(K) Agencies must ensure adequate separation of functions for tasks that are susceptible to fraudulent or other unauthorized activity.]

{(4) Management and staff responsibilities:]

{(A) The responsibilities of a position with respect to security and risk management shall be commensurate with its authority. Descriptions of security roles and responsibilities for agency personnel shall be included in written position descriptions and compiled in the agency security manual developed and maintained by the information security function.]

{(B) Each agency head, or the information resources manager acting on delegated authority, shall institute an information security function to administer the agency information security program. It shall be the duty and responsibility of this function to establish all procedures and practices necessary to ensure the security of information assets against unauthorized or accidental modification, destruction, or disclosure. The information security function within each agency shall document and maintain an up-to-date internal information security program. The agency security program shall include written internal policies and procedures for the protection of information resources, be an instrument implementing state information security policies and standards, be applicable to all elements of the agency, and be signed by the information resources manager or the agency head.]

{(C) The Information Resources Management Act makes it clear that information and information resources residing in the various agencies of state government are assets owned by the people of Texas. For the purpose of information resources security and risk management, the concept of owners, custodians, and users of information resources, and their surrogate responsibilities to the people of Texas, is utilized in the development of an information security program. The effectiveness of the program depends to a large extent on the correct identification of those surrogate owners, custodians, and users of information. Owners, custodians, and users of data, software, and other information resources shall be identified, documented, and their responsibilities defined. All resources shall be assigned an owner. In cases where data or software is aggregated for purposes of ownership, the aggregation shall be at a level which assures individual accountability. The following distinctions among owner, custodian, and user responsibilities should guide determination of these roles:]

{(i) Owner responsibilities. The owner of information resources is the designated individual upon whom responsibility rests for carrying out the program that uses the resources. That person is referred to herein as a program manager. The owner, or program manager, is responsible and authorized to: approve access and formally assign custody of the asset; judge the asset's value; specify data control requirements and convey them to users and custodians; and ensure compliance with applicable controls. Ownership responsibilities apply in the development of outsourcing contracts with private firms or with other agencies. These contracts must specify appropriate controls, based on risk assessment, to ensure protection of the state's confidential or sensitive information files, databases, and software from unauthorized modification, deletion, or disclosure.]

{(ii) Custodian responsibilities. A custodian is the agent in charge of the organizational unit providing technical facilities, data processing and other support services to owners and users of automated information. The custodian of information resources is assigned the responsibility to: implement the controls specified by the owner; provide physical and procedural safeguards for the information resources within the facility; assist owners in evaluating the cost-effectiveness of controls; administer access to the information resources; and to make provisions for timely detection, reporting, and analysis of unauthorized attempts to gain access to information resources. Custodial responsibilities apply to all entities providing outsourcing services to state agencies.]

{(iii) User responsibilities. The users of information resources have the responsibility to: use the resource only for the purposes specified by its owner; comply with controls established by the owner; and prevent disclosure of confidential or sensitive information.]

{(D) The agency information security function acting on behalf of the agency head and with cooperation from program and technical management, shall assign information asset ownership and ownership responsibilities for all information resources within the agency.}

{(E) Program managers, having been assigned information resource ownership, shall assign custody of program assets to appropriate technical and data center managers and ensure they are provided the appropriate direction to implement the security controls and procedures that have been defined.}

{(F) Technical managers, assigned information resource custodianship, are charged with executing the monitoring techniques and procedures for detecting, reporting, and investigating breaches in information asset security.}

{(G) An internal audit of the information security function shall be performed periodically, based on risk assessment, as directed by the agency head or the information resources manager acting on delegated authority for risk management decisions.}

{(5) Risk analysis.}

{(A) The information security function within each agency shall require a comprehensive risk analysis of all information processing systems be performed on a periodic basis as set by agency standards. Risk analysis results shall be presented to the owner of the information resource for risk management. Each step of the risk analysis process must be documented. The degree of risk acceptance (i.e., the exposure remaining after implementation of the recommended protective measures) must be identified.}

{(B) A risk analysis report documenting the risk assessment must be submitted to the agency head. The risk analysis process provides the basis for preparing the agency's risk analysis report.}

{(C) All information resources determined by agency management to be essential to the agency's critical mission and functions, the loss of which would have an unacceptable impact, shall have a written and cost effective contingency plan that will provide for the prompt and effective continuation of critical state missions in the event of a disaster. The contingency plan shall be tested and updated at least annually to assure that it is valid and remains current.}

{(D) Data and software essential to the continued operation of critical agency functions shall be backed up. The security controls over the backup resources shall be as stringent as the protection required of the primary resources.}

{(6) Personnel practices.}

{(A) Each agency shall prepare a security manual that lists the agency's security policies and procedures. All agency personnel shall be required to provide written acknowledgment that they have received, read, and understand the security policies and procedures. The agency head, or the information resources manager acting on delegated authority, shall determine how often this written acknowledgment must be renewed.}

{(B) Each agency shall establish procedures for reviewing information resource functions to determine which positions require special trust or responsibilities.}

{(C) Agencies shall use non-disclosure agreements to document the acceptance by employees and contractors of special information security requirements as defined by agency standards and risk management decisions.}

{(D) Agencies shall provide an ongoing awareness and training program in information security and in the protection of state information resources for all personnel whose duties bring them into contact with confidential or sensitive state information resources. Security training sessions for these personnel shall be held at least annually. Further, awareness and training in security shall not be limited to formal training sessions, but shall include periodic briefings and continual reinforcement of the value of security consciousness in all employees whose duties bring them into contact with confidential or sensitive state information resources.}

{(E) State agencies shall take advantage of new employee orientation to establish security awareness and inform new employees and contractors of information security policies and procedures. If an employee leaves the employment of any agency of the state, for whatever reason, all security privileges shall be immediately revoked and the employee shall be prevented from having any opportunity to access information.}

{(7) Physical security.}

{(A) Management reviews of physical security measures shall be conducted annually, as well as whenever facilities or security procedures are significantly modified.}

{(B) Physical access to central computer rooms shall be restricted to only authorized personnel. Authorized visitors shall be recorded and supervised.}

{(C) Employees and information resources shall be protected from environmental hazards. Designated employees shall be trained to monitor environmental control procedures and equipment and shall be trained in desired response in case of emergencies or equipment problems.}

{(D) Confidential or sensitive information, when handled or processed by terminals, communication switches, and network components outside the central computer room, shall receive the level of protection necessary to ensure its integrity and confidentiality. The required protection may be achieved by physical or logical controls, or a mix thereof.}

{(E) Emergency procedures shall be developed and regularly tested.}

{(8) Information security.}

{(A) Authorized use and ownership.}

{(i) All information and telecommunication resources leased or owned by the state and all time-sharing services billed to the state shall be used only to conduct state business.}

{(ii) All computer software programs, applications, source code, object code, and documentation shall be deemed to be a work made for hire and is state property and shall be protected as such if developed.}

{(I) by state employees in the course and scope of their employment or with the use of state equipment, materials, or other resources, with the exception of employees of universities and other institutions of higher education, provided such university or institution has an intellectual property policy in place which addresses ownership rights regarding software development; or}

{(II) by contract personnel acting under a contract with the state, unless the contract under which the software or documentation is developed specifically provides otherwise; or}

{(III) with state funds.}

*[(iii)] All computer software programs, applications, and documentation purchased for the use of the state is state property and shall be protected as such.]*

*[(B) Confidentiality of data and systems.]*

*[(i)] Confidential information shall be accessible only to personnel who are authorized by the owner on a strict "need to know" basis in the performance of their duties. Data containing any confidential information shall be readily identifiable and treated as such in its entirety.]*

*[(ii)] When confidential or sensitive information from one agency is received by another agency in connection with the transaction of official business, the receiving agency shall maintain the confidentiality or sensitivity of the information in accordance with the conditions imposed by the providing agency.]*

*[(C) Integrity. Controls shall be established to ensure the accuracy and completeness of data. User management shall ensure that data comes from the appropriate source for the intended use.]*

*[(D) Passwords.]*

*[(i)] Except for public users of systems where such access is authorized, or for situations where risk analysis demonstrates no need for individual accountability of users, each user of a multiple-user automated system shall be assigned a unique personal identifier or user identification. User identification shall be authenticated before the system may grant that user access to automated information.]*

*[(ii)] A user's access authorization shall be removed from the system when the user's employment is terminated or the user transfers to a position where access to the system is no longer required.]*

*[(iii)] Systems which use passwords shall conform to the federal standard on password usage contained in the Federal Information Processing Standard Publication 112 (FIPS PUB 112), which specifies minimum criteria and provides guidance for selecting additional password security criteria, when appropriate. A current password standard compliance document shall be maintained for each system which uses passwords, specifying the criteria to be met for the 10 factors which address design, implementation, and use of access control systems as contained in the FIPS PUB 112 standard.]*

*[(E) Auditability.]*

*[(i)] Audit trails shall be maintained to provide accountability for all accesses to confidential or sensitive information and software and for all changes to automated security or access rules.]*

*[(ii)] An auditable, continuous chain of custody shall record the transfer of confidential or sensitive information.]*

*[(iii)] A sufficiently complete history of transactions shall be maintained for each session involving access to confidential or sensitive information to permit an audit of the system by tracing the activities of individuals through the system.]*

*[(iv)] Automated systems which process confidential or sensitive information must provide the means whereby authorized personnel have the ability to audit and establish individual accountability for any action that can potentially cause access to, generation of, or effect the release of the information.]*

*[(F) Access controls. Controls shall ensure that legitimate users of the computer cannot access stored software or data unless they have been authorized to do so.]*

*[(G) Security breaches.]*

*[(i)] Security breaches shall be promptly investigated.]*

*[(ii)] If criminal action is suspected, the agency must contact the appropriate local law enforcement and investigative authorities immediately. Laws governing the admissibility of evidence are very strict, and without professional advice the agency may be jeopardizing possible legal actions.]*

*[(H) Systems development and testing.]*

*[(i)] Test functions shall be kept either physically or logically separate from production functions. Copies of production data shall not be used for testing unless the data has been declassified or unless all personnel involved in testing are otherwise authorized access to the data.]*

*[(ii)] Appropriate information security and audit controls shall be incorporated into new systems. Each phase of systems acquisition shall incorporate corresponding development or assurances of security and auditability controls.]*

*[(iii)] After a new system has been placed in operation, all program changes shall be approved before implementation to determine whether they have been authorized, tested, and documented.]*

*[(9) Authentication, data encryption, and key management.]*

*[(A) Systems shall implement authentication functions that are consistent with the level of confidentiality or sensitivity of the data they contain and process.]*

*[(B) It will not be a requirement at this time for agencies to use data encryption techniques for storage and transmission of data. However, those agencies who choose to employ data encryption shall adopt the data encryption standard, also referred to as the DES algorithm, which is defined in the Federal Information Processing Standard Publication 46-1 (FIPS PUB 46-1). It is highly recommended that electronic fund transfer (EFT) systems use the data encryption standard (DES). For systems employing encryption as described above, procedures shall be prescribed for secure handling, distribution, storage, and construction of DES key variables used for encryption and decryption. Protection of the key shall be at least as stringent as the protection required for the information encrypted with the key.]*

*[(10) Data communication systems.]*

*[(A) General network controls.]*

*[(i)] Network resources participating in the access of confidential information shall assume the confidentiality level of that information for the duration of the session. Controls shall be implemented commensurate with the highest risk.]*

*[(ii)] All network components under state control must be identifiable and restricted to their intended use.]*

*[(B) Distributed network access security. Owners of distributed information resources served by distributed networks shall prescribe sufficient controls to ensure that access to those resources is restricted to authorized users and uses only. These controls shall selectively limit services based on:]*

*[(i) user identification and authentication (e.g., password, smart card/token); or]*

~~[(ii) designation of other users, including the public where authorized, as a class (e.g., public access through dial-up or public switched networks), for the duration of a session; or]~~

~~[(iii) physical access controls.]~~

~~[(C) Application security. Network access to an application containing confidential or sensitive data, and data sharing between applications, shall be as authorized by the application owners and shall require authentication.]~~

~~[(D) Alternate procedures. If the agency utilizes a communication network to process critical applications or functions, it shall, as part of its contingency plan, provide for an alternate means of accomplishing its program objectives in case the system or its communication network becomes unavailable. Alternative procedures shall be established that enable agency personnel to continue critical day-to-day governmental operations in spite of the loss of the communication network.]~~

~~[(E) Dial-up access. For services other than those authorized for the public, users of dial-up terminals shall be positively and uniquely identifiable and their identity authenticated (e.g., by password) to the systems being accessed.]~~

~~[(F) Warning statements. System identification screens shall include the following warning statements:]~~

~~[(i) unauthorized use is prohibited;]~~

~~[(ii) usage may be subject to security testing and monitoring; and]~~

~~[(iii) abuse is subject to criminal prosecution.]~~

~~[(11) Personal computers and word processors. Personal computer systems and word processors used to store, process, and/or access confidential or sensitive data, shall undergo risk analysis as required by the information security function. Risk analysis results shall be presented to the owner of the information resources for risk management. The degree of risk acceptance (i.e., the exposure remaining after implementation of the recommended protective measures) must be identified. The information security function must be prepared to demonstrate that security precautions have been established to ensure data confidentiality and the maintenance of information integrity.]~~

~~[(12) Implementation schedule. Implementation of this rule shall be in accordance with the following schedule. Earlier implementation of any item would be advantageous to the protection of state information resources.]~~

~~[(A) September 1, 1993—Establish an information security function (reference paragraph (4) of this subsection) to administer the agency information security program which shall include:]~~

~~[(i) written internal policies and procedures for the protection of information resources;]~~

~~[(ii) assignment of information asset ownership and custodianship and the attendant responsibilities for all information resources within the agency.]~~

~~[(B) September 1, 1993—Implementation of all required personnel practices (reference paragraph (6) of this subsection).]~~

~~[(C) September 1, 1994—Completion of risk analysis (reference paragraph (5) of this subsection) of all information resources (including mainframes, minicomputers, personal computers, local area networks and distributed processing systems) used to col-~~

~~lect, record, process, store, retrieve, display, and transmit confidential or sensitive information, including:]~~

~~[(i) documentation of risk analysis results;]~~

~~[(ii) recommended protective measures;]~~

~~[(iii) the degree of risk acceptance after such measures would be implemented;]~~

~~[(iv) a written disaster recovery plan.]~~

~~[(D) September 1, 1994—Implementation of all physical security requirements (reference paragraph (7) of this subsection).]~~

~~[(i) physical access controls;]~~

~~[(ii) identification of environmental hazards;]~~

~~[(iii) development of environmental control procedures;]~~

~~[(iv) emergency response training.]~~

~~[(E) September 1, 1995—Implementation and testing of agency disaster recovery plans (reference paragraph (5)(C) of this subsection).]~~

~~[(F) September 1, 1996—Implementation of information resources protective measures as identified by risk analysis including those for mainframes, minicomputers, personal computers, local area networks, and distributed processing systems (reference paragraph (8) of this subsection).]~~

~~[(i) logical and/or physical access controls to all information resources on a "need to know" basis;]~~

~~[(ii) user authentication (passwords);]~~

~~[(iii) data integrity controls;]~~

~~[(iv) audit trails;]~~

~~[(v) periodic internal audits;]~~

~~[(vi) documentation and investigation of security breaches.]~~

~~[(G) September 1, 1997—All remaining requirements consistent with these standards.]~~

~~[(H) Waivers. The executive director of the department is hereby delegated authority by the board to grant a requesting state agency a compliance waiver from any implementation date of the schedule in this paragraph. Application for waiver will be made in writing to the department by the agency information resources manager. The agency must clearly demonstrate to the department through written justification that the overall economic interests of the state in matters of information security are best served by granting the compliance waiver and the requesting agency must submit a new written implementation schedule. The department will act on requests for waivers based on the agency's compliance with other information security standards not affected by the waiver, the agency's newly submitted implementation schedule, and the provision that the executive director of the department will notify the board when requests for waivers are received.]~~

~~(c)-(e) (No change.)~~

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

Filed with the Office of the Secretary of State on May 5, 1998.  
TRD-9807302

C.J. Brandt, Jr.  
General Counsel  
Department of Information Resources  
Earliest possible date of adoption: June 21, 1998  
For further information, please call: (512) 475-2153

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**TITLE 4. AGRICULTURE**

**Part VIII. Texas Agriculture Resources  
Protection Authority**

**Chapter 101. General Rules**

**Subchapter A. Routine Procedures**

**4 TAC §101.2, §101.20**

The Texas Agriculture Resources Protection Authority (the Authority) proposes amendments to §101.2, concerning meetings of the Authority, and §101.20 concerning submission of reports by agencies. The amendments are proposed to make §101.2 consistent with changes made by the 75th Legislature and to correct an error in §101.20. House Bill 1144, 75th Legislature, 1997, changed the meeting requirement of the Authority from quarterly to annually. The amendment to §101.2 changes to annually all references to quarterly meetings and establishes the annual meeting date as the first Monday of June each year. The amendment to §101.20 corrects an error to clarify when reports are to be filed.

Donnie Dippel, Assistant Commissioner for Pesticide Programs for the Texas Department of Agriculture, has determined that for the first five-year period the amendments are in effect there will be a \$4200 per year savings to state government in the form of savings to government agencies represented on the board resulting from changing the meeting requirement to an annual meeting.

Mr. Dippel also has determined that for each year of the first five years the amendments are in effect the public benefit will be elimination of unnecessary board meetings. There will be no effect on small or large businesses. There is no anticipated economic costs to persons who are required to comply with the amendment as proposed.

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 on the proposal 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, §76.009, as amended by House Bill 1144, 75th Legislature, 1997, which provides the Texas Agriculture Resources Protection Authority with the authority to adopt rules to carry out its duties.

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

*§101.2. Meetings.*

(a) The required annual [~~quarterly~~] meetings of the Texas Agriculture Resources Protection Authority (the Authority) shall be held on the first Monday of June each year [~~the third month of the calendar quarter~~] at 10 a.m. at a location designated by the

commissioner for use of the Authority unless a different date, hour, or place is specified by call for the regular quarterly meeting to be held alternatively at another place, date, or hour.

(b) Alternative annual [~~quarterly~~] meetings or special meetings may be called by the presiding officer of the Authority or by a majority of the members of the Authority. A call by a majority of the members must be in writing and delivered to the commissioner at least ten days in advance of the anticipated meeting date. The call shall state the time, place, and purpose of the meeting, including a proposed agenda.

(c) - (e) (No change.)

*§101.20. Submission of Reports by Agencies.*

(a) Time and Place for Submission.

(1) (No change.)

(2) Such reports shall be submitted no later than the 30th day following the end of [~~the~~] each fiscal year quarter.

(3) (No change.)

(b) - (d) (No change.)

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

Filed with the Office of the Secretary of State, on May 11, 1998.

TRD-9807654

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Agriculture Resources Protection Authority

Earliest possible date of adoption: June 21, 1998

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

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**TITLE 13. CULTURAL RESOURCES**

**Part I. Texas State Library and Archives  
Commission**

**Chapter 2. General Policies and Procedures**

**Subchapter A. Principles and Policies of the  
Commission**

**13 TAC §2.52**

The Texas State Library and Archives Commission proposes an amendment to §2.52, concerning the exhibition of state archives. The amendment is being proposed to expand the loan of archival materials, historical items, and artifacts and to specify conditions under which those items will be loaned for public exhibition.

Christopher LaPlante, Director, Archives and Information Services Division, has determined that for the first five year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section as proposed.

Mr. LaPlante also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the rule will be to provide an increased opportunity for the public to view archival materials, historical

items, and artifacts from the collections of the Texas State Library and Archives Commission, and to help ensure the security and stability of those items during their exhibition. There is no anticipated impact on small businesses. There are anticipated economic costs associated with transporting and insuring items loaned for public exhibition for those persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Christopher LaPlante, Director, Archives and Information Services Division, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711-2927.

The amendment is proposed under Government Code §441.190 and §441.006 which provide the Texas State Library and Archives Commission with the authority to govern the State Library and Archives and adopt rules establishing standards and procedures for the protection, maintenance, and storage of archival state records.

The following are the statutes that are affected by this section: Texas Government Code, §441.190, and Texas Government Code, §441.006.

§2.52. *Customer Service Policies.*

(a)-(c) (No Change)

(d) Exhibition of State Archives. Archival [ ~~No archival~~] material, historical items, artifacts, or museum pieces will be loaned for public exhibition [except that items may be loaned to the State Preservation Board for display in the Capitol Complex Visitors Center] only under conditions specified in paragraphs (1) - (8) of this subsection [specified in writing by the director and librarian]. Requests for loan of the original Texas Declaration of Independence, original copies of the Constitutions of Texas, Treaties of the Republic of Texas, and certain other highly significant documents will require the formal approval of the Commission. Microfilm reproductions, preservation photocopies, other photographic reproductions, or digital images will be created prior to archival materials being lent for exhibition.

(1) General Requirements.

(A) A formal loan request should be made in writing at least 60 days before the materials are to leave the Texas State Library and Archives Commission. The request shall be addressed to the Director and Librarian. The written request shall include the exhibition title, dates of exhibition and loan period, a general description of the exhibition, and complete citations for each item requested. If special circumstances warrant, the Director and Librarian may waive the 60-day requirement.

(B) The maximum loan period is normally six months. The Director and Librarian reserves the right to recall loaned materials for good cause at any time and will attempt to give reasonable notice thereof.

(C) The borrower must agree in writing to adhere to the commission rules governing the loan and exhibition of materials. If the borrower wishes to use its own incoming loan agreement form as well, it must first agree that the terms of the commission loan agreement are the controlling terms when there is a conflict between the two documents.

(D) The borrower may not take any of the actions detailed in clauses (i), (ii), and (iii) of this subparagraph without first obtaining written permission from the Director and Librarian.

(i) Display commission materials in a location or exhibition other than that cited on the loan agreement.

(ii) Transfer physical custody of the loaned items to another institution or third party.

(iii) Alter, clean, or repair loaned items; perform any conservation treatment; or remove a document from a housing provided by commission (e.g., polyester encapsulation, mat, etc.).

(2) Security and Environmental Conditions.

(A) Archival material, historical items, and artifacts must be displayed in a facility equipped with fire protection equipment as described in National Fire Protection Association– Recommended Practice for the Protection of Museums and Museum Collections (ANSI/NFPA 911-1991).

(B) Items on loan must be secure at all times. Professional security guards or other trained personnel must regularly patrol exhibition areas during hours of public access. The borrower shall have sufficient 24-hour guards or a 24-hour electronic security system to effectively monitor and protect the exhibition, storage, and preparation areas at all times.

(C) Temperature and humidity levels must be monitored and controlled. A temperature of 770 plus or minus 5 degrees and relative humidity of 50% plus or minus 5% without rapid fluctuations must be maintained in the storage, preparation, and exhibition areas. Before approving a loan and while items are on loan, the Director and Librarian may request copies of temperature and humidity readings from the borrower to verify that these requirements can and are being met.

(D) Exhibition cases must be dirt-free, dust-proof, and secured with locks or security screws. Frames must also be dirt- and dust-proof and secured to the wall with security screws or other hanging methods approved by the Director and Librarian. Glass or acrylic sheeting, such as Plexiglas, Lucite, or Polycast must protect all materials displayed in frames or cases. The Director and Librarian may specify grades of acrylic sheeting that filter ultraviolet light for materials that are especially light sensitive.

(E) The exhibition must be monitored daily to ensure security and stability of documents within the cases and frames as well as adequate maintenance and cleaning of the exhibit area.

(F) Eating, drinking, and smoking must be prohibited in the storage, preparation, and exhibition areas.

(3) Lighting Conditions.

(A) Incandescent bulbs are the preferred light source for exhibition lighting. All light sources must be filtered to remove the ultraviolet component.

(B) When lighting items exhibited in a case, exterior incandescent lights shall be used whenever possible. If interior case lights are used, fluorescent lights with ultraviolet filters are preferable because fluorescent tubes will have minimal affect on the temperature in the case.

(C) No original archival materials, historical items, or artifacts shall be exhibited where they will be exposed to direct or unfiltered sunlight.

(4) Handling and Installation.

(A) Original archival materials, historical items, or artifacts may be handled and installed only by a curator, registrar,



preparator, or conservator under contract to or on the staff of the borrower.

(B) The commission may encapsulate or mat documents for loan to minimize dangers associated with handling and exhibition. No item borrowed for exhibition may be altered, cleaned, repaired, or removed from housing provided by the commission without first obtaining written permission from the Director and Librarian.

(C) The commission reserves the right to directly supervise the installation of its materials.

(D) If documents are displayed in exhibition cases, the cases must be dirt-free, dust-proof, and locked or secured with security screws.

(E) All items must be handled, supported, and conveyed by means that will prevent damage during transport to and from the borrowing institution and within it.

(F) All items must be given sufficient support to prevent damage during exhibition.

(5) Inspections.

(A) A commission staff member may inspect the exhibition area before the loan is approved. If, after a commission staff inspection, in the opinion of the Director and Librarian any loan requirement cannot be met, the loan will not be made.

(B) Commission staff members or personnel designated by the Director and Librarian may make inspection trips at any time during the period of the loan.

(6) Packing and Transportation.

(A) Unless the commission specifies otherwise, commission staff will pack items going out on loan. The borrower is responsible for packing loan items to return to the commission. All items must be given sufficient support and protection to prevent damage during transit.

(B) The borrower will pay all costs associated with shipping or transporting the items on loan from the commission.

(7) Insurance. All borrowers other than state agencies must provide all-risk insurance coverage in an amount satisfactory to the commission for all loaned items from the time the items leave the commission until the time of return. Evidence of this policy must be provided the commission before any items are removed from the commission.

(8) Publicity and Credit.

(A) The Director and Librarian must approve any plans to reproduce loaned items for exhibition-related publications, other publications, and publicity purposes.

(B) Commission materials on exhibition may be photographed by the general public without the use of flash or tripod.

(C) In the exhibition and related publicity, the commission must receive clear and prominent credit. The following credit line shall be used: Archives and Information Services Division, Texas State Library and Archives Commission.

(e)-(h) (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 May 5, 1998.

TRD-9807283

Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

Earliest possible date of adoption: June 21, 1998

For further information, please call: (512) 463-5440

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**TITLE 16. ECONOMIC REGULATION**

**Part II. Public Utility Commission of Texas**

**Chapter 23. Substantive Rules**

**Subchapter H. Telephone**

**16 TAC 23.104**

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

The Public Utility Commission of Texas (PUC) proposes the repeal of §23.104 relating to Telecommunications Pricing. Project Number 18886 has been assigned to this proceeding. The Appropriation Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The PUC held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the PUC is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to (1) satisfy the requirements of Section 167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. As a result of this reorganization, §23.104 will be duplicative of proposed new §26.213 of this title (relating to Telecommunications Pricing) in Chapter 26 of this title (Substantive Rules Applicable to Telecommunications Service Providers).

Mr. Nelson Parish, chief economic analyst, Office of Policy Development, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

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

Mr. Parish has also determined that for each year of the first five years the repeal is in effect there will be no impact on

employment in the geographic area affected by the repeal of this section.

Comments on the proposed repeal (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. All comments should refer to Project Number 18886, repeal of §23.104.

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

Cross Reference to Statutes: Public Utility Regulatory Act §14.002.

§23.104. *Telecommunications Pricing.*

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 May 8, 1998.

TRD-9807525

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: June 21, 1998

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



## Chapter 25. Substantive Rules Applicable to Electric Service Providers

The Public Utility Commission of Texas proposes new §25.84, Annual Reporting of Electric Utilities' Relationships with Their Affiliates, §25.271, Code of Conduct for Electric Utilities and Their Affiliates, §25.272, Corporate Support Service Agreements Between Electric Utilities and Their Affiliates, §25.273, Contracts Between Electric Utilities and Their Affiliates, and §25.274, Compliance Proceeding to Implement Code of Conduct for Electric Utilities and Their Affiliates. These sections are proposed under Project Number 17549. Section 25.84 replaces the rule provision currently located at §23.11(c) of this title, relating to General Reports, and requires that electric utilities' report to the commission annually on relationships with their affiliates. Section 25.271 establishes broad safeguards to govern the interaction between regulated electric utilities and their affiliates. Section 25.272 establishes the requirements for the implementation of corporate support service agreements between regulated utilities and their affiliates. Section 25.273 establishes the fair, competitive bidding process that utilities may use to obtain products and services from an affiliate or other third party, and establishes requirements for any contracts with affiliates that may result from this competitive bidding process. Section 25.274 establishes the requirements for the compliance proceedings that will be necessary for the implementation of these new rules relating to affiliate activities.

In Project Number 14400, the commission's rulemaking to address integrated resource planning (completed in 1996), the commission indicated that it would address at a later date the issues of energy services unbundling and utilities' relationships with their affiliates. This rulemaking addresses

affiliate activities, and the issue of energy services unbundling is being addressed in Project Number 19205.

Based on its extensive experience in regulating the electric power industry and in implementing the pro-competitive policies adopted by the U.S. Congress, the Texas Legislature, and the Federal Energy Regulatory Commission, the commission finds that there is a strong likelihood that a utility will favor its affiliates where those affiliates are providing services in competition with other, non-affiliated entities. The commission concludes that this would not be in the public interest.

Further, based on recent experience conducting periodic electric utility rate reviews and on other regulators' recent experiences with the motor carrier, telephone, and natural gas industries, the commission finds that there is a strong incentive for regulated utilities or their holding companies to subsidize their competitive activities with revenues or intangible benefits derived from their regulated monopoly businesses. The commission concludes that this is not in the public interest.

Finally, the commission finds that current regulations governing the relations between and among units/divisions of an electric utility (or an electric utility holding company) are not adequate to prevent or discourage anticompetitive behavior. The commission concludes that articulating new rules which reflect the current state of competition in the electric power industry will provide regulatory certainty, facilitate more efficient competition to the benefit of customers, and fairly balance the equities among competing service providers.

Based on its experience in regulating the electric power and local telephone industries, the commission has found that structural solutions are generally to be preferred over regulatory solutions in fostering competition. An example of a structural solution would be to completely prohibit a utility or its affiliate from engaging in activities which are or can be performed by unregulated entities. However, the commission is aware that efficient competition is fostered by encouraging the participation of many qualified participants, including unregulated affiliates. Consequently, these rules attempt to balance these potentially conflicting interests.

In the natural gas industry, which has become significantly competitive at the wholesale level, such a balanced solution has been highly effective in fostering healthy competition. Providing market participants with real-time knowledge of utility-to-affiliate interactions, for example, has allowed the natural gas market to police itself, rather than require extensive regulatory involvement. In both natural gas and electricity, the delivery system remains a natural monopoly but the production (power generation) and merchant (marketing) functions are now competitive rather than natural monopolies. Within these markets, the playing field will be leveled, competition will be fostered, and customers will benefit from early, clear articulation of policies and processes governing the relationships between utilities' and affiliates' regulated and competitive functions. The benefit of such policies has been demonstrated in natural gas restructuring and in the commission's own two years of experience with the competitive wholesale electric power market.

In proposing these rules relating to affiliate activities, therefore, the commission has three objectives: fostering fair competition for all participants in the market place, preventing cross-subsidization of competitive activities by monopoly rate payers, and preventing anticompetitive behavior and utilities' circumvention of their regulatory obligations. As a result of the commission's

establishing the rules governing the relationships between regulated utilities and their competitive affiliates, participants in the market place will benefit from full knowledge of "the rules of the road" in the current regulatory environment. If the Texas Legislature removes existing legal barriers to entry by new entrants into competitive activities, those functions would be governed by this code of conduct as well.

The commission requests that interested parties address the following issues in their comments on the proposed rules. The questions are grouped into twelve topics: application of the rules to cooperatives, application of the rules to affiliates that are also regulated utilities, separation of the utility from its affiliates, limitations on affiliate transactions, definition of corporate support services, migration of employees, use by an affiliate of a utility's name and logo, customer requests for information about products or services offered by affiliates, transfers of assets that take place before versus after the promulgation of these rules, regulation of transactions related to "exempt telecommunications carriers," the competitive bidding process, and review and approval of service agreements and contracts. This grouping provides a framework for discourse on these topics, and interested parties should organize their comments according to these categories. The commission also seeks any additional comments on the proposed rule that interested parties believe are appropriate. Furthermore, the commission will seek comment at a later date on the format of the annual reports required in proposed §25.84.

First, the commission seeks comment on the application of the proposed rules. Are certain exemptions or modifications to these rules appropriate for electric cooperatives? If so, what exemptions or modifications would allow the commission to meet its stated objectives? How might customers of electric cooperatives be affected by exemptions or modifications of these rules?

Second, the commission requests comment on how affiliates that are also regulated utilities, under the jurisdiction of this commission or another regulatory body, might be affected by the proposed rules. Are certain exemptions or modifications of these rules appropriate for affiliates that are also regulated utilities? If so, what exemptions or modifications would allow the commission to meet its stated objectives?

Third, the commission requests comment on the provisions requiring separation of the utility from its affiliates. The commission notes that there is a clear trade-off between the degree of structural separation between utilities and their affiliates versus the amount of regulatory oversight that is required by the commission to ensure that its three stated objectives are met; in other words, the greater the separation, the less regulatory oversight required. To the extent that interested parties make arguments against structural separation due to potentially lost economies of scale and scope, such parties should provide an analysis showing how any alleged losses of economies of scale and scope compare to the increased costs to both the commission and the utility for the greater regulatory oversight required to balance the degree of separation between the utility and its affiliates.

Fourth, the commission seeks comment on the proposal to limit transactions between utilities and their affiliates to the following three possibilities: corporate support services, products and services offered by the utility through tariffs, or products and services purchased by the utility as a result of competitive

bidding. Should the commission allow any other affiliate transactions beyond those entered into through one of these three methods?

Fifth, the commission solicits comment on the definition of corporate support services. Is the definition appropriate and sufficiently detailed?

Sixth, the commission requests comment on the provisions relating to migration of employees between the regulated utility and its affiliates. The provision prohibiting temporary assignment of employees includes an exception for restoration in the event of a "major service interruption." Is it necessary to define what constitutes a "major service interruption?" In addition, how and when should utilities inform the commission that this exception has been invoked? The proposed transfer fee formula includes a fee of 10% of ending salary for the first year of experience, with an additional 0.5% of ending salary for each year of employment with the regulated utility. Would a different transfer fee formula be more appropriate? How can the commission ensure that there is a balance between allowing fair compensation to the utility, without unduly impeding professional growth opportunities for the utility's employees? Should this provision be applied under extraordinary circumstances, such as a major corporate restructuring involving a mass transfer of employees from the utility to a new affiliate? Should certain classes of employees be exempted from the transfer fee provision, such as clerical employees or those employees engaged in the provision of corporate support services? Or, in the alternative, should the fee apply only to employees whose total annual compensation is above a specified floor, such as \$30,000?

Seventh, the commission seeks comment on the provision requiring use of a disclaimer when an affiliate uses the utility's name or logo. Would an outright prohibition on the use of the utility's name or logo provide for more efficient implementation of these rules? To the extent that interested parties argue for allowing use of the regulated utility's name and logo by its affiliates, with or without a disclaimer, they should address how the commission can ensure that the utility is fairly compensated for use of the trade name and logo. For example, should utilities be entitled to receive royalty payments? Furthermore, is the disclaimer compromise the best possible means to inform consumers that there is a corporate relationship between the regulated and unregulated entities, while simultaneously informing consumers that the two entities have different regulatory obligations and oversight by the commission?

Eighth, the commission requests comment on the provision requiring utilities to give customers a current list of all affiliated and non-affiliated providers when a customer requests information about products or services offered by affiliates and their competitors. The commission believes that customers should be able to rely on such lists as being reasonably accurate, but that a utility should not be held liable for any inaccuracy in the list or lack of service provider viability if such is not the fault of the utility. The commission requests comment on what additional safeguards could be put in place to address this issue.

Ninth, the commission requests comment on the issue of how to address transfers of assets other than generation and transmission assets (from the utility to an affiliate) that take place before these rules are in effect. The proposed rules require that such asset transfers be subject to the competitive bidding requirements of §25.273. However, some utilities may already have made mass transfers of assets to their affiliates

prior to these rules taking effect, which could afford the affiliate a competitive advantage not available to other entities, including those firms that are affiliated with a utility that transfers assets after the rules are adopted. How should the commission address this potential disparity in competitive advantage?

Tenth, the commission requests comment as to whether these proposed rules are sufficient to achieve the commission's goal of regulating the transactions between utilities subject to the provisions of the Public Utility Holding Company Act of 1935 (PUHCA) and their affiliated "exempt telecommunications companies" (ETCs) pursuant to the federal Telecommunications Act of 1996 §103, as codified at 15 U.S.C.A. §79z-5c. The commission has proposed rules relating specifically to affiliate transactions between PUHCA-jurisdictional utilities and their affiliated ETCs in Project Number 17508. Are separate rules for these specific affiliate transactions required? If not, are there any changes that need to be made to the rules proposed herein to properly regulate transactions between utilities and their affiliated ETCs?

Eleventh, the commission seeks comment on the competitive bidding process set forth in proposed §25.273. The commission desires to provide sufficient guidance for what constitutes a "fair, competitive bidding process" without being overly prescriptive. How might these requirements be streamlined so as to provide greater flexibility for utilities to procure products and services in the event that such products and services are competitively available? What types of current services being obtained by a utility from an affiliate would fall under this rule? Should the commission establish a threshold annual dollar amount under which purchases by a utility from an affiliate, other than for corporate support services, would not be subject to the competitive bidding process? If so, what would be an appropriate threshold amount?

Finally, the commission requests comment on the provisions relating to the commission's review and approval of service agreements and contracts. Specifically, proposed §25.272 and §25.273 state that corporate support service agreements and contracts are "subject to commission review and approval for compliance with PURA requirements and commission rules." Should the commission require approval of these service agreements and contracts prior to their implementation by the utility? What procedural requirements for review and approval of these documents should be instituted by the commission? How should existing service agreements and contracts be treated by the commission?

Suzanne L. Bertin, assistant director, Office of Policy Development, 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 the enforcing or administering the sections.

Ms. Bertin 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 these sections will be improved regulatory oversight of electric utilities and enhanced competition in the provision of energy-related and telecommunications-related services.

It is anticipated that there will be economic costs incurred by persons who are required to comply with the new sections as proposed. The costs incurred are likely to vary from utility to utility, and are difficult to ascertain. The benefits accruing

from implementation of these rules, however, are expected to outweigh these costs.

For each year of the first five years the sections are in effect, there will be no effect on small businesses as a result of enforcing the proposed sections.

Ms. Bertin has further determined that for the first five years the proposed sections are in effect there may be a favorable impact on the opportunities for employment in the geographic areas of Texas affected by implementing the requirements of the rules, but the magnitude of such an impact cannot be ascertained.

Comments on the proposed rule (16 copies) may be submitted to Filing Clerk, Public Utility Commission of Texas, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas, 78701-3326, within 31 days after publication. Reply comments may be submitted within 45 days after publication. All comments should refer to Project Number 17549. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the sections. The commission will consider the costs and benefits in deciding whether to adopt the sections.

## Subchapter D. Records, Reports, and Required Information

### 16 TAC §25.84

The commission staff will conduct a public hearing on this rule-making under Government Code §2001.029 at the commission's offices on June 25, 1998, at 9:00 a.m.

Section 25.84 is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998) (PURA) §§11.002(a), 14.001, 14.002, 14.003, 14.151, 14.154, and 15 U.S.C.A. §79z-5c. Section 11.002(a) requires establishment of a comprehensive and adequate regulatory system by the Public Utility Commission of Texas to ensure just and reasonable rates, operations, and services. Section 14.001 grants the commission the general power to regulate and supervise the business of each utility within its jurisdiction. Section 14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. Section 14.003 grants the commission the authority to require submission of information by the utility regarding its affiliate activities. Section 14.151 grants the commission authority to prescribe the manner of accounting for all business transacted by the utility. Section 14.154 grants the commission limited authority over the utility's affiliates, with respect to their transactions with the utility. Finally, 15 U.S.C.A. §79z-5c grants the commission authority to regulate the transactions between PUHCA-jurisdictional utilities and their affiliated ETCs.

Cross Reference to Statutes: PURA §§11.002(a), 14.001, 14.002, 14.003, 14.151, 14.154, 15 U.S.C.A. §79z-5c.

§25.84. Annual Reporting of Electric Utilities' Relationships with Affiliates.

(a) Purpose. This section establishes annual reporting requirements for activities between utilities and their affiliates, as allowed under §25.271 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates).

(b) Application. This section applies to all electric utilities operating in the State of Texas as defined in the Public Utility Regulatory Act (PURA) §31.002 (1), and also to affiliates as defined in PURA §11.003 (2) to the extent specified herein.

(c) Definitions. Any terms defined in §25.271 of this title have the same meanings herein.

(d) Annual Report of Affiliate Activities. A "Report of Affiliate Activities" shall be filed annually with the commission. Using forms approved and provided by the commission, a utility shall report activities among itself and its affiliates in accordance with the requirements of §25.271 of this title. The report shall be filed by June 1, and shall encompass the time period from January 1 through December 31 of the immediately preceding year.

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

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

TRD-9807804

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: June 7, 1998

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



## Subchapter K. Relationships with Affiliates

### 16 TAC §25.271

Section 25.271 is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998) (PURA) §§11.002(a), 14.001, 14.002, 14.003, 14.151, 14.154, 31.001(c), 32.101(c), 35.003(b), 35.034, 35.035, 36.003, 36.058, 38.021, 38.022, 55.006, 51.001 and 52.001 as well as 15 U.S.C.A. §79z-5c and Texas Revised Civil Statutes Annotated article 717p (Vernon Supplement 1998). Section 11.002(a) requires establishment of a comprehensive and adequate regulatory system by the Public Utility Commission of Texas to ensure just and reasonable rates, operations, and services. Section 14.001 grants the commission the general power to regulate and supervise the business of each utility within its jurisdiction. Section 14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. Section 14.003 grants the commission the authority to require submission of information by the utility regarding its affiliate activities. Section 14.151 grants the commission authority to prescribe the manner of accounting for all business transacted by the utility. Section 14.154 grants the commission limited authority over the utility's affiliates, with respect to their transactions with the utility. Section 31.001(c) requires that the commission formulate and apply rules, policies, and principles to protect the public interest in a more competitive electric market place. Section 32.101(c) requires that customer proprietary information be treated as highly sensitive trade secrets. Section 35.003(b) prohibits electric utilities from granting undue preference to a person in connection with the purchase or sale of energy or other services. Section 35.034 grants the commission authority to approve transfers of certain assets between utilities and affiliates. Section 35.035 governs the valuation of assets transferred by a utility to or from an affiliate. Section 36.003 requires the commission to ensure that a utility's rates are just and reasonable, sufficient, equitable, and consistent in application to each class of consumer, and not unreasonably preferential, prejudicial, or discriminatory. Section 36.058 sets forth the circumstances under which the commission may

allow payments by a utility to an affiliate. Section 38.021 requires that utilities not grant an unreasonable preference to or impose an unreasonable disadvantage on different persons in the same classification. Sections 38.022 and 55.006 require that utilities not discriminate against competitors or engage in practices that restrict or impair competition in electric and telecommunications markets, respectively. Sections 51.001 and 52.001 require that the commission implement innovative new rules, policies, and principles to protect the public interest in telecommunications markets and provide equal opportunity to telecommunications competitors. 15 U.S.C.A. §79z-5c grants the commission authority to regulate the transactions between PUHCA-jurisdictional utilities and their affiliated ETCs. Finally, Texas Revised Civil Statutes Annotated article 717p (Vernon Supplement 1998) grants Texas river authorities and their affiliates certain rights and privileges that differ from those of other electric utilities in the state.

Cross Reference to Statutes: PURA §§11.002(a), 14.001, 14.002, 14.003, 14.151, 14.154, 31.001(c), 32.101(c), 35.003(b), 35.034, 35.035, 36.003, 36.058, 38.021, 38.022, 55.006, 51.001, and 52.001, 15 U.S.C.A. §79z-5c, and Texas Revised Civil Statutes Annotated article 717p (Vernon Supplement 1998).

§25.271. Code of Conduct for Electric Utilities and Their Affiliates.

(a) Purpose. The provisions of this section establish broad safeguards to govern the interaction between regulated utilities and their affiliates. In promulgating these affiliate rules, the commission has three objectives: fostering fair competition for all participants in the market place, preventing cross-subsidization of competitive activities by monopoly rate payers, and preventing anticompetitive behavior and utilities' circumvention of their regulatory obligations.

(b) Application. This section applies to all electric utilities operating in the State of Texas as defined in the Public Utility Regulatory Act (PURA) §31.002 (1), and also to affiliates as defined in PURA §11.003 (2) to the extent specified herein. River authorities are exempted from subsection (d) of this section pursuant to Texas Revised Civil Statutes Annotated article 717p (Vernon Supplement 1998).

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

(1) Affiliate rules - The body of rules in Chapter 25, Subchapter K, relating to Relationships with Affiliates, inclusive of §§25.271 of this title, 25.272 of this title (relating to Corporate Support Service Agreements Between Electric Utilities and Their Affiliates), 25.273 of this title (relating to Contracts Between Electric Utilities and Their Affiliates) and 25.274 of this title (relating to Compliance Proceedings to Implement Code of Conduct for Electric Utilities and Their Affiliates).

(2) Antitrust laws - Federal and state antitrust laws including the following:

(A) Federal antitrust laws - Sherman Act, 15 United States Code §§1-7; Clayton Act, 15 United States Code §§12-27; and a portion of the Federal Trade Commission Act, 15 United States Code §45.

(B) Texas antitrust laws - Texas Free Enterprise and Antitrust Act of 1983, Texas Business & Commerce Code §§15.01-15.52.

(3) Arm's length transaction - The standard of conduct under which unrelated parties, each acting in its own best interest, would carry out a particular transaction. Applied to related parties, in testing whether a transaction is at "arm's length," it must be ascertained whether the transaction could have been made on the same terms to a disinterested third party in a bargained transaction.

(4) Corporate support services - Those services, generally administrative in nature, that relate to the operation of companies in any corporate family, regardless of whether a company in the corporate family is involved in the provision of energy, energy-related products or services, telecommunications, or telecommunications-related products or services. Examples of services meeting this definition include, but are not limited to, payroll, shareholder services, insurance, financial reporting, financial planning and analysis, corporate accounting, corporate security, human resources (compensation, benefits, employment policies), employee records, pension management, and telecommunications and information systems only to the extent they are not used in the provision of electricity, energy-related products or services or the provision of retail or wholesale telecommunications products or services. Examples of services not meeting this definition include, but are not limited to, regulatory affairs, lobbying, legal services, employee recruiting, engineering, purchasing of electric transmission, system operations, marketing, and telecommunications and information systems used in the provision of electricity or energy-related products or services or the provision of retail or wholesale telecommunications products or services.

(5) Proprietary customer information - Any information compiled by an electric utility on a customer in the normal course of providing electric service which makes possible the identification of any individual customer by matching such information with the customer's name, address, account number, type or classification of service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, or any other information that the customer has expressly requested not be disclosed. Information relating to customers that is aggregated, redacted, or organized in such a way as to make it impossible to identify the customer to whom the information relates does not constitute proprietary customer information.

(6) Service agreements - Contracts between a utility and an affiliate for the provision of corporate support services.

(7) Temporary, intermittent, or rotational assignments - Non-permanent assignments that have a duration of less than one year, that begin and end in intervals, or that are cyclical in nature.

(d) Structural and transactional safeguards.

(1) Separate and independent entities. A utility shall be a corporate entity separate from its affiliates, operating independently.

(2) Separate officers, directors, and employees. A utility shall not jointly employ officers, directors, and employees with an affiliate. The exception is that a parent company officer or director may serve on the board of the utility or on the board of an affiliate providing services or products related to energy or telecommunications, but not on both the board of the utility and of an affiliate providing services or products related to energy or telecommunications.

(3) Books and records. A utility shall maintain books, records, and accounts separate from those of its affiliates, subject to review by the commission, as follows:

(A) In accordance with generally accepted accounting principles and consistent with state and federal guidelines, a utility shall record all transactions with its affiliates, whether direct or indirect.

(B) A utility shall prepare financial statements that are not consolidated with those of its affiliates.

(C) A utility and its affiliates shall maintain sufficient records to allow for an audit of the transactions between the utility and its affiliates. At any time, the commission may, at its discretion, require a utility to initiate, at the utility's expense, an audit performed by an independent third party.

(4) No credit support by a utility. A utility shall not allow an affiliate to obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the utility's assets. The financial arrangements of a utility's affiliates are subject to the following restrictions:

(A) Any indebtedness incurred by an affiliate will be without recourse to the utility;

(B) A utility shall not enter into any agreements under terms of which the utility is obligated to commit funds in order to maintain the financial viability of an affiliate;

(C) A utility shall not make any investment in an affiliate under circumstances in which the utility would be liable for the debts and/or liabilities of the affiliate incurred as a result of acts or omissions of an affiliate;

(D) A utility shall not issue any security for the purpose of financing the acquisition, ownership, or operation of an affiliate;

(E) A utility shall not assume any obligation or liability as guarantor, endorser, surety, or otherwise in respect of any security of an affiliate;

(F) A utility shall not pledge, mortgage or otherwise use as collateral any assets of the utility for the benefit of an affiliate;

(G) This subsection does not affect a utility's obligations under other law or regulations, such as the obligations of a public utility holding company under §23.18(c)(2) of this title (relating to Foreign Utility Company Ownership by Exempt Holding Companies).

(5) Arm's length transactions. Transactions between a utility and its affiliates shall be at arm's length. With the exception of transactions relating to corporate support services, transactions between a utility and its affiliates for products and services shall be made only in accordance with tariffs or through a fair, competitive bidding process.

(A) Tariffs. Tariffs shall meet the requirements delineated in §23.24 of this title (relating to Form and Filing of Tariffs). Except as provided for in subparagraph (C) of this paragraph, any sales of a product or service by a utility to its affiliate shall be governed by a tariff on file with the commission, making the same products and services available to any third party entity on the same terms and conditions.

(B) Competitive bidding.

(i) Purchase of products or services by a utility from its affiliate. Except as provided for in subparagraph (C) of this paragraph, a utility may not enter into a transaction to purchase a product or service from an affiliate unless the transaction is the result of a fair, competitive bidding process formalized in a contract

subject to the provisions of §25.273 of this title (relating to Contracts Between Electric Utilities and Their Affiliates).

(ii) Transfers of assets other than generation or transmission facilities. For purposes of this subparagraph, assets are defined as those that are in rate base, previously were in rate base, or are capital assets of the utility. Any transfer of assets from a utility to its affiliates, other than generation or transmission facilities, must be the result of a fair, competitive bidding process formalized in a contract subject to the provisions of §25.273 of this title.

(C) Corporate support services. A utility may engage in transactions directly related to the provision of corporate support services with its affiliates, in accordance with the requirements relating to service agreements set forth in §25.272 of this title (relating to Corporate Support Service Agreements Between Utilities and Their Affiliates). As a general principle, such provision of corporate support services shall not allow or provide a means for the transfer of confidential information from the utility to the affiliate, create the opportunity for preferential treatment or unfair competitive advantage, create opportunities for cross-subsidization of affiliates, or otherwise provide any means to circumvent these affiliate rules.

(D) Transfer of generation or transmission assets. The transfer of generation or transmission assets from a utility to an affiliate will be reviewed by the commission pursuant to the provisions of PURA §§14.101, 35.034, and 35.035 and any rule implementing those sections.

(6) Employee migration.

(A) Tracking migration of employees. A utility shall track and document all employee movement between the utility and its affiliates. Such information shall be made available to the commission on an annual basis in the context of the utility's filing pursuant to §25.84 of this title (relating to Annual Reporting of Electric Utilities' Relationships with Affiliates). The tracking information shall include the following: an identification code for the migrating employee, the respective titles held while employed at each entity, the effective dates of the migration, and amount of the transfer fee paid, if applicable. Movement of an employee from a utility to an affiliate or vice versa shall be accomplished through the employee's termination of employment with one company and acceptance of employment with the other.

(B) Employee rotation. Temporary, intermittent, or rotational assignments of utility employees to affiliates are prohibited. The exception to this provision is that employees may be temporarily assigned to an affiliated or non-affiliated utility to assist in restoring power in the event of a major service interruption.

(C) Transfer fee. A utility shall be entitled to a one-time payment by its affiliate for the costs that the utility has invested in development of an employee who changes employment from the utility to the utility's affiliate. Such fees shall be recorded in a separate account for future consideration by the commission. The fees shall be calculated using the following formula: transfer fee = final salary x ((years of service with utility x 0.5%) + 10%). This subparagraph should not be construed as to interfere with the conditions of employment resulting from a collective bargaining agreement recognized under federal law.

(7) Use of property and equipment. A utility shall not own property in common with its affiliate unless prior approval is obtained from the commission. A utility's office space and office equipment shall be physically separate from that of its affiliates, where physical separation is accomplished by having office space and equipment in either separate buildings or in secure, controlled-

access areas within a building. A utility shall not share computer systems and information systems with an affiliate, nor shall a utility allow an affiliate access to its computer and information systems. The exception to this provision is that computer systems and information systems may be shared only to the extent necessary for the provision of corporate support services; however, the utility shall ensure that the proper cost allocation mechanisms, security access, and other safeguards are in place to ensure full compliance with these affiliate rules.

(e) Safeguards relating to provision of products and services.

(1) Products and services available on a non-discriminatory basis. If a utility makes a product or service available to an affiliate, it shall make the same product or service available to all non-affiliates on a nondiscriminatory basis. A utility shall process all requests for a product or service from affiliated and non-affiliated entities on a non-discriminatory basis. If a utility's tariff allows for discretion in its application, the utility shall apply that provision in the same manner to its affiliates and non-affiliates, as well as to their respective customers. If a utility's tariff allows no discretion in its application, the utility shall strictly apply that provision. Utilities are prohibited from using customer-specific contracts to circumvent these requirements.

(2) Discounts, rebates, or fee waivers. If a utility offers its affiliate a discount, rebate, or fee waiver for any product or service, it shall make the same available on a non-discriminatory basis to all non-affiliates. A pricing benefit made available by the utility through an open, competitive bidding process will be considered to satisfy this requirement. Specifically, no less than 24 hours prior to a utility's provision to its affiliate of a discount, rebate, or fee waiver, the utility shall post a conspicuously-placed notice on its Internet site or public electronic bulletin board for at least 30 consecutive calendar days providing the following information: the name of the affiliate involved in the transaction; the rate charged; the normal rate; the period for which the pricing benefit applies; the quantities and the delivery points involved in the transaction; any conditions or requirements applicable to the pricing benefit, along with documentation of any cost differential underlying the pricing benefit, and the procedures by which non-affiliates may obtain the same benefit.

(3) Tying arrangements prohibited. A utility shall not condition or tie the provision of any product, service, pricing benefit, or waiver of associated terms or conditions, to the purchase of any good or service from its affiliate. Nor may the utility give the appearance of engaging in such a tying arrangement.

(f) Information safeguards.

(1) Proprietary customer information. A utility shall not release proprietary customer information to an affiliate or any other person, other than the customer, without prior affirmative written consent by the customer. The customer shall be advised in writing that, to the extent that the customer permits the release of such information, the information shall be made available to all affiliates and non-affiliates on a strictly nondiscriminatory basis.

(2) Nondiscriminatory availability of aggregate customer proprietary information. A utility shall make aggregate proprietary customer information, including but not limited to information about a utility's energy purchases, sales, or operations or about a utility's energy-related goods or services, available to its affiliate only if the utility makes such information available to all non-affiliates under the same terms and conditions and at the same price as it is made available to any of its affiliates. In addition, no later than 24 hours prior to

a utility's provision to its affiliate of aggregate proprietary customer information, the utility shall post a conspicuously-placed notice on its Internet site or other public electronic bulletin board for at least 30 consecutive calendar days providing the following information: the name of the affiliate to which the information will be provided; the rate charged for the information; a meaningful description of the information provided; and the procedures by which non-affiliates may obtain the same information under the same terms and conditions.

(3) Information shared for corporate support services. A utility may exchange non-customer related proprietary information on an exclusive basis with its affiliates, provided the utility follows all commission-adopted pricing and reporting guidelines for such transactions and it is necessary to exchange this information in the provision of corporate support services pursuant to subsection (d)(5)(C) of this section. The affiliate's use of such non-customer-related proprietary information is limited to use in conjunction with corporate support services as defined in this rule and is not permitted for any other use.

(4) Other limitations on information disclosure. Nothing in this rule is intended to alter the specific limitations on disclosure of confidential information in the Texas Utilities Code, the Texas Government Code, Chapter 552, and the commission's substantive and procedural rules.

(g) Safeguards relating to joint marketing and advertising.

(1) Utility name or logo. A utility shall not allow the use of its name or logo by an affiliate in any written or auditory information, through radio or television, Internet-based, or other electronic format accessible to the public, unless the affiliate includes a disclaimer with its use of the utility name or logo. Such disclaimer shall be located at the first instance of the name or logo in the material distributed, must be written in a bold and conspicuous manner or clearly audible, as appropriate for the communication medium, and shall state the following: "{Affiliate name} is not the same company as {utility name}, and is not regulated by the Public Utility Commission of Texas. Customers of {utility name} do not have to buy products or services from {affiliate name} to continue to receive service from the regulated company, {utility name}. If you have questions about your rights as a consumer, please contact the Public Utility Commission of Texas by calling toll-free, 1-888-PUC-TIPS. Or, if you are in Austin, please call 936- 7120." This disclaimer applies only to the affiliate's use of the utility's name or logo within the State of Texas.

(2) Joint business development, joint marketing prohibited.

(A) Unless otherwise provided by these rules, a utility shall not:

(i) provide or acquire leads on behalf of its affiliates;

(ii) solicit business, or acquire information on behalf of its affiliates; or

(iii) give the appearance of speaking or acting on behalf of any of its affiliates.

(B) A utility shall not engage in joint marketing or advertising of its products or services with those of an affiliate, and shall not act or appear to act on behalf of an affiliate in any communications and contacts with any existing or potential customers. Such joint marketing and communication includes, but is not limited to, the following activities:

(i) joint sales calls;

(ii) joint proposals, either as a request for proposal or a response to a request for proposal;

(iii) joint advertising, sales, communications, or correspondence, except that a utility may allow an affiliate access to customer bill advertising inserts so long as access to such inserts is made available on the same terms and conditions to non-affiliates offering similar services as the utility affiliate that uses bill inserts;

(iv) joint presentations at trade shows, conferences, or other marketing-type events within the State of Texas; and

(v) providing links from a utility's Internet web site to an affiliate's Internet web site.

(3) Consumer requests for specific affiliate information. If a consumer requests information from a utility about any of its affiliates, the utility shall refer the consumer to the affiliate for more information only if the consumer request specifically mentions the affiliate's name. If a consumer does not specifically mention the affiliate's name, the utility shall follow the procedures set forth in paragraph (4) of this subsection. Under this paragraph, the only information that a utility may provide to the consumer is the affiliate's address and telephone number. The utility shall not transfer the customer directly to the affiliate's customer service office via telephone or provide any other electronic link whereby the customer could contact the affiliate through the utility. When providing the consumer information about the affiliate, the utility shall not promote its affiliate or its affiliate's products or services.

(4) Consumer requests for general information about products or services offered by affiliates and their competitors. If a consumer requests general information from a utility about products or services provided by its affiliate or its affiliate's competitors, the utility shall provide to the consumer a current list of all affiliated and non-affiliated providers of these products or services, and shall not promote its affiliate or its affiliate's products or services. The utility shall be responsible for maintaining this service provider list. All service providers shall be arranged on the list in a random manner, using a uniform typeface. Any non-affiliated providers shall be responsible for ensuring that current information regarding their name and contact information is communicated to the utility maintaining the list. The utility shall post the current service provider list on its Internet site or other public electronic bulletin board on an ongoing basis and in a conspicuous manner, and shall file a current version of the list with the commission on a quarterly basis. In the event that the number of providers exceeds 100, the utility may direct the consumer to a telephone directory instead of providing a list of suppliers. Unless otherwise provided for in these rules, a utility shall not offer or provide customers advice or assistance with respect to its affiliates or other service providers.

(h) Remedies and enforcement.

(1) Enforcement by the commission. In addition to other methods that may be available, the commission may enforce the provisions of this rule by:

(A) Entering a cease and desist order or other comparable order directing the utility to discontinue or to correct violations;

(B) Pursuing administrative penalties under PURA, Chapter 15, Subchapter B.

(2) No immunity from antitrust enforcement. Nothing in these affiliate rules shall confer immunity from state or federal



antitrust laws. Sanctions imposed by the commission for violations of this rule do not affect or preempt antitrust liability, but rather are in addition to any antitrust liability that may apply to the anticompetitive activity. Therefore, antitrust remedies also may be sought in federal or state court to cure anticompetitive activities by utilities and their affiliates.

(3) No immunity from civil relief. Nothing in these affiliate rules shall preclude any form of civil relief that may be available under federal or state law, including, but not limited to, filing a complaint with the commission.

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

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Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

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### **16 TAC §25.272**

Section 25.272 is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998) (PURA) §§11.002(a), 14.001, 14.002, 14.003, 14.151, 14.154, 31.001(c), 32.101(c), 35.003(b), 35.034, 35.035, 36.003, 36.058, 38.021, 38.022, 55.006, 51.001 and 52.001 as well as 15 U.S.C.A. §79z-5c and Texas Revised Civil Statutes Annotated article 717p (Vernon Supplement 1998). Section 11.002(a) requires establishment of a comprehensive and adequate regulatory system by the Public Utility Commission of Texas to ensure just and reasonable rates, operations, and services. Section 14.001 grants the commission the general power to regulate and supervise the business of each utility within its jurisdiction. Section 14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. Section 14.003 grants the commission the authority to require submission of information by the utility regarding its affiliate activities. Section 14.151 grants the commission authority to prescribe the manner of accounting for all business transacted by the utility. Section 14.154 grants the commission limited authority over the utility's affiliates, with respect to their transactions with the utility. Section 31.001(c) requires that the commission formulate and apply rules, policies, and principles to protect the public interest in a more competitive electric market place. Section 32.101(c) requires that customer proprietary information be treated as highly sensitive trade secrets. Section 35.003(b) prohibits electric utilities from granting undue preference to a person in connection with the purchase or sale of energy or other services. Section 35.034 grants the commission authority to approve transfers of certain assets between utilities and affiliates. Section 35.035 governs the valuation of assets transferred by a utility to or from an affiliate. Section 36.003 requires the commission to ensure that a utility's rates are just and reasonable, sufficient, equitable, and consistent in application to each class of consumer, and not unreasonably preferential, prejudicial, or discriminatory. Section 36.058 sets forth the circumstances under which the commission may allow payments by a utility to an affiliate. Section 38.021

requires that utilities not grant an unreasonable preference to or impose an unreasonable disadvantage on different persons in the same classification. Sections 38.022 and 55.006 require that utilities not discriminate against competitors or engage in practices that restrict or impair competition in electric and telecommunications markets, respectively. Sections 51.001 and 52.001 require that the commission implement innovative new rules, policies, and principles to protect the public interest in telecommunications markets and provide equal opportunity to telecommunications competitors. 15 U.S.C.A. §79z-5c grants the commission authority to regulate the transactions between PUHCA-jurisdictional utilities and their affiliated ETCs. Finally, Texas Revised Civil Statutes Annotated article 717p (Vernon Supplement 1998) grants Texas river authorities and their affiliates certain rights and privileges that differ from those of other electric utilities in the state.

Cross Reference to Statutes: PURA §§11.002(a), 14.001, 14.002, 14.003, 14.151, 14.154, 31.001(c), 32.101(c), 35.003(b), 35.034, 35.035, 36.003, 36.058, 38.021, 38.022, 55.006, 51.001, and 52.001, 15 U.S.C.A. §79z-5c, and Texas Revised Civil Statutes Annotated article 717p (Vernon Supplement 1998).

§25.272. Corporate Support Service Agreements Between Electric Utilities and Their Affiliates.

(a) Purpose. This section establishes the requirements for the implementation of service agreements between regulated utilities and their affiliates as allowed for the provision of corporate support services pursuant to §25.271 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates).

(b) Application. This section applies to all electric utilities operating in the State of Texas as defined in the Public Utility Regulatory Act (PURA) §31.002 (1), and also to affiliates as defined in PURA §11.003(2) to the extent specified herein.

(c) Definitions. Any terms defined in §25.271 of this title have the same meanings herein.

(d) Service agreements. A utility shall have a single service agreement in place for each affiliate with which it has any transactions related to corporate support services. Such agreements shall be maintained on file with the commission as specified in these affiliate rules.

(1) In addition to the standard terms, a service agreement shall include, at a minimum, the following provisions:

(A) the effective date of the agreement and identification of the parties to the agreement;

(B) the term of the agreement;

(C) a narrative describing the services provided to or by the utility, including a list by specific service of all the affiliated companies that provide or receive these services;

(D) the obligations of the parties to the agreement;

(E) method by which costs to the utility will be determined, to include direct and allocated expenses;

(F) the billing and payment procedures;

(G) a process whereby the utility can challenge an expense billed by the affiliate;

(H) availability of the affiliate company's accounting records to the utility; and

(1) audits of the affiliate by the utility.

(2) All purchases of corporate support services by a utility from an affiliate shall be at the lower of actual cost or market value.

(3) All sales of corporate support services by a utility to an affiliate shall be at the higher of actual cost or market value.

(4) Amended service agreements shall be filed with the commission whenever there is a change in the scope or nature of affiliate transactions between a utility and the affiliate; the amended service agreement shall be filed within 30 days of the change.

(e) Review and approval. Service agreements are subject to commission review and approval for compliance with PURA requirements and commission rules.

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 May 13, 1998.

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Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

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## 16 TAC §25.273

Section 25.273 is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998) (PURA) §§11.002(a), 14.001, 14.002, 14.003, 14.151, 14.154, 31.001(c), 32.101(c), 35.003(b), 35.034, 35.035, 36.003, 36.058, 38.021, 38.022, 55.006, 51.001 and 52.001 as well as 15 U.S.C.A. §79z-5c and Texas Revised Civil Statutes Annotated article 717p (Vernon Supplement 1998). Section 11.002(a) requires establishment of a comprehensive and adequate regulatory system by the Public Utility Commission of Texas to ensure just and reasonable rates, operations, and services. Section 14.001 grants the commission the general power to regulate and supervise the business of each utility within its jurisdiction. Section 14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. Section 14.003 grants the commission the authority to require submission of information by the utility regarding its affiliate activities. Section 14.151 grants the commission authority to prescribe the manner of accounting for all business transacted by the utility. Section 14.154 grants the commission limited authority over the utility's affiliates, with respect to their transactions with the utility. Section 31.001(c) requires that the commission formulate and apply rules, policies, and principles to protect the public interest in a more competitive electric market place. Section 32.101(c) requires that customer proprietary information be treated as highly sensitive trade secrets. Section 35.003(b) prohibits electric utilities from granting undue preference to a person in connection with the purchase or sale of energy or other services. Section 35.034 grants the commission authority to approve transfers of certain assets between utilities and affiliates. Section 35.035 governs the valuation of assets transferred by a utility to or from an affiliate. Section 36.003 requires the commission to ensure that a utility's rates are just and reasonable, sufficient, equitable, and consistent in

application to each class of consumer, and not unreasonably preferential, prejudicial, or discriminatory. Section 36.058 sets forth the circumstances under which the commission may allow payments by a utility to an affiliate. Section 38.021 requires that utilities not grant an unreasonable preference to or impose an unreasonable disadvantage on different persons in the same classification. Sections 38.022 and 55.006 require that utilities not discriminate against competitors or engage in practices that restrict or impair competition in electric and telecommunications markets, respectively. Sections 51.001 and 52.001 require that the commission implement innovative new rules, policies, and principles to protect the public interest in telecommunications markets and provide equal opportunity to telecommunications competitors. 15 U.S.C.A. §79z-5c grants the commission authority to regulate the transactions between PUHCA-jurisdictional utilities and their affiliated ETCs. Finally, Texas Revised Civil Statutes Annotated article 717p (Vernon Supplement 1998) grants Texas river authorities and their affiliates certain rights and privileges that differ from those of other electric utilities in the state.

Cross Reference to Statutes: PURA §§11.002(a), 14.001, 14.002, 14.003, 14.151, 14.154, 31.001(c), 32.101(c), 35.003(b), 35.034, 35.035, 36.003, 36.058, 38.021, 38.022, 55.006, 51.001, and 52.001, 15 U.S.C.A. §79z-5c, and Texas Revised Civil Statutes Annotated article 717p (Vernon Supplement 1998).

### §25.273. Contracts Between Electric Utilities and Their Affiliates.

(a) Purpose. This section establishes the requirements for the implementation of contracts between regulated utilities and their affiliates resulting from a fair, competitive bidding process as allowed pursuant to §25.271 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates).

(b) Application. This section applies to all electric utilities operating in the State of Texas as defined in the Public Utility Regulatory Act (PURA) §31.002 (1), and also to affiliates as defined in PURA §11.003 (2) to the extent specified herein.

(c) Definitions. Any terms defined in §25.271 of this title have the same meanings herein.

(d) Competitive bidding required. The utility shall conduct competitive bidding, as required by §25.271 of this title, to procure products and services that are offered by an affiliate or to sell assets other than generation or transmission assets. The commission may require competitive bidding in the context of any proceeding or inquiry. When competitive bidding is required, the utility shall conduct competitive bidding pursuant to this section or §23.36 of this title (relating to Solicitation of Resources), as appropriate.

(1) Notice. The utility shall provide reasonable notice of any request for proposals required pursuant to this section. Such notice shall include:

(A) notice by publication in trade journals or newspapers as appropriate; and

(B) notice by mail to persons who previously requested to be notified of the request for proposals.

(2) Independent evaluator. The utility shall use an independent evaluator when an affiliate bid is included among the bids to be evaluated. If an independent evaluator is required, the utility shall maintain a record of communications with the independent evaluator. The independent evaluator shall in writing identify the bids that are most advantageous and warrant negotiation and contract

execution, in accordance with the criteria set forth in the request for proposals. The utility retains responsibility for final selection of products or services subject to the review and approval of the commission.

(3) Competitive bidding procedures. The utility shall make a request for proposals available to interested persons.

(A) The request for proposals must clearly set forth the eligibility and selection criteria and shall specify the weight to be given to any non-cost selection criteria.

(B) The utility shall strictly enforce the criteria specified in the request for proposals.

(C) Requests for proposals shall require that each bidder, including utility affiliates, submit the prescribed number of copies of its bid to the utility or independent evaluator as appropriate.

(4) Evaluation of bids. The utility or independent evaluator, as appropriate, shall evaluate each bid submitted in accordance with the criteria specified in the request for proposals. The utility or independent evaluator may not give preferential treatment or consideration to any bid.

(5) Rejection of bids. The utility is not required to accept a bid and may reject any or all bids in accordance with the selection criteria specified in the request for proposals.

(e) Contracts. A utility shall file with the commission a signed copy of any contracts entered into with an affiliate as the result of the fair, competitive bidding process described in subsection (d) of this section. A contract shall include, at a minimum, the following provisions:

(1) the effective date of the agreement and parties to the agreement;

(2) the term of the agreement;

(3) a narrative describing the services provided to the utility, including a list by specific service of all the affiliated companies who provide or receive these services, or a narrative describing the assets (other than generation or transmission assets) being sold by the utility to the affiliate;

(4) the obligations of the parties;

(5) the price for those products, services, or assets governed by the contract; and

(6) billing and payment procedures.

(f) Review and approval. Contracts are subject to commission review and approval for compliance with PURA requirements and commission rules.

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

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Rhonda Dempsey

Rules Coordinator

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16 TAC §25.274

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Cross Reference to Statutes: PURA §§11.002(a), 14.001, 14.002, 14.003, 14.151, 14.154, 31.001(c), 32.101(c), 35.003(b), 35.034, 35.035, 36.003, 36.058, 38.021, 38.022, 55.006, 51.001, and 52.001, 15 U.S.C.A. §79z-5c, and Texas Revised Civil Statutes Annotated article 717p (Vernon Supplement 1998).

§25.274. Compliance Proceeding to Implement Code of Conduct for Electric Utilities and Their Affiliates.

(a) Purpose. This section establishes the requirements for the compliance proceeding necessary for the initial implementation of §25.271 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates).

(b) Application. This section applies to all electric utilities operating in the State of Texas as defined in the Public Utility Regulatory Act (PURA) §31.002(1), and also to affiliates as defined in PURA §11.003(2) to the extent specified herein.

(c) Definitions. Any terms defined in §25.271 of this title have the same meanings herein.

(d) Filing of compliance plans. Within 45 days of the effective date of this section, each utility shall file a compliance plan explaining the mechanisms and procedures it proposes to employ to ensure the utility's full compliance with these affiliate rules.

(1) Initial compliance plans. The utility shall file its initial compliance plan with the commission under the project number designated by the commission for that purpose.

(A) The utility's initial compliance plan shall become effective on an interim basis on the day it is filed.

(B) After the initial plan is reviewed, the commission will either approve the plan as filed or order necessary revisions.

(C) If the utility seeks exemption from any portion of the rule it may list its proposed exemptions under the Application provisions of the initial compliance plan. Upon its review of the plan, the commission shall rule on the proposed exemptions and, if denied, specify the utility's schedule for meeting the provisions at issue. Any exemption from these affiliate rules is subject to review by the commission at any time on its own motion, to determine whether the exemption is still necessary to protect the public interest.

(D) As a part of the utility's initial compliance plan, service agreements for all corporate support services and copies of existing contracts between utilities and their affiliates shall be filed with the commission.

(2) Annual updates of compliance plans. By June 1 of each year, a utility shall review its compliance plan and file a revised version, if necessary, to indicate any changes in mechanisms and procedures for complying with the commission's affiliate rules.

(3) Creation of new affiliates. Upon creation of a new affiliate, a utility shall immediately notify the commission and shall post a conspicuously-placed notice on its Internet site or other public electronic bulletin board for at least 30 consecutive calendar days. No later than 30 days after the creation of an affiliate, the utility shall file an amendment to its compliance plan with the commission, detailing how the utility will implement these affiliate rules with respect to the new affiliate.

(e) Annual audit of utility activity with affiliates. For each calendar year following the effective date of this section, the utility shall have an audit prepared by an independent auditor according to generally accepted accounting principles and generally accepted auditing standards. The audit shall evaluate the utility's compliance with these affiliate rules on a comprehensive basis and in a detailed manner. By June 1 of each year, each utility shall file the independent auditor's report under a control number designated by the commission. The independent audit shall be at shareholder expense.

(f) Compliance plan provisions. A utility's compliance plan shall address each provision of these affiliate rules. A utility shall provide sufficient detail to show how it will comply with all of the

provisions of these affiliate rules. General statements that policies are in effect and appropriate personnel have been instructed to abide by them are not sufficient and are cause for immediate rejection of the compliance plan. The following provisions identify specific items that shall be included in the compliance plan; the items identified are not to be construed as exclusive, however.

(1) Application of the affiliate rules. A utility shall:

(A) list any approved exemptions from these affiliate rules; and

(B) explain its methods for separating accounts and operations governed by affiliate rules from any utility operations outside the State of Texas.

(2) Structural and transactional safeguards.

(A) Separate entities. A corporate officer from the utility and parent company shall certify by affidavit the adequacy of specific mechanisms and procedures, as explained elsewhere in the compliance plan, to ensure that the utility is not utilizing the holding company or any of its affiliates as a conduit to circumvent these affiliate rules.

(B) Separate officers, directors, and employees. To the extent that there are shared directors and officers as permitted by these affiliate rules, a corporate officer from the utility and parent company shall certify by affidavit the procedures and mechanisms in place, and the adequacy thereof, to ensure that such sharing does not in any way circumvent these affiliate rules.

(3) Books and records. A utility shall:

(A) show that its records are sufficient for commission or third-party audits, including an annual rules compliance review; and

(B) describe its internal audit system.

(4) No credit support to affiliate by utility. A utility shall:

(A) certify by affidavit that it is providing no credit support to any of its affiliates; and

(B) explain internal systems used to avoid affiliate recourse to utility assets.

(5) Arm's length transactions. A utility shall explain its system for ensuring that all affiliate transactions are at arm's length.

(6) Employee migration. A utility shall explain its system for tracking employee transfers between the utility and its affiliates, including how it will maintain records regarding:

(A) job titles and job descriptions for positions held by migrating employees at each entity;

(B) effective dates of migration;

(C) amounts of transfer fees paid, as applicable.

(7) Use of property and equipment.

(A) A utility shall provide a description of any property held in common with an affiliate, including a description of the circumstances under which such shared ownership was approved by the commission.

(B) A utility shall describe how it accomplishes physical separation of offices and equipment, including any related security access controls. For any shared computer systems, the utility shall:

(i) describe access controls and cost allocation methods; and

(ii) describe all other safeguard mechanisms used to ensure that these affiliate rules are not circumvented as a result of using the shared system.

(8) Safeguards relating to provision of products and services.

(A) Nondiscriminatory provision of products and services. For all products and services (including discounts, rebates, fee waivers, and bill inserts), a utility shall explain its procedures for making such products and services available to all non-affiliates, and for processing all requests for such products and services, on a non-discriminatory basis.

(B) Discounts, rebates, and fee waivers. A utility shall explain its system for prior posting of information regarding discounts, rebates, fee waivers and any other activity where such is required by these affiliate rules.

(9) Information safeguards. A utility shall describe its procedures for obtaining customer consent for use of proprietary information, and shall provide a sample customer consent form.

(10) Joint marketing and advertising.

(A) Use of name and logo. A utility shall explain its methods for implementing the use of utility name and logo disclaimer provisions of this rule and shall provide sample materials demonstrating use of the disclaimer.

(B) Customer inquiries. A utility shall explain its procedures for responding to customer requests for product or service information, and shall provide to the commission sample materials used, such as, but not limited to, training materials for customer service representatives and sample customer service scripts.

(C) List of non-affiliated service providers. A utility shall describe its procedures for maintaining and distributing a list of non-affiliated service providers.

(11) Internal mechanisms for education and enforcement. A utility shall provide:

(A) a description of how the utility will educate its employees regarding their obligations relating to these affiliate rules and the utility's compliance plan;

(B) information regarding disciplinary measures that address any actions by utility employees that are in violation of these affiliate rules or the utility's compliance plan.

(12) Other information. A utility shall provide any other information in its compliance plan that it believes will aid the commission in determining whether the utility is in full compliance with these affiliate rules.

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 May 13, 1998.

TRD-9807808

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: June 7, 1998

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

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## Chapter 26. Substantive Rules Applicable to Telecommunications Service Providers

### Subchapter J. Costs, Rates and Tariffs

#### 16 TAC §26.213

The Public Utility Commission of Texas proposes new §26.213 relating to Telecommunications Pricing. Project Number 18886 has been assigned to this proceeding. This section details the pricing restrictions that a dominant certificated telecommunications utility (DCTU) subject to the provisions of this rule must conform with in providing different types of telecommunications services in Texas. This section also adds a subsection that allows such DCTUs to package, with restrictions, basic network services with certain discretionary services. By allowing such packaging and detailing the related restrictions, the section will foster additional competition in the local telecommunications markets in Texas while protecting consumers and competitors from potential discriminatory and unreasonable pricing practices by DCTUs. It should be noted that the section allows packaging, but does not require packaging of basic network services and discretionary services.

The Appropriation Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The PUC held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the PUC is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to (1) satisfy the requirements of Section 167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. 16 TAC Chapter 26 has been established for all commission substantive rules applicable to telecommunications service providers. The duplicative sections of Chapter 23 will be proposed for repeal as each new section is proposed for publication in the new chapter. Proposed new §26.213 replaces and modifies §23.104, of this title (relating to Telecommunications Pricing).

All but one of the definitions in this section have been deleted because they have been moved to proposed §26.5 of this title (relating to definitions). The definition for "service" as defined in 26.213(b) is specific to this section.

Mr. Nelson Parish, chief economic analyst, Office of Policy Development, and Ms. Meena Thomas, assistant director, Office of Regulatory Affairs, have determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of the enforcing or administering the sections.

Mr. Parish and Ms. Thomas have also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing this section will be, generally, benefits associated with increased, but controlled,

competition. Such benefits include, but are not limited to, more choice in telecommunications services, lower prices for telecommunications services, the ability to buy packages of telecommunications services that best suit their needs, and protection of the competitive market from anticompetitive and discriminatory behavior. Small businesses, being consumers of telecommunications services, would benefit from the increase in competition, as would larger businesses and residential customers.

There is no anticipated economic cost to persons who are required to comply with the proposed new section. The proposed modifications to §26.213 as compared to existing §23.104 are simply an expansion of options (and restrictions related to those options) for companies subject to §23.104. For each year of the first five years the section is in effect, there will be no effect on the costs of small businesses as a result of enforcing the proposed section.

Mr. Parish and Ms. Thomas have further determined that for the first five years the proposed section is in effect there will be no impact on the opportunities for employment in the geographic areas of Texas affected by implementing the requirements of the rules.

The *Texas Register* will publish §26.213 as all new text. Interested persons may obtain a redline comparing proposed §26.213 to existing §23.104 at the Public Utility Commission of Texas, Central Records Division, under Project Number 18886.

Comments on the proposed section (16 copies) may be submitted to Filing Clerk, Public Utility Commission of Texas, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas, 78701-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. All comments should refer to Project Number 18886. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the amendment. The commission will consider the costs and benefits in deciding whether to adopt the amendment.

A public hearing on this matter will be held on Monday, June 29, 1998 at 10:00 a.m., at the commission's offices at 1701 N. Congress Avenue, Austin, TX 78701.

This section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and §52.001(b), which provides the Public Utility Commission of Texas with the authority to formulate and apply rules to protect the public interest and provide equal opportunity to each telecommunications utility in a competitive marketplace.

Cross Index to Statutes: Public Utility Commission of Texas §14.002 and §52.001(b).

§26.213. Telecommunications Pricing.

(a) Purpose. The purpose of this section is to establish principles to foster economic efficiency and the public welfare in the pricing of telecommunications services.

(b) Application. Except as otherwise provided herein, the provisions of this section shall apply to dominant certificated telecommunications utilities (DCTUs). Unless the DCTU has elected to be regulated under the terms of the Public Utility Regulatory Act (PURA) Chapter 58, the provisions of this section may be applied to a

DCTU serving 31,000 or more but fewer than one million access lines only on a bona fide request by a holder of a certificate of operating authority or service provider certificate of operating authority.

(c) Definition. As used in this section, "service" is a tariffed or contract offering which a customer may purchase to the exclusion of other offerings. For example: the various mileage bands for standard toll services are rate elements, not services; individual optional calling plans that can be purchased individually and which are offered as alternatives to each other are services, not rate elements.

(d) General principles.

(1) Subsidy-free pricing.

(A) Telecommunications prices should be subsidy-free. Subsidy-free prices prevent one service or group of services from subsidizing or being subsidized by another. This language is not meant to preclude the use of explicit universal service support mechanisms to maintain affordable rates.

(B) Pricing all services produced by a DCTU above long run incremental cost (LRIC) will ensure subsidy-free pricing.

(C) In a subsidy-free pricing environment, support for universal basic telecommunications service must come from an explicit subsidy, such as a Universal Service Fund.

(D) The transition to subsidy-free pricing should be undertaken in stages, in coordination with implementation of state and federal universal service support mechanisms and initiatives to reform pricing of access services.

(2) Customer-specific pricing. When set above incremental cost and not used in an anticompetitive manner, customer-specific pricing can benefit the general body of ratepayers and foster economic efficiency by encouraging utilization of under-utilized facilities.

(3) Inefficient or uneconomic costs. The commission has no obligation to ensure that a DCTU recovers inefficient or uneconomic costs.

(e) Basic network services. Except as provided by paragraph (2) of this subsection, a DCTU may not exercise pricing flexibility for a basic network service.

(1) The following services are initially classified as basic network services:

(A) flat-rate residential and business local exchange telephone service, including primary directory listings and the receipt of a directory and any applicable mileage or zone charges;

(B) tone dialing service;

(C) lifeline and tel-assistance services;

(D) service connection for basic services;

(E) direct inward dialing service for basic services;

(F) private pay telephone access service;

(G) call trap and trace service;

(H) access to 911 service, where provided by a local authority, and access to dual party relay service;

(I) switched access service;

(J) interconnection to competitive providers;

(K) mandatory extended area service arrangements;

(L) mandatory extended metropolitan service or other mandatory toll-free calling arrangements;

(M) interconnection for commercial mobile service providers;

(N) directory assistance; and

(O) 1+ intraLATA message toll service.

(2) An electing local exchange company (LEC) may lower the rate for a basic network service to the service's price floor. For an electing LEC that is required by the commission to perform long run incremental cost studies or elects to perform those studies, the price floor for switched access service or for any basic local telecommunications service shall be LRIC. For any other electing LEC, the price floor for basic local telecommunications service shall be the appropriate cost of the service.

(3) In setting the price of a basic network service, the commission shall pursue the goal of maintaining basic services at affordable rates for customers.

(f) Discretionary services. Except as provided by paragraph (5) of this subsection, a DCTU may not exercise pricing flexibility for a discretionary service.

(1) The following services shall initially be classified as discretionary services.

(A) 1+ intraLATA message toll services, where intraLATA equal access is available;

(B) 0+, 0- operator services;

(C) call waiting, call forwarding, and custom calling features not classified as competitive services;

(D) call return, caller ID, and call control options not classified as competitive services;

(E) central office-based PBX - type services;

(F) billing and collection services;

(G) integrated services digital network (ISDN) services; and

(H) new services.

(2) The price for a discretionary service shall not be set below LRIC or the price floor prescribed by §23.102 of this title (relating to Imputation), whichever is higher. An electing LEC may request the establishment of a price floor for a discretionary service that is above LRIC.

(3) The price of a discretionary service shall not be set above the service's stand-alone cost. An electing LEC may request the establishment of a ceiling for a discretionary service that is below stand-alone cost.

(4) The price ceiling for a discretionary service provided by an electing LEC may not be set below or above the rate in effect on September 1, 1995, without regard to proceedings pending under PURA §§12.004, 15.001, 15.002, 53.151 and 53.152 or under Government Code, Chapter 2001, Subchapter G. The ceiling may be raised only after the proceedings required under PURA, Chapter 60. Thereafter, on application by the DCTU or on the commission's own motion, the commission may change the price ceiling but may not increase the ceiling more than 10% annually.

(5) Within the range of the floor and the ceiling established pursuant to this subsection, an electing LEC may change the

price of a discretionary service but shall notify the commission of each change. Such price changes may include volume and term discounts, zone density pricing, packaging of services, customer specific pricing, and other promotional pricing flexibility. Packaging of services may include packaging of an installation service or charge with provision of the corresponding service. An electing LEC lowering the price of any component of a package of services, including an installation charge, shall demonstrate that the package of services affected by the price change recovers its LRIC within one year of the price change.

(6) Discounts and other forms of pricing flexibility for discretionary services may not be preferential, prejudicial, or discriminatory.

(g) Competitive services. Except as provided by paragraphs (2) and (4) of this subsection, a DCTU may not exercise pricing flexibility for a competitive service.

(1) The following services shall initially be classified as competitive services:

(A) services described in the WATS tariff as of January 1, 1995;

(B) 800 and foreign exchange services;

(C) private line service;

(D) special access service;

(E) services from public pay telephones;

(F) paging services and mobile services (IMTS);

(G) 911 premises equipment;

(H) speed dialing; and

(I) three-way calling.

(2) The price for a competitive service shall not be set below LRIC or the price floor prescribed by §23.102 of this title, whichever is higher. An electing LEC may request the establishment of a price floor for a competitive service that is above the floor prescribed by this paragraph.

(3) An electing LEC may set the price for a competitive service at any level above the floor prescribed in this subsection. Permissible pricing flexibility includes volume and term discounts, zone density pricing, packaging of services, customer specific contracts, and other promotional pricing flexibility, subject to the requirements of PURA §60.001 and §60.002. However, an electing LEC may not increase the price of a service in a geographic area in which that service or a functionally equivalent service is not readily available from another provider. The pricing flexibility allowed by this subsection permits the packaging of a competitive service with one or more discretionary services only if the DCTU demonstrates that the rate for the package of services is greater than the sum of the LRIC of the competitive service and the tariffed rates of the discretionary services included in the package.

(4) Prices for competitive services may not be unreasonably preferential, prejudicial, or discriminatory.

(h) Packaging of different types of services.

(1) The packaging of basic network telecommunications services with competitive services is not permitted for a DCTU.

(2) The packaging of basic network telecommunications services with any discretionary services tariffed as of the date of

adoption of this section is permitted for a DCTU, except that a DCTU may not package the following services with basic network services:

(A) 1+ intraLATA message toll services where intraLATA equal access is available;

(B) central office-based PBX-type services; and

(C) billing and collection services.

(3) The packaging of basic network telecommunications services with discretionary services tariffed after the date of adoption of this section will be considered by the commission on a case-by-case basis.

(4) A package that includes a basic network service may not be offered in a manner that results in any of the following:

(A) a volume discount,

(B) a term discount,

(C) a reduction and/or waiver of installation charges,

or

(D) geographic deaveraging.

(5) Calculating price floors and price ceilings for a package. A DCTU packaging basic network and discretionary services must:

(A) set the price floor for the package equal to the sum of the LRICs of all of the basic network services in the package and the sum of either the LRICs or the price floors, prescribed by §23.102 of this title, of all discretionary services in the package;

(B) set the price ceiling for the package no higher than the sum of the price ceilings of all of the basic network services, which are either the rates in effect when the DCTU elected or the rates changed as requested by the DCTU and/or set by the commission after the DCTU elected, and the sum of the price ceilings of all of the discretionary services, set as prescribed by subsections (f)(3) and (f)(4) of this section;

(C) make the price ceiling equal to the price floor if the calculations in subparagraphs (A) and (B) of this paragraph would create a price ceiling below the price floor of the package; and

(D) not raise the price of the package once such price has been lowered.

(6) If a package of basic network and discretionary services is offered to any customer in a customer class, it must be offered to all customers within that customer class.

(7) Prices for packages of basic network and discretionary services may not be unreasonably preferential, prejudicial, or discriminatory.

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 May 8, 1998.

TRD-9807524

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: June 21, 1998

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

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## Part VI. Texas Motor Vehicle Commission

### Chapter 107. Warranty Performance Obligations

#### 16 TAC §107.8

The Texas Motor Vehicle Board proposes amendments to §107.8, concerning Decisions. The section sets forth guidelines for final decisions made under the Lemon Law.

The proposal reinstates paragraphs which were inadvertently deleted when §107.8 was amended in January, 1998 to formulate a reasonable allowance for use for towable recreational vehicles. Paragraph §107.8(7) authorizes the Director, Motor Vehicle Division, to require the dealer to reimburse the complainant, manufacturer, distributor, or converter for the cost of any items or options added to the vehicle but only to the extent that they contributed to the defect forming the basis of the repurchase or replacement. Paragraph §107.8(8) authorizes the entry of an order requiring repair of a vehicle to obtain compliance with the manufacturer's warranty obligations under §3.08(i) or §6.07(b) if it does not qualify for repurchase or replacement under §6.07(c). Paragraph §107.8(9) makes provision for reconsideration of the ordered repurchase price if a vehicle is substantially damaged or has an adverse change in condition beyond ordinary wear and tear. Paragraph §107.8(10) requires the Board to enter a written order and provide a copy to the parties in each case where a hearing is held.

Brett Bray, Director, Motor Vehicle Division has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Bray also has determined that the public benefit anticipated as a result of the proposed amendments to §107.8 will be to maintain continuity of the Board's policies concerning lemon law hearings and provide guidelines concerning irregularities in the disposition of lemon law cases. There will be no effect on small businesses and no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Brett Bray, Division Director, Motor Vehicle Division, Texas Department of Transportation, P. O. Box 2293, Austin, Texas 78768, (512) 416-4800. The Motor Vehicle Board will consider adoption of the proposed amendments at its meeting on July 9, 1998. The deadline for receipt of comments on the proposed amendments is 5:00 p.m. on June 22, 1998.

The amendments are proposed under the Texas Motor Vehicle Commission Code, §3.06, which provides the Board with authority to adopt rules necessary and convenient to effectuate the provisions of the act and to govern practice and procedure before the agency.

Motor Vehicle Commission Code, §6.07 is affected by the proposed amendment.

§107.8. *Decisions.*

Any decisions by the board and recommended decision by a hearing officer shall give effect to the presumptions provided the Texas Motor Vehicle Commission Code, §6.07(d), where applicable.

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

(7) In any award in favor of a complainant, the executive director may require the dealer involved to reimburse the complainant, manufacturer, distributor, or converter for the cost of any items or



options added to the vehicle but only to the extent that one or more of such items or options contributed to the defect that served as the basis for the order of repurchase or replacement. In no event shall this paragraph be interpreted to mean that a manufacturer, distributor, or converter will be required to repurchase a vehicle due to a defect or condition that was solely caused by a dealer add-on item or option.

(8) If it is found by the commission that a complainant's vehicle does not qualify for replacement or repurchase, then the commission shall enter an order dismissing the complaint insofar as relief under the lemon law is concerned. However, the commission may enter an order in any proceeding, where appropriate, requiring repair work to be performed or other action taken to obtain compliance with the manufacturer's, distributor's, or converter's warranty obligations.

(9) If the vehicle is substantially damaged or there is an adverse change in its condition, beyond ordinary wear and tear, from the date of delivery to the owner to the date of repurchase, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party shall have the right to request reconsideration by the commission of the repurchase price contained in the final order.

(10) The commission will issue a written order in each case in which a hearing is held and a copy of the order will be sent to all 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 May 7, 1998.

TRD-9807479

Brett Bray

Director

Texas Motor Vehicle Commission

Proposed date of adoption: July 9, 1998

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



## TITLE 22. EXAMINING BOARDS

### Part XXIII. Texas Real Estate Commission

#### Chapter 535. Provisions of the Real Estate License Act

##### Subchapter S. Registration of Easement or Right-of-Way Agents

###### 22 TAC §535.400, §535.403

The Texas Real Estate Commission (TREC) proposes an amendment to §535.400, concerning registration of easement or right-of-way agents, and new §535.403, concerning renewal of registration. The amendment to §535.400 adopts by reference two revised application forms used by individuals or business entities in seeking registration as an easement or right-of-way agent. The proposed application forms, Forms ERW 1-1 and ERW 2-1, would require applicants to indicate the physical location of the applicant's office and to provide a mailing address if that address is different from the location of the office. An individual applicant also would designate a residence mailing address. These changes will ensure that the commis-

sion can communicate with the registrant by mail or in person. The revised Form ERW 2-1 would no longer require a business entity other than a corporation or limited liability company to provide a certificate of good standing from the Comptroller of Public Accounts since state law requires only corporations or limited liability companies to be in good standing prior to receiving a registration or license from the state.

New §535.403 provides a procedure for annual renewal of a registration and adopts by reference an application form which a registrant would use for renewal. The new section is based on the commission's renewal process for other licenses issued by the commission. Generally, the commission would mail a renewal notice to each registrant, who would be required to file the renewal application, along with the statutory fee of \$150, by the last day the current registration is valid. A registrant who fails timely to renew the registration would have to file a new application for registration to be issued another registration certificate.

Mark A. Moseley, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. While there would be a nominal expense associated with mailing annual renewal notices to some 800 registrants, those expenses would be offset by the annual fee of \$150 paid by each registrant. There is no anticipated impact on local or state employment as a result of implementing the sections.

Mr. Moseley also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be orderly procedures for registering and renewing the registration of easement or right-of-way agents. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections, other than the annual registration fees set by statute at \$150.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment and new section are proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties

The statute that is affected by these sections is Texas Civil Statutes, Article 6573a.

§535.400. *Registration of Easement or Right-of-Way Agents.*

(a) The Texas Real Estate Commission adopts by reference the following forms approved by the Texas Real Estate Commission. These forms are published by and available from the Texas Real Estate Commission, P. O. Box 12188, Austin, Texas 78711- 2188.

(1) ERW 1-1 [1-0], Application For Easement Or Right-of-Way Agent Registration For An Individual; and

(2) ERW 2-1 [2-0], Application For Easement Or Right-of-Way Agent Registration For A Business.

(b) An individual desiring to be registered by the commission as an easement or right- of-way agent must file form ERW 1-1 [1-0] with the commission. If the applicant is a business, the applicant must file form ERW 2-1 [2-0]. All applicants must submit the applicable fees set forth in The Real Estate License Act, Texas Civil Statutes, Article 6573a, (the Act). The commission will not accept

an application which has been submitted without the correct filing fees or which has been submitted in pencil.

(c)-(f) (No change.)

§535.403. Renewal of Registration.

(a) The commission shall establish a time period for renewal of each registration, which shall end with the expiration date of the current registration. Each registrant has the responsibility to apply for renewal of a registration by making proper application as specified by this section. Applications must be made on the current renewal application form approved by the commission accompanied by the fee required by Section 11(a)(16) of The Real Estate License Act (the Act). Failure to receive a registration renewal application form from the commission does not relieve a registrant of the obligation to obtain the appropriate form and to apply for renewal to maintain registration. Failure to provide information requested by the commission in connection with a renewal application is grounds for disciplinary action under the Act, §9A(c)(4). A registrant who fails timely to pay a renewal fee must apply for and receive a new registration in order to act as an easement or right-of-way agent.

(b) The Texas Real Estate Commission adopts by reference Renewal Application Form ERW 5-0, approved by the commission in 1998. This form is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(c) The commission shall advise each registrant of the time period for filing a renewal application and paying the renewal fee by mailing a renewal application form to the registrant's last known business address at least three months before expiration of the current registration. The commission shall have no obligation to so notify a business entity such as a corporation, limited liability company or partnership, that has failed to designate an officer, manager or partner who meets the requirements of Section 6(d) of the Act. The commission may not renew a registration issued to a business entity unless the entity has designated an officer, manager or partner who meets the requirements of the Act.

(d) An application for renewal will be deemed to have been timely filed if it shows a postmark on or before the expiration date of the registration. When the last day of the renewal period falls on a non-business day, renewal applications also will be deemed to have been timely filed if received or postmarked no later than the first business day following the last day of the renewal period. "Non-business" days are Saturday, Sunday and any other day upon which the commission offices are closed due to a state holiday designated in the General Appropriations Act or by other law.

(e) Renewals by registrants who are on active duty in the United States armed forces or who are subject to the provisions of the Texas Education Code, §57.491, concerning certain student loans also will be governed by §535.92 of this title (Relating to Miscellaneous Provisions Concerning License Renewals).

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 May 8, 1998.

TRD-9807516

Mark A. Moseley

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: June 21, 1998

For further information, please call: (512) 465-3900

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**TITLE 25. HEALTH SERVICES**

**Part I. Texas Department of Health**

**Chapter 33. Early and Periodic Screening, Diagnosis, and Treatment**

On behalf of the State Medicaid Director, the Texas Department of Health (department) proposes the repeal of §§33.263, §§33.301-33.309, §§33.314-33.318, §33.320, §§33.322-33.327, and §§33.331-33.338, and new §§33.301-33.309, §§33.312-33.318, §§33.331-33.334, and §§33.351-33.358 concerning the provision of dental services to Medicaid/Early and Periodic Screening, Diagnosis, and Treatment (EPSDT)-eligible recipients. Specifically, the new sections cover definitions; oral evaluations and dental services; preventive dental services; therapeutic dental services; emergency dental services; allowable services and limitations; eligibility for Texas Health Steps dental services; requirements for provider enrollment and continuing participation; termination of a provider agreement; charges to recipients; payment of claims; claims - time limits, submission, and denial; change to another provider; standards of care; management of complaints; performance of dental services; orthodontic services limitation; eligibility for orthodontic services; payment limitations for orthodontic services; post-payment orthodontic utilization review; types of department utilization reviews; selection of dentists for department utilization review; notification to provider of department utilization review; provider cooperation; disposition of department utilization review results; recoupment of overpayments as a result of department utilization review; administrative actions and/or sanctions; and referral for investigation of fraud or program abuse.

These sections were originally adopted during 1981-1989, prior to the initiation of the claims processing contract with the National Heritage Insurance Company (NHIC) and the transfer of the EPSDT Program to the department from the Texas Department of Human Services. Subsequent organizational restructurings, transfer of the Medicaid Provider Sanctions Division from the department to the Health and Human Services Commission, and other interagency agreements and events, including the initiation of electronic claims processing, have made parts of many of the current sections inaccurate or inapplicable. Updating these inaccurate and inappropriate references requires repeal of the existing sections and proposal of new rules.

Kathleen Hamilton, Director, Texas Health Steps (EPSDT), has determined that for the first five year period the sections are in effect, there will be no fiscal implications to state or local government as a result of administering the sections as proposed. The proposed rules merely clarify current policy and will not increase the scope of covered services to clients, as defined in current policy, and therefore reimbursement to providers will not increase.

Ms. Hamilton has also determined that for each year of the first five years the sections are in effect, the public benefit of administering the sections will be better compliance with the policies and procedures related to the provision of and reimbursement for dental services to Medicaid/EPSDT-eligible recipients. There will be no effect on small or large businesses. There are no anticipated economic costs to persons who are

required to comply with the sections as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be sent to Kathleen Hamilton, Director, THSteps Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, (512) 458-7745. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*. A public hearing will be held at the Brown-Heatly Building, 4900 North Lamar, Room 1410, Austin, Texas, on Thursday, June 4, 1998, at 10:00 a.m.

## Subchapter F. Special Cases

### 25 TAC §33.263

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

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

The repeal affects Chapter 32 of the Human Resources Code.

§33.263. *Absence of Services Reported by Utilization Review 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.

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Susan K. Steeg

General Counsel

Texas Department of Health

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



## Subchapter G. Dental Services

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

### 25 TAC §§33.301-33.309, 33.314-33.318, 33.320, 33.322-33.327

The repeals are 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 propose rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the EPSDT program, and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

The repeals affect Chapter 32 of the Human Resources Code.

§33.301. *Dental Examination and Treatment.*

§33.302. *Emergency Services.*

§33.303. *Preventive Services.*

§33.304. *Therapeutic Services.*

§33.305. *Allowable Services and Limitations.*

§33.306. *Who Is Eligible for Early and Periodic Screening, Diagnosis, and Treatment Services (EPSDT)-Dental.*

§33.307. *Application for Participation.*

§33.308. *Requirements for Participation.*

§33.309. *Termination of a Provider Agreement.*

§33.314. *Charges to Recipients.*

§33.315. *Payment of Claims.*

§33.316. *Change to Another Provider.*

§33.317. *Claims—Time Limits, Return, and Denial.*

§33.318. *Interrupted or Incomplete Treatment Plans.*

§33.320. *Dental Problems Discovered by Utilization Review Dentist.*

§33.322. *Utilization of Peer Review or Grievance Committees.*

§33.323. *Utilization of State Board of Dental Examiners.*

§33.324. *Orthodontic Services.*

§33.325. *Recipient's Eligibility for Orthodontic Services.*

§33.326. *Provider Participation.*

§33.327. *Post-payment Review.*

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

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### 25 TAC §§33.301–33.309, 33.312–33.318

The new sections are 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 propose rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the EPSDT program, and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

The new sections affect Chapter 32 of the Human Resources Code.

§33.301. *Definitions.*

The following words and terms when used in Subchapters F, G, or H of this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Department - The Texas Department of Health.

(2) Early and Periodic Screening, Diagnosis, and Treatment Program (EPSDT) - A component of the Medicaid program, also known as Texas Health Steps, which provides medical check-up and dental services to Medicaid and Texas Health Steps clients under age 21 years.

(3) HHSC - Health and Human Services Commission.

(4) Manual - The Texas Medicaid Provider Procedures Manual, including all updates published bimonthly in the Texas Medicaid Bulletin.

(5) Medicaid - A medical and dental program provided under Title XIX of the federal Social Security Act and the Human Resources Code, Chapter 32.

(6) NHIC - National Heritage Insurance Company

(7) OIE - The Medicaid Office of Investigation and Enforcement at the Health and Human Services Commission.

(8) Recipient - A person eligible for and covered by the Texas Medical Assistance Program and the Texas Health Steps program.

(9) SBDE - State Board of Dental Examiners.

§33.302. Oral Evaluations and Dental Services.

(a) The name of the Early and Periodic Screening, Diagnosis, and Treatment program has been changed to Texas Health Steps.

(b) In addition to initial and periodic diagnostic oral evaluations, which may include radiographs and other diagnostic tests, three categories of dental services are available – preventive, therapeutic, and emergency – as defined in the following sections. These services are described in the Medicaid dental fee schedule published annually by the department in the manual. These services are subject to the limitations listed in the dental fee schedule and in the description of Texas Health Steps dental services in the manual. Prior authorization may be required for certain services. Services delivered should conform to professionally recognized standards of care as recognized by the SBDE, and are subject to utilization review.

§33.303. Preventive Dental Services.

Preventive dental services include only:

- (1) dental prophylaxis;
- (2) topical application of fluoride;
- (3) dental sealants;
- (4) oral hygiene instructions;
- (5) nutritional counseling; and
- (6) fixed or removable space maintainers.

§33.304. Therapeutic Dental Services.

Therapeutic services include:

- (1) restorative;
- (2) endodontics;
- (3) periodontics;
- (4) fixed and removable prosthodontics;
- (5) maxillofacial prosthetics;
- (6) implant services;
- (7) oral and maxillofacial surgery;

(8) adjunctive general services; and

(9) orthodontics, as defined in §§33.331-33.334 of this title (relating to Orthodontic Services).

§33.305. Emergency Dental Services.

(a) Emergency dental services are limited to the following:

(1) procedures necessary to control bleeding, relieve pain, and eliminate acute infection;

(2) operative procedures required to prevent imminent loss of teeth; and

(3) treatment of injuries to the teeth and supporting structures.

(b) Routine restorative procedures and root canal therapy are not emergency services.

(c) Prior authorization is not required for emergency dental services.

§33.306. Allowable Services and Limitations.

(a) For the most effective use of available funds and to offer services to as many recipients as possible, the department may impose certain limitations, such as those regarding allowable services and age, and others as described in the Medicaid dental fee schedule published in the manual.

(b) Payment shall be made only for services that are medically necessary, allowable, and delivered in accordance with the Medicaid program requirements in effect on the date of service.

(c) A prior authorization is not transferrable to another provider.

§33.307. Eligibility for Texas Health Steps Dental Services.

(a) Persons are eligible for dental services if they have a current Texas Medicaid identification or Medicaid verification letter that indicates Medicaid and Texas Health Steps eligibility for the time period during which services are delivered, and are under age 21.

(b) Dental services can be continued through the month in which the recipient reaches 21.

(c) Persons one year of age and older who are eligible for Medicaid and Texas Health Steps services may receive periodic, preventive dental services as defined in §33.303 of this title (relating to Preventative Dental Services) every six months based on the last paid date of preventive dental services, but no less frequently than six months after the previous dental checkup.

§33.308. Requirements for Provider Enrollment and Continuing Participation.

(a) Dentists and orthodontists providing Texas Health Steps dental services must:

(1) be licensed by the SBDE;

(2) operate in accordance with the laws relating to the practice of dentistry and the rules and regulations of the SBDE;

(3) practice in the United States of America; and

(4) be enrolled as Texas Health Steps dental providers.

(b) Dentists who deliver emergency dental services as defined in §33.305 of this title (relating to Emergency Dental Services) to Medicaid and Texas Health Steps-eligible Texas recipients while the recipients are out of state are not required to be licensed by the SBDE, but must be authorized to provide Title XIX services in the state in which the services are delivered.

(c) A provider's request for participation in the Texas Health Steps program and continued participation after enrollment is voluntary and may be denied by the Texas Health Steps Program for any of the following reasons:

(1) disciplinary action(s) taken against the provider by the SBDE or the licensing entity of any other state;

(2) previous or current Medicaid or other federally funded health care program violation(s);

(3) prior imposition of sanctions by a regulatory entity of the State of Texas or any other state;

(4) failure of the provider to comply with Texas Health Steps program rules;

(5) a judgment or settlement of civil liability or a criminal conviction based on fraud or abuse in Medicaid or any other federally funded health care program in any state. This includes a plea into a first offender program, misdemeanor, or felony;

(6) failure to comply with Family Code, §231.006, regarding payment of child support;

(7) notification from the HHSC OIE of adverse action taken against the provider; or

(8) any other reason authorized by rules, regulations, statute, or contract.

(d) A provider shall cease providing Texas Health Steps services and notify the department or its claims processing contractor if the SBDE suspends or revokes the provider's license, unless the suspension or revocation is probated in its entirety and without conditions or limitations.

#### §33.309. Termination of a Provider Agreement.

(a) The agreement between the provider and the department for provision of Texas Health Steps dental services may be terminated without cause by either the provider or the department according to its terms with 30 days written notice.

(b) The provider agreement may be terminated by the department for any of the following reasons:

(1) breach of contract;

(2) suspension or revocation of the provider's license by the SBDE unless the suspension or revocation is probated in its entirety and without conditions or limitations;

(3) disciplinary action(s) taken by the SBDE or the dental licensing entity of any other state in which the provider has been previously licensed;

(4) violation of any of the standards of care identified in §33.316 of this title (relating to Standards of Care);

(5) conviction for fraud in any federal or state health care program, including, but not limited to, titles V, XVIII, XIX, XX, and XXI of the Social Security Act;

(6) amendment or judicial interpretation of federal or state laws or other requirements in a way that would make it unfeasible or impossible for either party to fulfill the agreement, or if either party is unable to agree on changes necessary for the substantial continuation of the agreement;

(7) denial of federal financial participation;

(8) any other violations of HHSC rules; or

(9) any other reason authorized by rule, regulation, statute, or contract.

#### §33.312. Charges to Recipients.

(a) A provider shall not require a down payment before providing Medicaid-allowable services to eligible recipients.

(b) A provider shall not charge recipients for missed appointments.

(c) A provider shall neither bill, nor take recourse against an eligible recipient, for a denied or reduced claim for services that are within the amount, duration, and scope of benefits of the Texas Health Steps dental program, if the denial or reduction is the result of any of the following errors that are attributed to the provider:

(1) failure to submit a claim, including claims not received by the department's claims processing contractor;

(2) failure to submit a claim within the filing deadlines, as described in §33.314 of this title (relating to Claims–Time Limits, Submission, and Denial);

(3) filing of an incorrect paper or electronic claim;

(4) failure to resubmit a corrected paper or electronic claim within the appropriate time period as described in §33.314 of this title (relating to Claims–Time Limits, Submission, and Denial);

(5) failure to appeal a claim denial within the appropriate time period; or

(6) errors made in claims preparation, appeal submission, or the appeal process.

(d) A provider may bill a recipient for a dental service or item only if both:

(1) a request for prior authorization or a claim for payment for the service or item was denied as not being medically necessary, or not a benefit of the Medicaid program, or not allowable according to program rules and policy requirements; and

(2) the service or item was provided at the request of the recipient and the provider obtained a written client acknowledgment statement, as described in the manual, which was signed and dated by the recipient or the recipient's parent/guardian prior to the initiation of the specified dental service, and is retained in the recipient's dental record.

#### §33.313. Payment of Claims.

(a) The provider shall accept payment by the department as payment in full for services.

(b) Providers will be reimbursed for allowable services delivered in accordance with applicable laws, regulations, operational instructions, and the provider agreement. Payment may be withheld or suspended for services not delivered in accordance with applicable rules and regulations. Medicaid payments will not be made for services that are allowable and payable by any other third-party insurer or assistance program.

(c) In the event of the provider's death, a completed claim will be considered for payment only if the executor of the estate signs the claim and the services were performed by the provider in accordance with the Texas Health Steps program requirements.

#### §33.314. Claims–Time Limits, Submission, and Denial.

(a) Payment shall be denied if the following time limits for submitting claims are not met:

(1) dental service claims must be received by the department's claims processing contractor within 95 days from the earliest date of service on the claim;

(2) if a service is billed to another insurance resource, the claim must be received by the claims processing contractor within 95 days of the date of disposition by the other insurer; or

(3) if a service is billed to a third-party resource that has not responded, the claim must be received by the claims processing contractor within 12 months of the service date. However, the claim may not be submitted before 110 days after the third party has been billed.

(b) Claims which lack information necessary for processing shall be rejected as incomplete claims. A resubmitted claim containing the necessary information must be received by the claims processing contractor within 180 days from the last denial date.

(c) The claims processing contractor must receive all claims appeals and requests for adjustments within 180 days of the claim's disposition date. This is the date on the remittance and status report on which the claim appears.

(d) Claims for services shall be denied for any of the following reasons:

(1) the recipient was not eligible for Texas Health Steps services on the date of service;

(2) the service is not an allowable service;

(3) the service was either not medically necessary or not delivered according to program rules and policy in effect on the date of service, or both;

(4) the service required prior authorization, which the provider failed to obtain;

(5) the service was prior authorized but was delivered after the expiration of the prior authorization period;

(6) the service was provided by a nonparticipating, suspended, or otherwise ineligible dentist;

(7) the claim was not prepared or submitted according to the appropriate claims filing or claims appeal criteria as described in the manual; or

(8) a duplicate claim was submitted or the services were included in another claim previously paid.

#### §33.315. Change to Another Provider.

(a) A provider may refer a recipient to another provider or discontinue treatment for any of the following reasons:

(1) treatment by a dental specialist, such as a pediatric dentist, periodontist, endodontist, orthodontist, or oral surgeon, is indicated;

(2) services needed are outside the skills or scope of practice of the initial provider; or

(3) documented failure by the recipient or the recipient's caretaker or guardian to keep appointments, noncompliance with the treatment plan, or conflicts with the recipient or other family members.

(b) A recipient may select another provider if he or she so desires.

(c) The department may refer a recipient to another provider as a result of adverse information obtained during a utilization review

or resolution of a complaint from either party, or upon the provider's request.

#### §33.316. Standards of Care.

(a) Texas Health Steps recipients or their parents or guardians who can give informed consent shall:

(1) receive information following an oral evaluation regarding:

(A) the dental diagnosis;

(B) scope of proposed treatment, including alternatives and risks;

(C) anticipated results;

(D) need for administration of sedation or anesthesia, including risks; and

(2) receive a full explanation the treatment plan prior to its implementation.

(b) Texas Health Steps recipients shall:

(1) receive dental services specified in the treatment plan which meet the standards of care established by the laws relating to the practice of dentistry and the rules and regulations of the SBDE;

(2) receive dental services free from abuse or harm from the provider or the provider's staff; and

(3) receive only that treatment required to address documented medical necessity and which meets professionally recognized standards of health care as recognized by the SBDE.

#### §33.317. Management of Complaints.

(a) Texas Health Steps dental program administration.

(1) The department has responsibility for the administration of Texas Health Steps dental services. This responsibility includes review of complaints and payments. In accordance with each agency's guidelines for referrals, the department shall refer a provider to the OIE and/or to the SBDE. If discrepancies or irregularities are reported to the department, or found during a utilization review, the department may take one or more administrative actions. These actions include, but are not limited to, the following:

(A) providing oral, written, or personal educational contact with the provider;

(B) referral to a departmental peer review;

(C) requiring execution of a closed-end or time-limited provider agreement for a specified period of time;

(D) requiring attendance at provider education sessions;

(E) requiring prior authorization of selected services;

(F) requiring review of all services before payment;

(G) requiring review of all services after payment;

(H) requiring submission of additional claim justification that is not normally required;

(I) imposing vendor hold;

(J) recouping of overpayments; or

(K) referral to SBDE.

(2) The department will notify the provider in writing of the review findings and of any proposed administrative action.

This notification may occur before or after other action is taken by professional dental or governmental organizations.

(3) Upon receipt of a provider's written request, the department shall afford the provider a fair hearing pursuant to §§1.51-1.55 of this title (relating to Fair Hearing Procedures) before taking any of the administrative actions listed at subsections (a)(1)(A)-(J) of this section.

(b) Referrals to other state agencies.

(1) OIE criteria for referrals by the department include, but are not limited to, complaints or allegations of provider fraud or abuse including program abuse; abuse or harm to a recipient; lack of medical necessity; overbilling; soliciting or collecting unauthorized payments from recipients; or failure to refund payments to recipients. Such complaints or allegations shall be made in writing and forwarded to the OIE. The OIE may utilize staff from the department or its claims processing contractor to assist in determining the validity of any complaints or allegations received. A departmental employee acting as an agent of OIE is governed by the parameters of authority and investigation for OIE.

(2) Complaints about the practice of dentistry as described in the Texas Dental Practice Act or the rules and regulations of the SBDE shall be made in writing to the SBDE.

(3) Allegations of fraud or abuse committed by a Texas Health Steps recipient shall be made in writing to the Office of Inspector General, Texas Department of Human Services, 701 West 51st Street, Austin, Texas, 78756.

§33.318. Performance of Dental Services.

All Texas Health Steps dental services shall be performed by the enrolled provider except for that work allowed to be done by a licensed dental hygienist, dental assistant, or certified dental technician in a commercial or office dental laboratory. The Texas Dental Practice Act and the rules and regulations of the SBDE define the scope of work that dental auxiliary personnel may perform. Any deviations from these practice limitations shall be reported to the SBDE and could result in sanctions or other actions being taken against the provider.

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 H. Dental Utilization Review

### 25 TAC §§33.331-33.338

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

The repeals are proposed under the Human Resources Code §32.021, and Government Code §531.021, which provide the Health and Human Services Commission with the authority

to propose rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the EPSDT program, and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

The repeals affect Chapter 32 of the Human Resources Code.

§33.331. *Types of Reviews.*

§33.332. *Notification to Provider of Utilization Review.*

§33.333. *Provider Cooperation.*

§33.334. *Report of Findings.*

§33.335. *Classification of Review Findings.*

§33.336. *Restitution of Overpayments.*

§33.337. *Administrative Actions.*

§33.338. *Fraud or Abuse.*

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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### 25 TAC §§33.331-33.334, 33.351-33.358

The new sections are 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 propose rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the EPSDT program, and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

The new sections affect Chapter 32 of the Human Resources Code.

§33.331. *Orthodontic Services Limitations.*

(a) Orthodontic services are limited to treatment of severe handicapping malocclusion and related conditions as described and measured by the procedures and standards published in the manual.

(b) Orthodontics only for cosmetic reasons is not an allowable service.

§33.332. *Eligibility for Orthodontic Services.*

(a) Recipients must be under age 21 and eligible for Medicaid and Texas Health Steps on the date that the prior authorization request for orthodontic services is approved.

(b) If a recipient reaches age 21 or loses Medicaid eligibility before orthodontic treatment is completed, payment is provided to complete the single course of orthodontic treatment that was prior-authorized and initiated while the recipient was under 21 and Medicaid-eligible.

§33.333. Payment Limitations for Orthodontic Services.

(a) Except for the initial orthodontic visit, all orthodontic services must be prior-authorized by the dental director of the department's claims processing contractor according to the procedures described in the manual.

(b) A prior authorization is issued for a complete plan of orthodontic treatment that includes all procedures for completion of the single course of treatment to be accomplished over a specified time period.

(c) A prior authorization for orthodontic services issued to a requesting provider is not transferrable.

(d) If a request for prior authorization of a plan of orthodontic services for a recipient is not approved, the provider may file a claim and receive payment to defray the costs of the diagnostic materials required for submitting the request. Department policy in effect at the time of service delivery shall determine the number of denials for which reimbursement of costs shall be available.

§33.334. Post-payment Orthodontic Utilization Review.

(a) Orthodontic utilization reviews are performed by a dentist licensed by the SBDE and who is board-certified as an orthodontist.

(b) As part of an orthodontic utilization review, a provider may be required to submit study models and diagnostic work-up information and records at the provider's expense.

§33.351. Types of Department Utilization Reviews.

(a) The department or its claims processing contractor may conduct utilization reviews through automated analysis of a provider's pattern(s) of practice, including peer group analysis. Such analysis may result in the subsequent conduct of an on-site utilization review. The department or its claims processing contractor may conduct utilization reviews at the direction of OIE, according to HHSC rules.

(b) The department may conduct dental utilization reviews which:

(1) may include examination of:

(A) recipients;

(B) office records;

(C) hospital records;

(D) patient records, including radiographs; or

(E) any other records determined to be necessary to conduct the review; and

(2) are performed by a dentist licensed by the SBDE. Review of the work of specialists shall be substantiated by a specialist in the same field or by a panel which contains such a specialist when issues of patient care are involved.

§33.352. Selection of Dentists for Department Utilization Review.

(a) An individual or group dental provider may be selected by the department for a utilization review as a result of:

(1) a random selection procedure from the current list of participating dental providers in a geographic area selected for review;

(2) comparisons of claims submitted or patterns of practice in relation to other participating dentists; or

(3) information or complaints received by the department, except those alleging fraud or abuse or violation of the Texas Dental Practice Act as described in §33.317 of this title (relating to Management of Complaints).

(b) Providers suspected of program fraud or abuse will not be subject to a utilization review by the department, but will instead be referred to OIE for disposition.

(c) Complaints regarding the practice of dentistry will be referred to SBDE.

§33.353. Notification to Provider of Department Utilization Review.

(a) The department shall give the provider at least 30 days notice of the time and place of a utilization review, unless such notice would jeopardize an active investigation.

(b) At least seven days prior to a utilization review, the department shall give the provider a list of the recipients for whom all records must be provided, unless such notice would jeopardize an active investigation.

(c) Prior notification requirements to providers do not apply to utilization reviews conducted under the direction of the OIE.

§33.354. Provider Cooperation.

(a) The provider, the provider's associate(s) in a group practice, or the provider's office staff shall not contact, examine, or treat recipients identified as part of the utilization review (with the exception of emergency services as defined in §33.305 of this title (relating to Emergency Dental Services), or upon approval of the provider's request by the department) from the time the provider receives notification identifying the recipients to be reviewed until notified in writing by the department that normal contacts may be resumed.

(b) Prior to the utilization review, the provider must make available to the reviewing dentist any and all records maintained by the provider, including office records and radiographs, for each recipient identified as part of the review.

(c) Failure to produce such records may result in recoupment of payments for all services delivered to those recipients whose records are withheld or otherwise not made available for the utilization review.

§33.355. Disposition of Department Utilization Review Results.

The results of utilization reviews shall be forwarded by the department to the OIE for evaluation and final disposition. Results of a review which reflects no deviation from review standards will be mailed to the provider in a timely manner upon completion of the review.

§33.356. Recoupment of Overpayments as a Result of Department Utilization Review.

If the results of a department utilization review indicate overpayment for services delivered or that payment was made for services not delivered, recoupment is required. The appropriate agency or agency designee will notify the provider of any overpayment identified and the method of recoupment. A provider's recoupment obligation may involve either or both of the following:

(1) the dollar amount of the discrepancies in the claims reviewed; or

(2) a dollar amount calculated by applying the monetary discrepancy rate found in the claims reviewed to all remaining claims for the types of services sampled with dates of service during the period under review.

§33.357. Administrative Actions and/or Sanctions.

Evaluation of a utilization review may result in one or more of the following administrative actions or sanctions by the appropriate agency or the agency's designee:



- (1) closure of the review with written notification to the provider;
- (2) discussion and interpretation of the utilization review results with the provider;
- (3) recoupment of any overpayment identified according to §33.356 of this title (relating to Recoupment of Overpayments as a Result of Department Utilization Review);
- (4) imposition of a vendor hold;
- (5) referral to the appropriate state licensing board;
- (6) referral to the OIE;
- (7) termination of a provider agreement; and
- (8) any other remedies authorized by rule, regulation, statute, or contract.

§33.358. Referral for Investigation of Fraud or Program Abuse.

Suspected cases of fraud or abuse will be immediately referred to the OIE. Department utilization reviews will not be initiated on any provider suspected of fraud or abuse.

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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## TITLE 28. INSURANCE

### Part I. Texas Department of Insurance

#### Chapter 19. Agent's Licensing

##### Subchapter U. Utilization Reviews for Medical Benefits Provided Under Workers' Compensation Insurance Coverage

###### 28 TAC §§19.2001-19.2021

The Texas Department of Insurance proposes new Subchapter U, §§19.2001-19.2021, concerning utilization reviews for medical benefits provided under workers' compensation insurance coverage. This subchapter implements the provisions of Insurance Code Article 21.58A, §14(c), which was amended by House Bill 3197 in 1997, 75th Legislature, Chapter 903. The amendment was effective September 1, 1997, but applies only to utilization reviews for medical benefits provided under workers' compensation insurance coverage after January 1, 1998. House Bill 3197 amended §14(c) such that, except as otherwise provided, Insurance Code Article 21.58A applies to utilization review of health care services provided to persons eligible for workers' compensation medical benefits under Title 5, Labor Code. It further provided that the Commissioner of Insurance shall regulate, in the manner provided for by Insurance Code Article 21.58A, a person who performs review of medical benefits provided for under Chapter 408, Labor Code, but that Article

21.58A, §14(c), does not affect the Texas Workers' Compensation Commission's authority to exercise the powers granted to it under Title 5, Labor Code. It also provided that, in the event of a conflict between Insurance Code Article 21.58A and Title 5, Labor Code, the latter prevails, and that the department and the Texas Workers' Compensation Commission may adopt rules as necessary to implement amended Insurance Code, Article 21.58A. It is upon this authority that the department proposes these rules.

Proposed §19.2001 contains general provisions regarding this chapter, including the statutory basis, severability provisions and a designation of the purpose of the rules. Proposed §19.2002 contains limitations on applicability and assures that the subchapter does not affect the authority of the Texas Workers' Compensation Commission under Title 5, Labor Code. Proposed §19.2003 defines certain terms used in this subchapter. Proposed §19.2004 contains information regarding the certification of utilization review agents to perform review of medical benefits provided for under Title 5, Labor Code. The section states where to obtain and file an application for certification, and includes a list of information required to be submitted by the applicant. Requirements for filing revisions to the application during the review process are set forth, as well as the applicable time frames and certain duties of the applicant and the department during the application process. Requirements that an applicant must prove have been met prior to obtaining certification of registration are also listed. The section provides that a utilization review agent registered pursuant to this subchapter must apply for renewal of such registration every two years, and sets forth renewal requirements and procedures. The section also sets forth the process for appeal if an application or renewal is denied. Proposed §19.2005 contains the general standards of utilization review of medical benefits provided for under Chapter 408 of Title 5, Labor Code, and requires that the plan be reviewed by a physician and conducted in accordance with standards developed with input from other appropriate health care providers. The section also requires a description of the elements of review which must be provided, and requires written procedures for various operational aspects of the utilization review agent. The section requires use of written medically acceptable screening criteria, and allows delegation of review under certain circumstances. Proposed §19.2006 addresses qualification of personnel and required reporting thereon, and certain prohibitions regarding treatment of personnel. It requires that utilization review of health care be provided under the direction of a physician and that utilization review of dental health care be reviewed by a dentist. Proposed §19.2007 contains information regarding the prohibition of certain activities of utilization review agents. A utilization review agent's contact with and receipt of information from health care providers and injured employees is governed by proposed §19.2008. Proposed §19.2009 contains information regarding on-site review by a utilization review agent, generally prohibiting the utilization review agent from being present at an injured employee's examination or treatment without consent, and requiring certain identification protocol for utilization review staff during on-site visits. Proposed §19.2010 contains information regarding requirements of notice of determinations made by utilization review agents, excluding retrospective review. Requirements affording a health care provider a reasonable opportunity to discuss a proposed plan of treatment which has been denied are addressed in proposed §19.2011. Proposed §19.2012 states that appeals from an adverse determination made by

a utilization review agent certified pursuant to this subchapter shall be governed by the Texas Workers' Compensation Act and applicable rules. Proposed §19.2013 deals with requirements of a utilization review agent's telephone accessibility. Confidentiality requirements with regard to utilization review are set forth in proposed §19.2014. Proposed §19.2015 describes various aspects of retrospective review of medical necessity. Requirements regarding a utilization review agent's complaint system, complaints to the department, and required reporting to the department are set forth in proposed §19.2016. Also set forth in this proposed section are authority and procedures for on-site review of the operations of utilization review agents by the department. Proposed §19.2017 contains the regulations for enforcement of the standards of utilization review and any other requirements under this subchapter. Proposed §19.2018 makes it a criminal offense to perform utilization review pursuant to this subchapter without a certificate of registration. Proposed §19.2019 contains information regarding insurance companies which perform utilization review. Utilization review agents performing only specialty review are addressed in proposed §19.2020. Proposed §19.2021 states that adverse determinations pursuant to this subchapter are not subject to independent review as set forth in Chapter 12 of this title (relating to Independent Review Organizations).

Gloria Hunt, acting deputy commissioner, HMO/URA group, has determined that for each year of the first five years the proposed new subchapter is in effect, there will be no measurable fiscal impact on state or local government as a result of enforcing or administering the proposed chapter, and there will be no effect on the local employment or economy.

Ms. Hunt has determined that for each year of the first five years the proposed new subchapter is in effect, the public benefits anticipated as a result of the proposed new subchapter will be the licensing and implementation of regulation of utilization review agents to perform utilization reviews for medical benefits provided under workers' compensation insurance coverage, which formerly performed utilization review, but which have not, under prior law, been subject to licensing by the department. The cost to a utilization review agent for the first five-year period the proposed new subchapter is in effect will be \$2,695 for the licensing fees for utilization review agents set forth in the department's licensing fee rule, 28 TAC §19.802. This includes an Initial application cost of \$2,150, and a biennial renewal cost of \$545. Other, additional costs to utilization review agents during each of the first five years will depend upon the degree to which agents performing utilization review of workers' compensation benefits are already in compliance with the statutory and regulatory requirements. For example, utilization review agents must develop and file with the department a utilization review plan which contains screening criteria and review procedures. The rule also requires that the utilization review plan incorporate the review of appropriate health care providers, including primary and specialty doctors, and that the final plan be reviewed and approved by a physician. Prior to the change in the law resulting from House Bill 3197, utilization review agents were required to use certain screening tools, including fee and treatment guidelines developed by the Texas Workers' Compensation Commission. Some of those agents also may have been using additional screening criteria, and thus would not need to develop or purchase additional criteria. Professionally developed screening criteria for workers' compensation medical benefits is estimated to cost \$400. The writing and production of the utilization review plan for delivery

to the department is estimated to cost no more than \$7500; this cost could be less depending upon whether an agent has in place a plan that meets the requirements of the statute and rule.

Additionally, the rule requires use of certain licensed medical personnel at points in the review process, and additional costs may be incurred depending upon whether such personnel are already currently employed by, or under contract to, the agent. Utilization review must be under the direction of a physician (defined as a medical doctor or doctor of osteopathy), and utilization review must be under the direction of a physician, and adverse determinations must be referred to an appropriate professional (a doctor or other health care provider). The cost for a physician review is estimated to be on average \$290 per review. Review by health care providers other than physicians is estimated to be on average \$100 per review.

In addition, utilization review personnel who obtain certain clinical information over the telephone must be nurses, physicians assistants, or other qualified health care providers. Many utilization review agents currently have at least one such person in their employ. The number of such personnel needed will vary depending upon the volume of business performed by a utilization review agent and the number of qualified personnel now employed by the agent. The cost of an additional person to meet this requirement is estimated to be \$14 per hour, but could be greater depending upon the particular skills and qualifications of the person.

The rules also require a utilization review agent to establish and maintain a system for responding to complaints and for tracking and annually reporting to the department information on complaints and adverse determinations. It is estimated that compliance with this provision will require a one-time cost of approximately \$300 for purchase of software. Utilization review agents who do not already do so must maintain a toll-free telephone number, at an estimated average annual cost of \$620 per 1,000 calls.

The costs for insurance companies performing utilization review under §14(h) of the Utilization Review Act are anticipated to be the same as those for utilization review agents except that insurance companies will not have to pay the licensing fees.

The costs of compliance with the rule would be the same for small and large businesses, with the variable for both being the extent to which each had already had in place criteria, personnel and procedures for compliance with the rule's requirements. It is estimated that, in an extreme scenario in which neither a large nor small utilization review business fully met the requirements for screening criteria, development of a utilization review plan, or installing a computer tracking system, the one-time cost to the small business (with revenue of \$1 million or less) would be an estimated \$.82 per \$100 of revenue, and the one-time cost to a large business (with revenue of at least \$2 million) is estimated to be \$.41 per \$100 of revenue. The costs of compliance are a requirement of statute as well as rule, and are thus mandatory on all companies to which the requirements apply.

The assumptions on which these costs are based are subject to change as the department receives data during the comment period.

Comments on the proposal must be submitted within 30 days after publication of the proposed sections in the *Texas Register* to Caroline Scott, Chief Clerk, Mail Code 113-2A, Texas

Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted to Gloria Hunt, Acting Deputy Commissioner, HMO/URA Group, Mail Code 108-6A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

This subchapter is proposed under Insurance Code Articles 21.58A, §14(c) and 1.03A. The Insurance Code Article 21.58A, §14(c) provides that the department may promulgate standards and rules for the certification and operation of utilization review agents to review health care services provided to persons eligible for workers' compensation medical benefits under Title 5, Labor Code. The Insurance Code Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance as authorized by statute. The Government Code, Chapter 2001, §§2001.004 et seq. authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and prescribes the procedures for adoption of rules by a state administrative agency.

The following articles are affected by this proposal: Statute 28 TAC §§19.2001 - 19.2021 Insurance Code, Articles 21.58A and 1.03A

§19.2001. General Provisions.

(a) Statutory basis. This subchapter implements the provisions of the Insurance Code Article 21.58A, which was amended by H.B. 3197 in 1997, 75th Legislature, Chapter 903 which was effective September 1, 1997, but applies only to utilization reviews for medical benefits provided under workers' compensation insurance coverage conducted on or after January 1, 1998.

(b) Severability. Where any terms or sections of this subchapter are determined by a court of competent jurisdiction to be inconsistent with any statutes of this state, or to be unconstitutional, the remaining terms and provisions of this subchapter shall remain in effect.

(c) Purpose. The purpose of these rules is to:

(1) promote the delivery of quality health care in a cost-effective manner, including protection of injured employee safety;

(2) assure that utilization review agents adhere to reasonable standards for conducting utilization reviews;

(3) foster greater coordination and cooperation between health care providers and utilization review agents;

(4) improve communications and knowledge of medical benefits among all parties; and

(5) ensure that utilization review agents maintain the confidentiality of medical records in accordance with applicable law.

§19.2002. Limitations on Applicability.

This subchapter does not affect the authority of the Texas Workers' Compensation Commission to exercise the powers granted to that commission under Title 5, Labor Code. This subchapter does not apply to a utilization review agent or other person which conducts only the functions of categories of utilization review listed in paragraphs (1)-(3) of this section:

(1) a person who provides information to injured employees, their representatives and/or health care providers about scope of coverage or benefits provided for under workers' compensation insur-

ance coverage and who does not determine whether particular health care provided or to be provided to an injured employee is medically reasonable and necessary;

(2) a doctor, as defined in §19.2003 of this title (relating to Definitions), or any other individual licensed to provide health care, performing utilization review who is an employee of, or a contractor to, a certified utilization review agent;

(3) a utilization review agency which conducts only the categories of utilization review listed in subparagraphs (A) - (D) of this paragraph:

(A) reviews performed pursuant to any contract with the federal government for utilization review of patients eligible for services under Title XVIII or XIX of the Social Security Act (42 United States Code §§1395 et seq. or §§1396 et seq.);

(B) reviews performed for the Texas Medicaid Program, except reviews performed by a health maintenance organization that contracts with the Health and Human Services Commission or an agency operating part of the state Medicaid managed care program to provide health care services to recipients of medical assistance under Chapter 32, Human Resources Code, the Chronically Ill and Disabled Children's Services Program created pursuant to Chapter 35, Health and Safety Code, any program administered under Title 2, the Human Resources Code, any program of the Texas Department of Mental Health and Mental Retardation, or any program of the Texas Department of Criminal Justice;

(C) reviews of health care services provided under a policy or contract of automobile insurance promulgated by the department under the Insurance Code, Subchapter A, Chapter 5 or issued pursuant to the Insurance Code Article 1.14; or

(D) reviews that apply to the terms and benefits of the employee welfare benefit plans as defined in Section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(1)).

§19.2003. Definitions.

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

(1) Act—Insurance Code Article 21.58A, entitled "Health Care Utilization Review Agents."

(2) Active practice—A minimum of 20 hours per week in the examination, diagnosis and/or treatment of patients.

(3) Administrative Procedure Act—Government Code Chapter 2001.

(4) Adverse determination—A determination by a utilization review agent that the medical benefits, as defined in this subchapter, furnished or proposed to be furnished to an injured employee are not reasonable and necessary.

(5) Appeal process—The processes outlined in the Texas Workers' Compensation Act, including but not limited to Texas Labor Code §413.031 and Chapter 134, Subchapter G of this title (relating to Treatments and Services Requiring Preauthorization), Chapter 133, Subchapter D of this title, (relating to Dispute and Audit of Bills by Insurance Carriers).

(6) Certificate—A certificate of registration granted by the commissioner to a utilization review agent.

(7) Commissioner—The Commissioner of Insurance.

(8) Compensable injury—An injury that arises out of and in the course and scope of employment for which compensation is payable under the Texas Workers' Compensation Act.

(9) Complaint—An oral or written expression of dissatisfaction with a utilization review agent concerning the utilization review agent's process. A complaint is not an expression of dissatisfaction with a specific adverse determination, a misunderstanding or misinformation that is resolved promptly by supplying the appropriate information or clearing up the misunderstanding to the satisfaction of the complaining party.

(10) Department—Texas Department of Insurance.

(11) Dentist—A licensed doctor of dentistry, holding either a D.D.S. or a D.M.D. degree.

(12) Doctor—A doctor of medicine, osteopathic medicine, optometry, dentistry, podiatry, or chiropractic who is licensed and authorized to practice.

(13) Health care—Includes all reasonable and necessary medical aid, medical examinations, medical treatments, medical diagnoses, medical evaluations, and medical services. The term does not include vocational rehabilitation. The term includes:

(A) medical, surgical, chiropractic, podiatric, optometric, dental, nursing, and physical therapy services provided by or at the direction of a doctor;

(B) physical rehabilitation services performed by a licensed occupational therapist provided by or at the direction of a doctor;

(C) psychological services prescribed by a doctor;

(D) the services of a hospital or other health care facility;

(E) a prescription drug, medicine, or other remedy;  
and

(F) a medical or surgical supply, appliance, brace, artificial member, or prosthesis, including training in the use of the appliance, brace, member, or prosthesis.

(14) Health care facility—A hospital, emergency clinic, outpatient clinic, or other facility providing health care.

(15) Health care provider—Any person, corporation, facility, or institution licensed by a state to provide or otherwise lawfully providing health care that is eligible for independent reimbursement for those services.

(16) Injured employee—An employee with a compensable injury under the Texas Workers' Compensation Act.

(17) Inquiry—A request for information or assistance from a utilization review agent.

(18) Insurance carrier—

(A) an insurance company;

(B) a certified self-insurer for workers' compensation insurance; or

(C) a governmental entity that self-insures, either individually or collectively.

(19) Insurance company—A person authorized and admitted by the Texas Department of Insurance to do insurance business in this state under a certificate of authority that includes authorization to write workers' compensation insurance.

(20) Life-threatening—A disease or condition resulting from a compensable injury, for which the likelihood of death is probable unless the course of the disease or condition is interrupted.

(21) Medical benefit—Payment for health care reasonably required by the nature of a compensable injury and intended to:

(A) cure or relieve the effects naturally resulting from the compensable injury, including reasonable expenses incurred by the injured employee for necessary treatment to cure and relieve the injured employee from the effects of an occupational disease before and after the injured employee knew or should have known the nature of the disability and its relationship to the employment;

(B) promote recovery; or

(C) enhance the ability of the injured employee to return to or retain employment.

(22) Medical records—The entire history of diagnosis and treatment for a compensable injury, including but not limited to medical, dental, and other health care records from all disciplines rendering care to an injured employee.

(23) Nurse—A professional or registered nurse, a licensed vocational nurse, or a licensed practical nurse.

(24) Open records law—Government Code, Chapter 552.

(25) Person—An individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert.

(26) Physician—A licensed doctor of medicine or a doctor of osteopathy.

(27) Preauthorization—The process of a doctor, other health care provider or health care facility requesting approval to provide a specific treatment or service prior to rendering the treatment or service as delineated in Chapter 134, subchapter G of this title (relating to Treatments and Services Requiring Preauthorization.)

(28) Retrospective review—The process of reviewing health care which has been provided to injured employees to determine if the health care was medically reasonable and necessary under the Texas Workers' Compensation Act.

(29) Screening criteria—The written policies, decision rules, medical protocols, TWCC fee and treatment guidelines, and TWCC rules and advisories used by the utilization review agent as part of the utilization review process (e.g., appropriateness evaluation protocol (AEP), and intensity of service, severity of illness, discharge, and appropriateness screens (ISD-A)). The TWCC Treatment Guidelines are tools that identify recommended treatment parameters and typical courses of intervention, whose purpose is to clarify those services that are reasonable and medically necessary. The guidelines are not to be used as fixed treatment protocols by either the health care provider or insurance carrier and shall not be viewed as prescriptive or the sole basis for approval or denial of proposed services. There may be injured employees who will require more or less treatment than is recommended in the guidelines. Treatment falling outside the parameters of the guidelines will be subject to more careful scrutiny and may require additional documentation of special circumstances to justify the need for treatment. Each guideline includes specific ground rules which establish the use of the guideline.

(30) Texas Workers' Compensation Act—Texas Labor Code, Title 5.

(31) Treating doctor—The doctor primarily responsible for treating the injured employee’s compensable injury as defined in the Texas Labor Code, §401.011(42).

(32) TWCC—Texas Workers’ Compensation Commission.

(33) Utilization review—A system for preauthorization, or preauthorization and retrospective review to determine if health care proposed to be provided, being provided, or which has been provided to an injured employee is medically reasonable and necessary. Utilization review shall not include the spinal surgery second opinion process as delineated in Chapter 133, subchapter C of this title (relating to Second Opinions for Spinal Surgery), or elective requests for clarification of coverage or prepayment guarantee.

(34) Utilization review agent—An insurance carrier, the carriers’ agent(s), and/or any entity contracted or subcontracted to provide utilization review.

(35) Utilization review plan—The screening criteria and utilization review procedures of a utilization review agent.

(36) Working day—A weekday, excluding New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day.

(37) Workers’ compensation insurance coverage:

(A) an approved insurance policy, pursuant to Article 5.56 of the Insurance Code, to secure the payment of compensation under the Texas Workers’ Compensation Act;

(B) coverage to secure the payment of compensation through self-insurance as provided by the Texas Workers’ Compensation Act; or

(C) coverage provided by a governmental entity to secure the payment of compensation under the Texas Workers’ Compensation Act.

§19.2004. Certification of Utilization Review Agents.

(a) An application for certification of a utilization review agent must be filed with the Texas Department of Insurance at the following address: Texas Department of Insurance, Mail Code 108-6A, P. O. Box 149104, Austin, TX 78714-9104.

(b) The application must be submitted on a form which can be obtained from the Utilization Review Section, Mail Code 108-6A, Texas Department of Insurance, 333 Guadalupe, P. O. Box 149104, Austin, TX 78714-9104.

(c) The attachments to the application form require the following information:

(1) a summary description of the utilization review plan which must include the matters listed in subparagraphs (A) and (B) of this paragraph. The utilization review plan must meet the requirements of §19.2005 of this title (relating to General Standards of Utilization Review);

(A) an adequate summary description of screening criteria and review procedures to be used to determine health care is medically reasonable and necessary; and

(B) a certification, signed by an authorized representative of the company, that screening criteria and review procedures to be applied in review determination are established with input from appropriate health care providers and approved by physicians;

(2) copies of procedures established for informing appropriate parties of the process for appeal of an adverse determination to TWCC. These procedures must comply with the provisions of Chap-

ter 133, Subchapter D of this title (relating to Dispute and Audit of Bills by Insurance Carriers);

(3) copies of procedures established for handling oral or written complaints by injured employees, their representatives or health care providers. These procedures must comply with §19.2016 of this title (relating to Complaints and Information);

(4) copies of policies and procedures which ensure that all applicable state and federal laws to protect the confidentiality of medical records are followed. These procedures must comply with §19.2014 of this title (relating to Confidentiality);

(5) a certification signed by an authorized representative of the company that the utilization review agent will comply with the provisions of the Act, the Texas Workers’ Compensation Act and TWCC Rules;

(6) a description of the categories of persons and names of the personnel employed or under contract to perform utilization review;

(7) a description of the hours of operation within the State of Texas and how the utilization review agent may be contacted during weekends and holidays. This description must be in compliance with §19.2013 of this title (relating to Utilization Review Agent’s Telephone Access);

(8) representative samples of all materials provided by the utilization review agent/applicant to inform its clients, injured employees, their representatives or providers of the requirements of the utilization review plan. Samples shall include language for notification of an adverse determination made in a utilization review;

(9) a description of the basis by which the utilization review agent compensates its employees or agents to ensure compliance with paragraph (10) of this subsection;

(10) a certification signed by an authorized representative of the company that the utilization review agent shall not permit or provide compensation or anything of value to its employees or agents, condition employment or its employee or agent evaluations, or set its employee or agent performance standards based on: the amount or volume of adverse determinations; reductions or limitations on lengths of stay, duration of treatment, medical benefits, services, or charges; or on the number or frequency of telephone calls or other contacts with health care providers or injured employees, which are inconsistent with the provisions of this subchapter;

(11) the organizational information, documents and all amendments, including:

(A) the bylaws, rules and regulations, or any similar document regulating the conduct of the internal affairs of the applicant with a notarized certification bearing the original signature of an officer or authorized representative of the applicant that they are true, accurate, and complete copies of the originals;

(B) for an applicant that is publicly held, the name of each stockholder or owner of more than five percent of any stock or options;

(C) a chart showing the internal organizational structure of the applicant’s management and administrative staff; and

(D) a chart showing contractual arrangements of the utilization review agent related to utilization review;

(12) the name and biographical information for each director, officer and executive of the applicant.

(d) The utilization review agent shall report any material changes in the information in the application or renewal form referred to in this section, not later than the 30th day after the date on which the change takes effect. Material changes include but are not limited to new personnel hired as directors, officers, or executives, changes in the organizational structure, changes in contractual relationships, changes in the utilization review plan and changes in methods of compensation to utilization review agents or their employees.

(e) The application process is described in paragraphs (1)-(4) of this subsection.

(1) The department shall have 60 days after receipt of an application to process the application and to certify or deny it. The department shall give the applicant written notice of any omissions or deficiencies noted as a result of the review conducted pursuant to this paragraph.

(2) The applicant must correct the omissions or deficiencies in the application within 30 days of the date of the department's latest notice of such omissions or deficiencies. If the applicant fails to do so, the application file will be closed as an incomplete application. The application fee will not be refundable.

(3) The applicant may waive any of the time limits described in this subsection, except in paragraph (2). The applicant may waive the time limit in paragraph (2) of this subsection only with the consent of the department.

(4) The department shall maintain an application file which shall contain the application, notices of omissions or deficiencies, responses and any written materials generated by any person that was considered by the department in evaluating the application.

(f) An applicant for a certificate of registration as a utilization review agent must provide evidence that the applicant:

(1) has available the services of doctors, nurses, physician's assistants, or other health care providers qualified to provide the service requested by the provider to carry out its utilization review activities in a timely manner;

(2) meets any applicable provisions of this subchapter and regulations relating to the qualifications of the utilization review agents or the performance of utilization review;

(3) has policies and procedures which protect the confidentiality of medical records in accordance with applicable state and federal laws;

(4) makes itself accessible to injured employees, their representatives and health care providers 40 working hours a week during normal business hours in this state in each time zone in which it operates.

(g) A utilization review agent must apply for renewal of the certificate of registration every two years from the date of certification. A renewal form must be used for this purpose. The renewal fee must be submitted with the renewal form. The renewal form can be obtained from the address listed in subsection (b) of this section. The completed renewal form, a summary of the current screening criteria, a statement signed by an authorized representative of the company certifying that all information previously submitted is true and correct and all changes have been previously filed to the application certified by the department, and the renewal fee must be submitted to the department at the address listed in subsection (a) of this section. A utilization review agent may continue to operate under its certificate of registration, if the information and the fee have been filed for renewal and timely received by the department, until the renewal is finally

denied or issued by the department. If the required information and fee are not received prior to the deadline for renewal of the certificate of registration, the certificate of registration will automatically expire and the utilization review agent must complete and submit a new application form and a new fee with all required information.

(h) If an application or renewal is initially denied under this section, the applicant or registrant may appeal such denial under the terms of the provisions of Chapter 1, Subchapter A of this title (relating to Rules of Practice and Procedure) and Government Code, Chapter 2001. A hearing of such appeal shall be conducted within 45 days of the date the petition for such hearing is filed with the commissioner. A decision by the commissioner shall be rendered within 60 days of the date of the hearing.

(i) A utilization review agent providing utilization review on the effective date of this subchapter must abide by the provisions of this subchapter effective upon its adoption, and must file with the department its original application within 180 days of the effective date of this subchapter. Utilization review agents that have received their certificate of registration prior to the adoption of these rules, and are performing workers' compensation utilization review as defined in §19.2003 of this title (relating to Definitions), must file with the department all changes to their original application as set forth in subsections (c) and (d) of this section within 180 days of the effective date of this subchapter.

(j) A utilization review agent will be required to make a single application and fee payment for one certification to cover all lines of utilization review business.

§19.2005. General Standards of Utilization Review.

The utilization review plan shall be reviewed by a physician and conducted in accordance with standards developed with input from appropriate health care providers, including doctors engaged in an active practice that are both primary and specialty doctors, and approved by a physician. The utilization review plan shall include the following components:

(1) a description of the elements of review which the utilization review agent provides, including but not limited to:

(A) preauthorization in accordance with Chapter 134, Subchapter G of this title (relating to Treatments and Services Requiring Preauthorization);

(B) the elements of review in the TWCC guidelines contained in Chapter 134 of this title (relating to Guidelines for Medical Services, Charges, And Payments);

(C) the elements of review contained in Chapter 133, Subchapter D of this title (relating to Dispute and Audit of Bills by Insurance Carriers).

(2) written procedures for:

(A) identification of individuals with special circumstances who may require flexibility in the application of screening criteria through utilization review decisions. Special circumstances include, but are not limited to, a person who has a disability, an acute condition or life-threatening illness. Disability shall not be construed to mean an injured employee who is off work or receiving income benefits;

(B) notification of the utilization review agent's determinations provided in accordance with Chapter 134, Subchapter G of this title and as addressed in §19.2010(b) of this title (relating to Notice of Determinations Made by Utilization Review Agents, Excluding Retrospective Review);

(C) informing appropriate parties of the process for appeal of an adverse determination to TWCC, as required by §19.2011 and §19.2012 of this title (relating to Requirements Prior to Adverse Determination and Appeal of Adverse Determinations of Utilization Review Agents;

(D) receiving or redirecting a toll-free normal business hour and after-hour calls, either in person or by recording, and assurance that a toll-free number will be maintained 40 hours per week during normal business hours as addressed in §19.2013 of this title (relating to Utilization Review Agent's Telephone Access);

(E) review including:

(i) any form used during the review process;

(ii) time frames that shall be met during the review;

(F) handling of oral or written complaints by injured employees, their representatives or health care providers as addressed in §19.2016(a) of this title (relating to Complaints and Information);

(G) determining if doctors or other health care providers utilized by the utilization review agent are licensed, qualified and appropriately trained;

(H) assuring that injured employee-specific information obtained during the process of utilization review, as addressed in §19.2014 of this title (relating to Confidentiality), will be:

(i) kept confidential in accordance with applicable federal and state laws;

(ii) used solely for the purposes of utilization review, quality assurance and case management;

(iii) shared with only those agencies who have authority to receive such information; and

(iv) in the case of summary data, not considered confidential if it does not provide sufficient information to allow identification of individual injured employees;

(I) providing prior written notice to a doctor or health care provider when publishing data, including quality review studies or performance tracking data which identifies a particular doctor, or health care provider;

(3) screening criteria. Each utilization review agent shall utilize written medically acceptable screening criteria as defined in §19.2003 of this title (relating to Definitions) and review procedures which are established and periodically evaluated and updated, at a minimum, upon certification renewal with appropriate involvement from the doctors, including doctors engaged in an active practice, and other health care providers. Utilization review decisions shall be made in accordance with currently accepted medical or health care practices, taking into account special circumstances of each case that may require deviation from the norm stated in the screening criteria. Screening criteria must be objective, clinically valid, compatible with established principles of health care, and flexible enough to allow deviations from the norm when justified on a case-by-case basis. Screening criteria must be used to determine only whether to approve the requested treatment. Denials must be referred to an appropriate doctor or other health care provider to determine whether health care is medically reasonable and necessary. Such written screening criteria and review procedures shall be available for review and inspection to determine appropriateness and compliance as deemed necessary by the commissioner, his or her designated representative, or TWCC and copying as necessary for the commissioner and/or TWCC to carry out the lawful duties under the Insurance Code, and the Texas Labor

Code, provided, however, that any information obtained or acquired under the authority of this subchapter and the Act, is confidential and privileged and not subject to the open records law or subpoena except to the extent necessary for the commissioner to enforce this subchapter and the Act, and for TWCC to enforce the Texas Workers' Compensation Act.

(4) delegation of review. Provide circumstances, if any, under which the utilization review agent may delegate the review to qualified personnel in the hospital or health care facility where the health care is to be provided. Such delegation shall not relieve the utilization review agent of full responsibility for compliance with this subchapter, the Act, and the Texas Workers' Compensation Act, including the conduct of those to whom utilization review has been delegated.

§19.2006. Personnel.

(a) Personnel employed by or under contract with the utilization review agent to perform utilization review shall be appropriately trained and qualified and, if applicable, currently licensed. Personnel who obtain information regarding an injured employee's specific medical condition, diagnosis and treatment options or protocols directly from the doctor or other health care provider, either orally or in writing, and who are not doctors shall be nurses, physicians assistants, or health care providers qualified to provide the service requested by the provider. This provision shall not be interpreted to require such qualifications for personnel who perform clerical or administrative tasks.

(b) A utilization review agent may not permit or provide compensation or any thing of value to its employees or agents, condition employment or its employee or agent evaluations, or set its employee or agent performance standards, based on: the amount or volume of adverse determinations; reductions or limitations on lengths of stay, duration of treatment, medical benefits, services, or charges; or the number or frequency of telephone calls or other contacts with health care providers or injured employees, which are inconsistent with the provisions of this subchapter.

(c) The utilization review agent is required to provide the name, number, type, and minimum qualification or qualifications of the personnel either employed or under contract to perform the utilization review to the commissioner. Utilization review agents shall be required to adopt written procedures used to determine if doctors or other health care providers utilized by the utilization review agent are licensed, qualified, and appropriately trained, and must maintain records on such.

(d) Utilization review conducted by a utilization review agent shall be under the direction of a physician currently licensed to practice medicine by a state licensing agency in the United States. Such physician may be employed by or under contract to the utilization review agent.

(e) Utilization review of dental health care shall be reviewed by a dentist currently licensed by a state licensing agency in the United States.

§19.2007. Prohibitions of Certain Activities of Utilization Review Agents.

(a) A utilization review agent may not engage in unnecessary or unreasonably repetitive contacts with the health care provider or injured employee and shall base the frequency of contacts or reviews on the severity or complexity of the injured employee's condition or on necessary treatment and return to work planning activity.

(b) A utilization review agent shall not set or impose any notice or other review procedures contrary to the requirements of this

subchapter, the Texas Workers' Compensation Act, and the TWCC rules.

§19.2008. Utilization Review Agent Contact with and Receipt of Information from Health Care Providers.

(a) A health care provider may designate one or more individuals as the initial contact or contacts for utilization review agents seeking routine information or data. In no event shall the designation of such an individual or individuals preclude a utilization review agent or medical advisor from contacting a health care provider or others in his or her employ where a review might otherwise be unreasonably delayed or where the designated individual is unable to provide the necessary information or data requested by the utilization review agent.

(b) Unless precluded or modified by contract, the workers' compensation insurance carrier shall reimburse health care providers for the reasonable costs of providing written medical information, including copying and transmitting any requested injured employee records or other documents pursuant to Chapter 133, Subchapter B of this title, (relating to Required Reports). A health care provider's charge for providing medical information to a utilization review agent shall not exceed the cost of copying records set by rules of the Texas Workers' Compensation Commission and may not include any costs that are either otherwise specified in TWCC rules and/or guidelines as not reimbursed separately or are recouped as a part of the charge for health care.

(c) When conducting utilization review the utilization review agent shall require only the information necessary to complete the review. This information may include identifying information about the injured employee, the treating health care provider, and facilities rendering care. It may also include clinical information regarding the diagnoses of the injured employee and the medical history of the injured employee relevant to the diagnoses and the compensable injury, the injured employee's prognosis, and the treatment plan prescribed by the treating health care provider along with the provider's justification for the treatment plan. It must include the medical information to substantiate the medical necessity for the specific treatment in review. These items shall only be requested when relevant to the utilization review in question, and be requested as appropriate from the health care provider or health care facility. The required information should be obtained from the appropriate source since no one source will have all of this information.

(1) Utilization review agents shall not routinely require hospitals and doctors to supply numerically codified diagnoses or procedures. Utilization review agents may ask for such coding, since if it is known, its inclusion in the data collected increases the effectiveness of the communication.

(2) Utilization review agents shall not routinely request copies of medical records on all injured employees reviewed. During utilization review, copies of medical records should only be required when a difficulty develops in determining whether the health care is medically reasonable and necessary. In those cases, only the necessary or pertinent sections of the record should be required.

(d) Information in addition to that described in this section may be requested by the utilization review agent or voluntarily submitted by the health care provider when there is significant lack of agreement between the utilization review agent and health care provider regarding the appropriateness of health care during the review process. "Significant lack of agreement" means that the utilization review agent:

(1) has tentatively determined, through its professional staff, that a service cannot be authorized to be provided or reimbursed;

(2) has referred the case to a physician for review; and

(3) has talked to or attempted to talk to the health care provider for further information.

(e) The utilization review agent shall share all pertinent clinical and demographic information on individual injured employees among its various divisions (e.g., preauthorization, return to work planning, case management) to avoid duplicate requests for information from injured employees or health care providers.

(f) Notwithstanding any other provision of this subchapter, a utilization review agent may not require as a condition of treatment approval, or for any other reason, the observation of a psychotherapy session or the submission or review of a mental health therapist's process or progress notes. This does not preclude the utilization review agent from requiring submission of an injured employee's medical record.

§19.2009. On-Site Review by the Utilization Review Agent.

(a) Unless approved by an injured employee and the treating doctor or modified by contract, a utilization review agent shall be prohibited from observing, participating in, recording, or otherwise being present during an injured employee's examination, treatment, procedure or therapy. In no event shall this section otherwise be construed to limit or deny contact with an injured employee or the health care provider for purposes of conducting utilization review unless otherwise specifically prohibited by law.

(b) Utilization review agents' staff shall identify themselves by name and by the name of their organization and, for on-site reviews, should carry picture identification and the utilization review company identification card with the certification or registration number assigned by the Texas Department of Insurance. Utilization review agents should assure that their on-site review staff register with the appropriate contact person, if available, prior to requesting any clinical information or assistance from hospital staff, and wear appropriate hospital supplied identification tags while on the premises. Utilization review agents shall agree, if so requested, that the medical records remain available in the designated areas during the on-site review, and that reasonable hospital administrative procedures shall be followed by on-site review staff so as to not disrupt hospital operations or patient care. Such procedures, however, should not obstruct or limit the ability of the utilization review agent to efficiently conduct the necessary review.

§19.2010. Notice of Determinations Made by Utilization Review Agents, Excluding Retrospective Review.

(a) A utilization review agent shall notify the injured employee, their representative and the treating doctor or the treating doctor's designated representative (e.g., referred health care providers or health care facilities) of a determination made in a utilization review.

(b) The notification and time frames for notification required by this section must be made in accordance with TWCC rules contained in Chapter 134, Subchapter G of this title (relating to Treatments and Services Requiring Preauthorization.)

(c) Notification of adverse determination by the utilization review agent must include:

(1) the principal reasons for the adverse determination;

(2) the clinical basis for the adverse determination;



(3) a description or the source of the screening criteria that were utilized as guidelines in making the determination; and

(4) a description of the procedure for the complaint process to the Department and appeal process to TWCC.

§19.2011. Requirements Prior to Adverse Determination.

Subject to the notice requirements of §19.2010 of this title (relating to Notice of Determinations Made By Utilization Review Agents, Excluding Retrospective Review), in any instance where the utilization review agent is questioning whether the health care is medically reasonable and necessary, the health care provider who ordered the services shall be afforded a reasonable opportunity to discuss the plan of treatment for the injured employee and the clinical basis for the utilization review agent's decision with a physician, doctor, or, in the case of dental health care, with a dentist, prior to issuance of an adverse determination. The utilization review agent shall have written procedures describing how the opportunity is afforded.

§19.2012. Appeal of Adverse Determination of Utilization Review Agents.

Appeals from an adverse determination by a utilization review agent shall be governed by the Texas Workers' Compensation Act and the applicable rules and procedures of the TWCC including but not limited to Chapter 134, Subchapter G of this title (relating to Treatments and Services Requiring Preauthorization) and Chapter 133, subchapter D of this title (relating to Dispute and Audit of Bills by Insurance Carriers).

§19.2013. Utilization Review Agent's Telephone Access.

(a) A utilization review agent shall have appropriate personnel reasonably available by toll-free telephone at least 40 hours per week during normal business hours in both time zones in Texas, if applicable, to discuss injured employee's care and allow response to telephone review requests.

(b) A utilization review agent must have a telephone system capable of accepting or recording or providing instructions to incoming calls during other than normal business hours and shall respond to such calls not later than two working days from the date on which the call was received or the date the details necessary to respond have been received from the caller.

§19.2014. Confidentiality.

(a) A utilization review agent shall preserve the confidentiality of individual medical records to the extent required by law.

(b) A utilization review agent may not disclose or publish individual medical records, personal information, or other confidential information about an injured employee obtained in the performance of utilization review without the prior written consent of the injured employee or as otherwise required by law. Personal information shall include, at a minimum, name, address, phone number, social security number, and financial information. If such authorization is submitted by anyone other than the individual who is the subject of the personal or confidential information requested, such authorization must:

(1) be dated; and

(2) contain the signature of the individual who is the subject of the personal or confidential information requested. The signature must have been obtained one year or less prior to the date the disclosure is sought or the authorization is invalid.

(c) A utilization review agent may provide confidential information to a third party under contract or affiliated with the utilization review agent for the sole purpose of performing or assisting with utilization review. Information provided to third parties shall remain confidential.

(d) If an individual submits a written request to the utilization review agent for access to recorded personal information about the individual, the utilization review agent shall within 10 business days from the date such request is received:

(1) inform the individual submitting the request of the nature and substance of the recorded personal information in writing; and

(2) permit the individual to see and copy, in person, the recorded personal information pertaining to the individual or to obtain a copy of the recorded personal information by mail, at the discretion of the individual, unless the recorded personal information is in coded form, in which case an accurate translation in plain language shall be provided in writing.

(e) A utilization review agent's charges for providing a copy of recorded personal information to individuals shall not exceed ten cents per page and may not include any costs that are otherwise recouped as part of the charge for utilization review.

(f) The utilization review agent may not publish data which identifies a particular doctor or other health care provider, including any quality review studies or performance tracking data, without prior written notice to the involved health care provider. This prohibition does not apply to internal systems or reports used by the utilization review agent.

(g) Documents in the custody of the utilization review agent that contain confidential injured employee information or doctor or other health care provider financial data shall be destroyed by a method which induces complete destruction of the information when the agent determines the information is no longer needed.

(h) All injured employee, doctor, and other health care provider data shall be maintained by the utilization review agent in a confidential manner which prevents unauthorized disclosure to third parties. Nothing in this article shall be construed to allow a utilization review agent to take actions that violate a state or federal statute or regulation concerning confidentiality of injured employee records and the confidentiality provisions in the Texas Workers' Compensation Act.

(i) To assure confidentiality, a utilization review agent must, when contacting a doctor's office or hospital, provide its certification number, the caller's name, and professional qualifications to the provider's named utilization review representative in the health care provider's office.

(j) Upon request by the provider, the utilization review agent shall present written documentation that it is acting as an agent of the insurance carrier for the relevant injured employee.

(k) The utilization review agent's procedures shall specify that specific information exchanged for the purpose of conducting reviews will be considered confidential, be used by the review agent solely for the purposes of utilization review, and shared by the utilization review agent with only those third parties who have authority to receive such information. The utilization review agent's process shall specify that procedures are in place to assure confidentiality and that the utilization review agent agrees to abide by the confidentiality provisions of the Texas Workers' Compensation Act and any other federal and state laws governing the issue of confidentiality. Summary data which does not provide sufficient information to allow identification of individual injured employees or health care providers need not be considered confidential.

(l) Medical records and injured employee specific information shall be maintained by the utilization review agent in a secure area with access limited to essential personnel only.

(m) Information generated and obtained by the utilization review agents in the course of utilization review shall be retained for at least two years from the date of the final decision in the utilization review.

(n) Notwithstanding the provisions in subsections (a) through (m) of this section, the utilization review agent shall provide to the commissioner and/or the Texas Workers' Compensation Commission on request individual medical records or other confidential information for determination of compliance with this subchapter. The information is confidential and privileged and is not subject to the open records law, Government Code, Chapter 552, or to subpoena, except to the extent necessary to enable the commissioner to enforce this subchapter.

§19.2015. Retrospective Review of Medical Necessity.

(a) When a retrospective review is performed:

(1) such retrospective review shall be based on written screening criteria as defined in §19.2003 of this title (relating to Definitions) established and periodically updated, at a minimum, upon certification renewal with appropriate involvement from doctors, including doctors engaged in an active practice, and other health care providers; and

(2) such retrospective review shall be under the direction of a physician and performed in accordance with Chapter 133, Subchapter D of this title (relating to Dispute and Audit of Bills by Insurance Carriers).

(b) When retrospective review results in an adverse determination or denial of payment, the utilization review agent shall notify the health care providers of the opportunity to appeal the determination through the appeal process as outlined in Chapter 133, Subchapter D of this title (relating to Dispute and Audit of Bills by Insurance Carriers).

§19.2016. Complaints and Reporting Requirements.

(a) Utilization review agent's complaint system. A utilization review agent shall establish and maintain a complaint system that provides reasonable procedures for the resolution of oral or written complaints initiated by injured employees, their representatives, or health care providers, concerning the utilization review process, and shall maintain records of such complaints for three years from the time the complaints are filed. The complaint procedure shall include a written response to the complainant by the agent within 30 days of the agent's receipt of the complaint.

(b) Utilization review agent's reporting requirements to the department. By March 1, of each year, the utilization review agent shall submit to the commissioner or his or her delegated representative a summary report of all complaints involving workers' compensation at such times and in such form as the commissioner may require, and shall permit the commissioner to examine the complaints and all relevant documents at any time. The summary report covers reviews performed by the utilization review agent during the preceding calendar year and includes:

(1) the total number of written notices of adverse determinations;

(2) a listing of adverse determinations for preauthorization, by the medical condition that is the source of the dispute using primary ICD-9 (physical diagnosis) or DSM-IV (mental health diagnosis) code, and by the treatment in dispute, if any, using CPT

(procedure) code or other relevant procedure code if a CPT designation is not available, or any other nationally recognized numerically codified diagnosis or procedure;

(3) the classification of party requesting review (i.e., health care provider, injured employee, their representative, etc.);

(4) the subject matter of the complaint. Complaints shall be categorized as follows:

(A) administration (e.g., copies of medical records not paid for, too many calls or written requests for information from provider, too much information requested from provider);

(B) qualifications of utilization review agent's personnel;

(C) complaint process (e.g., treating doctor has not been afforded the opportunity to discuss plan of treatment with utilization review physician, no notice of adverse determination, no notice of clinical basis for adverse determination, written procedures for appeal to TWCC not provided).

(c) Complaints to the department. Within a reasonable time period, upon receipt of a written complaint alleging a violation of this subchapter or the Act, by a utilization review agent, from an injured employee, their representative or health care provider, the commissioner or his or her delegated representative shall investigate the complaint, notify the utilization review agent of the complaint, require response by the utilization review agent addressing the complaint within 10 days of receipt of the complaint, and furnish a written response to the complainant and the utilization review agent named. This response must include the following:

(1) a statement of the original complaint;

(2) a statement of the findings of the commissioner or his or her delegated representative and an explanation of the basis of such findings;

(3) corrective actions, if any, on the part of the utilization review agent which the commissioner or his or her designated representative finds appropriate and whether the utilization review agent has voluntarily agreed to take such action; and

(4) a time frame in which any corrective actions should be completed.

(d) Evidence of corrective action. The utilization review agent will provide evidence of corrective action within the specified time frame to the commissioner or his or her representative.

(e) Authority of the department to make inquiries. In addition to the authority of the commissioner to respond to complaints described in subsection (b) of this section, the department is authorized to address inquiries to any utilization review agent in relation to the agents' business condition or any matter connected with its transactions which the department may deem necessary for the public good or for a proper discharge of its duties. It shall be the duty of the agent to promptly answer such inquiries in writing.

(f) Lists of utilization review agents. The commissioner shall maintain and update monthly a list of utilization review agents issued certificates and the renewal date for those certificates. The commissioner shall provide the list at cost to all individuals or organizations requesting the list.

(g) On-site review by the Texas Department of Insurance.

(1) The commissioner or the commissioner's designated representative is authorized to make a complete on-site review of the

operations of each utilization review agent at the principal place of business for such agent, as often as is deemed necessary.

(2) Utilization review agents will be notified of the scheduled on-site visit by letter, which will specify, as a minimum, the identity of the commissioner's designated representative and the expected arrival date and time.

(3) The utilization review agent must make available during such on-site visits all records relating to its operation.

(4) The commissioner or the designated representative may perform periodic telephone audits of utilization review agents authorized to conduct business in this state to determine if the agents are reasonably accessible.

§19.2017. Administrative Violations.

(a) If the commissioner, through the commissioner's designated representative, believes that any person or entity conducting utilization review pursuant to this article is in violation of the Act or applicable regulations, the commissioner's designated representative shall notify the utilization review agent or insurance carrier of the alleged violation and may compel the production of any and all documents or other information as necessary to determine whether or not such violation has taken place.

(b) The commissioner's designated representative may initiate the proceedings under this section.

(c) Proceedings under this section are a contested case for the purpose of Government Code, Chapter 2001.

(d) If the commissioner determines that the utilization review agent, insurance carrier, or other person or entity conducting utilization review pursuant to this subchapter has violated or is violating any provision of this Act, the commissioner may:

(1) impose sanctions under the Insurance Code, Article 1.10, §7;

(2) issue a cease and desist order under the Insurance Code Article 1.10A; or;

(3) assess administrative penalties under the Insurance Code Article 1.10E.

(e) If the utilization review agent has violated or is violating any provisions of the Insurance Code other than the Act, or applicable rules of the department, sanctions may be imposed under the Insurance Code Article 1.10 or 1.10A.

(f) The commission of fraudulent or deceptive acts or omissions in obtaining, attempting to obtain, or use of certification as a utilization review agent shall be a violation of the Act.

§19.2018. Criminal Penalties.

Any person or entity performing utilization review without a certificate as required by the Act commits an offense. Except as otherwise provided by this section, an offense under this section is a Class A misdemeanor. If it is shown in the trial of a violation of this section that the person or entity has once before been convicted of a violation of this section, on conviction the person or entity shall be punished for a third degree felony. Each day of violation constitutes a separate offense.

§19.2019. Responsibility of Insurance Companies Performing Utilization Review Under the Insurance Code, Article 21. 58A, §14(h).

(a) An insurance company licensed by the department and performing utilization review under the Insurance Code Article 21.58A, §14 (h) will be subject to §19.2001 of this title (relating to General Provisions), §19.2002 of this title (relating to Limitations

on Applicability), §19.2003 of this title (relating to Definitions), §19.2004(c)(1) - (10) and (d) of this title (relating to Certification of Utilization Review Agents), §19.2005 of this title (relating to General Standards of Utilization Review), §19.2006 of this title (relating to Personnel), §19.2007 of this title (relating to Prohibitions of Certain Activities of Utilization Review Agents), §19.2008 of this title (relating to Utilization Review Agent Contact with and Receipt of Information from Health Care Providers), §19.2009 of this title (relating to On-Site Review by the Utilization Review Agent), §19.2010 of this title (relating to Notice of Determinations Made by Utilization Review Agents), §19.2011 of this title (relating to Requirements Prior to Adverse Determination), §19.2012 of this title (relating to Appeal of Adverse Determination of Utilization Review Agents), §19.2013 of this title (relating to Utilization Review Agent's Telephone Access), §19.2014 of this title (relating to Confidentiality), §19.2015 of this title (relating to Retrospective Review of Medical Necessity), §19.2016 of this title (relating to Complaint and Information), §19.2017 of this title (relating to Administrative Violations), and §19.2020 of this title (relating to Specialty Utilization Review Agent) with respect to their operations under the provisions of the Act, §14(h).

(b) When an insurance company performs utilization review under the Texas Workers' Compensation Act or TWCC rules for an insurance carrier, an employer, or a utilization review agent other than the insurance company itself, such insurance company shall be required to obtain a certificate under this subchapter and comply with all the provisions of this subchapter.

(c) Insurance companies performing utilization review under §14(h) of the Act must register with the department and submit written documentation demonstrating compliance with all the filing requirements defined in §19.2004(c)(1) - (10) and (d) of this title (relating to Certification of Utilization Review Agents) and the name, address, contact name and phone number of the insurance company.

§19.2020. Specialty Utilization Review Agent.

(a) A utilization review agent that solely performs specialty review under the Insurance Code Article 21.58A, §14(j) is not subject to the Insurance Code Article 21.58A, §4(b), (c), (h) or (k) or §6(b)(3) of the Act. A utilization review agent that does not solely perform specialty review, is not subject to the provisions of this section or the Insurance Code Article 21.58A, §14(j).

(b) A utilization review agent that performs specialty review under the Insurance Code Article 21.58A, §14 (j) is subject to this subchapter, except §19.2004 (c)(1)(B) and (c)(6) of this title (relating to Certification of Utilization Review Agents); the first sentence of §19.2005 of this title (relating to General Standards of Utilization Review); §19.2006 (a), (d), (e) of this title (relating to Personnel); and §19.2011 of this title (relating to Requirements Prior to Adverse Determination) and §19.2012 of this title (relating to Appeal of Adverse Determination of Utilization Review Agents).

(c) A specialty utilization review agent must submit, by attachment to the application, assurance that the utilization review plan shall be reviewed by a health care provider of the appropriate specialty and conducted in accordance with standards developed with input from a health care provider of the appropriate specialty.

(d) A specialty utilization review agent must submit by attachment to the application a description of the categories of personnel who perform utilization review, such as doctors, nurses, physicians assistants, or other health care providers of the same specialty as the utilization review agent and who are licensed or otherwise authorized to provide the specialty health care by a state licensing agency in the United States, except that this provision does

not require those qualifications from personnel who perform solely clerical or administrative tasks.

(e) An applicant for a certificate of registration as a specialty utilization review agent must provide evidence that the applicant has available the services of doctors, nurses, physician's assistants, or other health care providers of the same specialty as the utilization review agent and who are licensed or otherwise authorized to provide the specialty health care by a state licensing agency in the United States to carry out its utilization review activities in a timely manner.

(f) Personnel employed by or under contract with the specialty utilization review agent to perform utilization review shall be appropriately trained and qualified and, if applicable, currently licensed. Personnel who obtain information regarding an injured employee's specific medical condition, diagnosis, and treatment options or protocols directly from the doctor or health care provider, either orally or in writing, and who are not doctors, shall be nurses, physician's assistants, or other health care providers of the same specialty as the utilization review agent and who are licensed or otherwise authorized to provide the specialty health care by a state licensing agency in the United States. This provision shall not be interpreted to require such qualifications for personnel who perform clerical or administrative tasks.

(g) Utilization review conducted by a specialty utilization review agent shall be conducted under the direction of a health care provider of the same specialty and shall be licensed or otherwise authorized to provide the specialty health care by a state licensing agency in the United States.

(h) Subject to the notice requirements of §19.2012 of this title (relating to Appeal of Adverse Determination), in any instance where the specialty utilization review agent questions whether the health care is medically reasonable and necessary, the health care provider who ordered the services shall, prior to the issuance of an adverse determination, be afforded a reasonable opportunity to discuss the plan of treatment for the patient and the clinical basis for the decision of the utilization review agent with a health care provider of the same specialty as the utilization review agent.

(i) Appeals from an adverse determination by a specialty utilization review agent shall be governed by the Texas Workers' Compensation Act and the applicable rules and procedures of the TWCC including but not limited to Chapter 134, Subchapter G of this title (relating to Treatments and Services Requiring Preauthorization) and Chapter 133, Subchapter D of this title (relating to Dispute and Audit of Bills by Insurance Carriers). §19.2021. Independent Review Organizations Non-Involvement. The rules of the commissioner in Chapter 12 of this title, (relating to Independent Review Organizations) are not applicable to this subchapter.

§19.2021. Independent Review Organizations Non-Involvement.

The rules of the commissioner in Chapter 12 of this title, (relating to Independent Review Organizations) are not applicable to this subchapter.

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

Filed with the Office of the Secretary of State, on May 11, 1998.

TRD-9807660

Lynda Nesenholtz

Assistant General Counsel

Texas Department of Insurance

Earliest possible date of adoption: June 21, 1998

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

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Chapter 21. Trade Practices

Subchapter O. Notice of Availability of Coverage Under the Texas Health Insurance Risk Pool

**28 TAC §§21.2301-21.2306**

The Texas Department of Insurance proposes new Subchapter O, §§21.2301-21.2306, concerning a notice of the availability of coverage through the Texas Health Insurance Risk Pool (Health Pool). The new subchapter requires a notice to be provided by health carriers that provide health coverage in this state in certain instances. The Health Pool brings Texas into compliance with the federal Health Insurance Portability and Accountability Act of 1996 and will increase access to health coverage, enhance health coverage portability, and reduce family impoverishment among medically uninsurable Texans without diminishing the availability of traditional health coverage. Section 21.2301 states that the purpose of these rules is to facilitate public awareness of and enrollment in the Health Pool. Section 21.2302 defines terms used in the subchapter. Section 21.2303 sets forth procedures for delivering the notice and delineates to whom the notice must be sent. Section 21.2304 refers to a notice developed by the department that health carriers may use and sets forth criteria for the notice if a health carrier chooses to develop and utilize a notice other than the notice developed by the department. Section 21.2305 contains the promulgated Notice of Availability of Coverage Under the Texas Health Insurance Risk Pool. Section 21.2306 states that the subchapter applies to any application for health coverage received, processed or acted upon by a health carrier on or after July 1, 1998.

Rose Ann Reeser, associate commissioner, regulation and safety, has determined that for the first five-year period the proposed sections are in effect, there will be no additional fiscal impact on state or local government as a result of enforcing or administering the proposed sections, and there will be no effect on local employment or local economy.

Ms. Reeser has also determined that for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcing the subchapter will be facilitation of public awareness of the availability of coverage and subsequent enrollment of eligible individuals in the Health Pool. The Health Pool will increase access to health coverage, enhance health coverage portability, and reduce family impoverishment among medically uninsurable Texans. The cost of compliance for persons affected by this section will be between \$0.10 and \$0.25 per notice. The actual total cost to each health carrier will vary depending on the number of applicants to whom the notice must be sent. A health carrier will only have to send the notice in certain situations, such as when coverage for an applicant is rejected, when coverage is offered at rates higher than the health carrier's standard rate, or when coverage is offered with conditional riders. In an effort to minimize costs, health carriers are allowed to deliver the notice along with other correspondence rather than in a separate mailing.

Ms. Reeser has determined that the maximum cost associated with the proposed sections is, estimated to be \$0.25 per notice. The total cost to the health carrier is not dependent upon the

size of the health carrier, but rather is dependent upon the health carrier's number of applicants, the health carrier's underwriting criteria, and the number of applicants who are not offered standard coverage or are offered coverage at a rate in excess of the health carrier's standard rate. Both small businesses and the largest businesses affected by these sections would incur the same cost per notice. The cost per hour of labor would not vary between the smallest and largest businesses, assuming that a small business and the largest business have to provide this notice to approximately the same percentage of their applicants.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposed subchapter in the *Texas Register* to Caroline Scott, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Linda Von Quintus, Deputy Commissioner, Regulation and Safety, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The new subchapter is proposed under the Insurance Code, Articles 3.77 and 1.03A. Article 3.77, §8 gives the commissioner authority to adopt rules as necessary and proper to implement Article 3.77. Article 1.03A provides that the commissioner of insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance as authorized by statute.

Insurance Code, Article 3.77 is affected by this proposal.

§21.2301. Purpose.

The purpose of these rules is to facilitate public awareness of the availability of coverage under and enrollment in the Texas Health Insurance Risk Pool (Health Pool). The rule accomplishes this purpose through implementing efficient and economical procedures for notifying persons that they may be eligible for coverage under the Health Pool.

§21.2302. Definitions.

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

(1) Eligible individual - An individual who is a resident of Texas who has applied or for whom application has been made for health coverage.

(2) Health carrier - Any entity authorized under the Texas Insurance Code or another insurance law of this state, which provides health coverage in this state, including an insurance company, a group hospital service corporation under Chapter 20, a health maintenance organization under the Texas Health Maintenance Organization Act (Chapter 20A), an approved nonprofit health corporation, a fraternal benefit society under Chapter 10, and a stipulated premium company under Chapter 22.

(3) Health coverage - Individual health coverage issued by a health carrier that provides coverage for hospital, medical or surgical expenses, or any other health care plan or arrangement that pays for or furnishes medical or health care services whether by insurance or otherwise. The term does not include accident, dental-only, vision-only, fixed indemnity, credit insurance or other limited coverage, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, or insurance under which benefits are payable with or without regard to fault and which is

statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(4) Health Pool - The Texas Health Insurance Risk Pool.

§21.2303. Delivery of Notice.

(a) A health carrier shall provide written notice of Health Pool availability to an eligible individual who has applied for health coverage from the health carrier, if the health carrier:

(1) refuses to issue health coverage to or for the eligible individual;

(2) offers health coverage to or for the eligible individual with riders excluding an individual or a medical condition or illness of an individual from coverage by that policy; or

(3) offers health coverage to or for the eligible individual at rates higher than the health carrier's standard rate.

(b) The notice shall be sent with the written notification of the action taken or proposed to be taken by the health carrier on the eligible individual's application for coverage from the health carrier.

§21.2304. Notice.

(a) The health carrier may use the Form Health Pool Notice provided at Figure 1 in §21.2305 of this title (relating to Form).

(b) In lieu of the notice outlined in subsection (a) of this section, a health carrier may opt to provide a notice that contains substantially similar language to the language contained in Figure 1 in §21.2305 of this title (relating to Form). The substantially similar language shall be in a readable and understandable format and shall include a clear, complete and accurate description of the items set out in paragraphs (1) - (5) of this subsection in the following order:

(1) a heading in bold print and all capital letters indicating the information in the notice relates to availability of coverage under the Health Pool;

(2) a statement in bold print that the notice is being provided to advise the individual that he/she may be eligible for coverage from the Health Pool;

(3) a listing of the reasons an individual may be eligible for coverage under the Health Pool including:

(A) two refusals or rejections for health coverage from health carriers,

(B) the offer of health coverage with a rider that excludes certain health conditions of the individual (and an example of such rider similar to the following: For example, a health carrier will provide coverage to the individual with an exclusion of the individual's diabetes, heart disease, cancer, etc.);

(C) a statement offering health coverage with rates that exceed the rates of the Health Pool;

(D) the individual has been diagnosed with one of the medical conditions specified by the Health Pool Board of Directors that qualifies him/her for Health Pool coverage; or

(E) the individual has maintained health coverage for the previous 18 months with no gap in coverage greater than 63 days, the most recent health coverage was with an employer-sponsored plan, government plan or church plan.

(4) a statement that the individual should contact the Health Pool for additional information regarding eligibility, coverages, cost, limitations, exclusions and termination provisions;

(5) in bold print the full name, address and telephone numbers of the Health Pool as shown in §21.2305(b) and as subsequently updated.

(c) The notice shall be in no less than 10 point type.

§21.2305. Form.

(a) Form Health Pool Notice is included in subsection (b) of this section in its entirety and has been filed with the Office of the Secretary of State. The address and phone numbers are variable to encompass any future changes. The form can be obtained from the Texas Department of Insurance, Life/Health Group, MC 106-1A, P.O. Box 149104, Austin, Texas 78714-9014.

(b) Form Health Pool Notice:

Figure: 28 TAC §21.2305(b)

§21.2306. Compliance and Effective Date.

The requirements of this subchapter apply to any application for health coverage received, processed or acted upon by a health carrier on or after July 1, 1998. If before the effective date of these rules, a health carrier has provided notice to eligible individuals that contains information substantially similar to that required by the notice described in this subchapter, such notice shall be deemed to comply with the requirements of this subchapter.

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

Filed with the Office of the Secretary of State, on May 11, 1998.

TRD-9807441

Lynda Nesenholtz

Assistant General Counsel

Texas Department of Insurance

Earliest possible date of adoption: June 21, 1998

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

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part I. Texas Department of Public Safety

#### Chapter 3. Traffic Law Enforcement

##### Subchapter B. Enforcement Action

###### 37 TAC §§3.22-3.24

The Texas Department of Public Safety proposes amendments to §§3.22-3.24, concerning Enforcement Action. Amendment to §3.22(a) omits unnecessary language regarding a written warning. Amendment to §3.23(b)(2) adds residence address and date of birth as required information which must be furnished by a violator. Amendment to §3.24 reflects the nonsubstantive changes in statute from Texas Civil Statutes to Texas Transportation Code.

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 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 of department policy.

There is no anticipated cost to persons who are required to comply with the sections as proposed. There are no anticipated economic costs to small or large businesses.

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 Government Code, §411.006(4), which authorizes the director to adopt rules, subject to commission approval, considered necessary for the control of the department.

Texas Government Code, §411.006(4), is affected by this proposal.

###### §3.22. *Written Warning.*

(a) General. The department believes that warnings given for traffic law violations constitute acceptable enforcement action when given under proper circumstances. Warnings will be given for traffic law violations of a relatively minor degree [~~to take care of the area between legal and substantially illegal operation of motor vehicles~~].

(b) (No Change.)

###### §3.23. *Citation and Custody Arrest.*

(a) (No Change.)

(b) Custody arrests.

(1) (No Change.)

(2) Under no circumstances will a custody arrest be used to punish the violator or as a convenience to the trooper. In obtaining information for a notice to appear in court, the violator is required by statute to furnish his name, residence address and date of birth [~~and current home address~~]. It is desirable to elicit pertinent information such as occupation, telephone number, and business address, etc., for possible future use in the processing of warrants. However, the violator's failure to respond in the latter instance is not, standing alone, a sufficient reason to make a custody arrest, for they are not legally compelled to provide such additional information.

###### §3.24. *Speed Law Enforcement.*

(a) (No Change.)

(b) Interpretation of Texas Transportation Code, §545.363(a) [~~Civil Statutes, Article 170(a)~~].

(1) The exception "except when reduced speed is necessary for safe operation" will not apply when it is practicable for the offending driver to drive onto the shoulder and allow the impeded traffic to pass.

(2) The exception "except when reduced is necessary ...in compliance with law" will be interpreted to exempt at all times a driver of a vehicle or combination of vehicles who is driving at or near the maximum legal limit for that vehicle or combination of vehicles.

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 May 5, 1998.

TRD-9807313

Dudley M. Thomas

Director

Texas Department of Public Safety

Earliest possible date of adoption: June 21, 1998  
For further information, please call: (512) 424-2890



## Subchapter F. Texas Registered Vehicles Not Requiring Inspection

### 37 TAC §3.91

The Texas Department of Public Safety proposes an amendment to §3.91, concerning NATO Agreement Vehicle Inspection Exemptions. The amendment to subsection (b) updates the NATO member countries.

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 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 to exempt motor vehicles imported into the United States from a foreign country by members of a military force or civilian component that is a party to the NATO Agreement of 1953 from the Texas vehicle inspection requirements. There is no anticipated cost to persons who are required to comply with the section as proposed. There are no anticipated economic costs to small or large businesses.

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 amendment is proposed pursuant to Texas Transportation Code, §548.002 which authorizes the department to adopt rules to administer and enforce this chapter.

Texas Transportation Code, §548.002 is affected by this proposal.

#### §3.91. NATO Agreement Vehicle Inspection Exemptions.

(a) (No Change.)

(b) The NATO member countries are Belgium, Canada, Denmark, ~~France, Germany, Greece, Iceland [Ireland], Italy, Luxemburg, Netherlands, Norway, Portugal, Spain, Turkey, United Kingdom of Great Britain and Northern Ireland, and the United States of America [ and West Germany].~~

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 May 5, 1998.

TRD-9807312

Dudley M. Thomas

Director

Texas Department of Public Safety

Earliest possible date of adoption: June 21, 1998

For further information, please call: (512) 424-2890



## Part XIII. Texas Commission on Fire Protection

## Chapter 421. Standards for Certification

### 37 TAC §§421.1, 421.3, 421.5, 421.7, 421.9

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

The Texas Commission on Fire Protection proposes the repeal of §§421.1, 421.3, 421.5, 421.7, and 421.9, concerning standards for certification. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state and local governments.

Mr. Calagna also also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that obsolete language will be replaced with new sections that implement legislative changes. There are no additional costs of compliance for small or large businesses and for individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to tcfp@mail.capnet.state.tx.us.

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the commission with authority to establish minimum requirements for fire protection personnel.

Texas Government Code, §419.022(a)(5) is affected by the proposed repeal.

§421.1. *Procedures for Meetings.*

§421.3. *Minimum Standards Set by the Commission.*

§421.5. *Definitions*

§421.7. *Minimum Standards for Employment*

§421.9. *Designation of Fire Protection Duties*

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 May 11, 1998.

TRD-9807586

T. R. Thompson

General Counsel

Texas Commission on Fire Protection

Earliest possible date of adoption: June 21, 1998

For further information, please call: (512) 918-7189



The Texas Commission on Fire Protection proposes new §§421.1, 421.3, 421.5, 421.7, and 421.9, concerning standards for certification. The new chapter includes sections pertaining

to procedures for advisory committee meetings, standards set by the commission for functional position descriptions, definitions, recognition of previous volunteer training, and designation of fire protection duties. The new §421.1 changes the references to the fire fighter advisory committee to address statutory changes and adds provisions for removal of committee members. New §421.3 deletes unnecessary language. New §421.5 changes definitions mainly to integrate the volunteer certification program into the paid fire protection personnel certification program. New §421.7 transfers language concerning recognition of previous volunteer training from the repealed volunteer rules. Finally, new §421.9 adds language to address statutory changes allowing individual certification and define compensation limits for persons designated as volunteer or other auxiliary fire fighters.

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the new chapter is in effect there will be no fiscal implications for state or local governments.

Mr. Calagna also has determined that for each of the first five years the new chapter is in effect the public benefit anticipated as a result of enforcing the new chapter will be elimination of duplication of training and certification requirements by consolidating the paid and volunteer programs. There will be no additional costs of compliance for small or large businesses or individuals required to comply with the new chapter. The commission has determined that the proposed new sections relating to standards for certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to tcfp@mail.capnet.state.tx.us.

The new chapter is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the commission with authority to establish minimum requirements for fire protection personnel; Texas Government Code §419.032, which provides the commission with authority to establish standards for employment as fire protection personnel; Texas Government Code, §419.0322, which provides for limits on compensation; and Texas Government Code, §419.071, which provides the commission with authority to establish standards for the volunteer certification program.

Texas Government Code, §419.022 is affected by the proposed new chapter.

#### §421.1. Procedures for Meetings

(a) Time and places. The Fire Fighter Advisory Committee and Testing Committee shall meet at such times and places in the State of Texas as it deems proper. The Fire Fighter Advisory Committee shall meet at least twice each calendar year.

(b) Meeting called. Meetings shall be called by the chairman, by the commission, or upon the written request of five members.

(c) Quorum. A majority of members shall constitute a quorum.

(d) Members. The Fire Fighter Advisory Committee shall consist of nine members appointed by the commission. The Testing Committee shall consist of members appointed by the Commission upon the recommendation of the Fire Fighter Advisory Committee. Committee members serve at the will of the commission.

(e) Officers. Officers of the Fire Fighter Advisory Committee and the Testing Committee shall consist of a chairman, vice-chairman, and secretary. The committee shall elect its officers from the appointed members at its first meeting and thereafter at its first meeting following January 1 of each year or upon the vacancy of an office.

(f) Responsibility. The Fire Fighter Advisory Committee shall review commission rules relating to fire protection personnel and fire departments and recommend changes in the rules to the commission.

(g) Effective Date. All rules recommended by the Fire Fighter Advisory Committee and finally adopted by the commission before May 1st, should go into effect January 1st, of the following year and rules recommended by the Fire Fighter Advisory Committee and finally adopted after May 1st, should go into effect no sooner than one year from January 1st, of the following year, unless the committee recommends a sooner effective date for issues such as health and safety or undue hardship.

(h) Removal. It is a ground for removal from an advisory committee appointed by the Commission if a member is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during a calendar year unless the absence is excused by a majority vote of the committee.

#### §421.3. Minimum Standards Set by the Commission.

(a) General statement. It shall be clearly understood that the specified minimum standards herein described are designated as a minimum program. Employing entities are encouraged to exceed the minimum program wherever possible. Continuous in-service training beyond the minimum standards for fire protection personnel is strongly recommended. Nothing in these regulations shall limit or be construed as limiting the powers of the Civil Service Commission, or the employing entity, to enact rules and regulations which establish a higher standard of training than the minimum specified, or which provides for the termination of the services of unsatisfactory employees during or upon completion of the prescribed probationary period.

(b) Functional position descriptions.

(1) Structural fire protection personnel. The following general position for structural fire protection personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the fire fighter operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. Successfully complete a commission approved course; achieve a passing score on written and performance certification examinations; must be at least 18 years of age; generally, the knowledge and skills required show the need for a high school education or equivalent; ability to communicate verbally, via telephone and radio equipment; ability to lift, carry, drag, and balance weight equivalent to the average human weight; ability to interpret written, and oral instructions; ability to work effectively in high stress situations; ability to work effectively in an environment with loud



noises and flashing lights; ability to function through an entire work shift; ability to calculate weight and volume ratios; ability to read and understand English language manuals including chemical, medical and technical terms, and road maps; ability to accurately discern street signs and address numbers; ability to document, in writing, all relevant information in prescribed format in light of legal ramifications of such; ability to converse in English with coworkers and other emergency response personnel. Good manual dexterity with ability to perform all tasks related to the protection of life and property; ability to bend, stoop, and crawl on uneven surfaces; ability to withstand varied environmental conditions such as extreme heat, cold, and moisture; and ability to work in low or no light, confined spaces, elevated heights and other dangerous environments.

(B) Competency. A basic fire fighter must demonstrate competency handling emergencies utilizing equipment and skills in accordance with the objectives in Chapter 1 of the Commission Certification Curriculum Manual, adopted by the Texas Commission on Fire Protection.

(2) Aircraft fire protection personnel. The following general position description for aircraft fire protection personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of aircraft fire protection personnel operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for basic structural fire protection personnel: familiarity with geographic and physical components of an airport; ability to use and understand communication equipment, terminology, and procedures utilized by airports; ability and knowledge in the application of fire suppression agents; and ability to effectively perform fire suppression and rescue operations.

(B) Competency. Basic fire fighting and rescue personnel must demonstrate competency handling emergencies utilizing equipment and skills in accordance with the objectives in Chapter 2 of the Commission Certification Curriculum Manual, adopted by the Texas Commission on Fire Protection.

#### §421.5. Definitions.

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

(1) Accredited training—A curriculum or training program which carries written approval from the commission, credit hours that appear on an official transcript from an accredited college or university and any fire service training received from a nationally recognized source, i.e., the National Fire Academy.

(2) Admission to employment—An entry level full-time employee of a local government entity in one of the categories of fire protection personnel.

(3) Approved training—Any training which will be used toward any level of certification must be submitted to the commission for approval prior to the commencement of the training. The training submission must be in a manner specified by the commission and contain all information requested by the commission. The commission will not grant credit twice for the same subject content or course.

(4) Assigned/work—A fire protection personnel or a part-time fire protection employee shall be considered "assigned/working" in a position, any time the individual is receiving compensation and

performing the duties that are regulated by the Texas Commission on Fire Protection certification.

(5) Assistant fire chief—The officer occupying the first position subordinate to the head of a fire department.

(6) Auxiliary fire fighter—A volunteer fire fighter.

(7) Benefits—Benefits shall include, but are not limited to, inclusion in group insurance plans (such as health, life, and disability) or pension plans, stipends, free water usage, and reimbursed travel expenses (such as meals, mileage, and lodging).

(8) Class hour—Defined as not less than 50 minutes of instruction, also defined as a contact hour; a standard for certification of fire protection personnel.

(9) Code—The official legislation creating the commission.

(10) College credits—Credits earned for studies satisfactorily completed at an accredited institution of higher education, or courses delivered through the National Emergency Training Center residency programs, and recommended for college credit by the American Council on Education (ACE).

(11) Commission—Texas Commission on Fire Protection.

(12) Compensation—Compensation is to include wages, salaries, and "per call" payments (for attending drills, meetings or answering emergencies).

(13) Coordinator—The official responsible for a commission approved training curriculum, training facility, and/or school (other than fire department) by whatever title he/she may be called.

(14) Department—A fire department which is a part of, or is administered by, a municipality or other governmental entity which is responsible for fire prevention and protection.

(15) Expired—Any certification that has not been renewed on or before the end of the certification period.

(16) Federal fire fighter—A person as defined in the Texas Government Code, § 419.084(h).

(17) Fire chief—The head of a fire department.

(18) Fire protection personnel—Any person who is a permanent full-time employee of a government entity and who is assigned duties in one of the following categories/disciplines: fire suppression, fire inspection, fire and arson investigation, marine fire fighting, aircraft fire fighting, fire training, fire education, fire administration and others employed in related positions necessarily or customarily appertaining thereto.

(19) Fire suppression duties—Engaging in the controlling or extinguishment of a fire of any type or performing activities which are required for and directly related to the control and extinguishment of fires or standing by on the employer's premises or apparatus or nearby in a state of readiness to perform these duties.

(20) Full-time—An officer or employee is considered full-time if the employee works an average of 40 hours a week or averages 40 hours per week or more during a work cycle in a calendar year. For the purposes of this definition paid leave will be considered time worked.

(21) Government entity—The local authority having jurisdiction as employer of full-time fire protection personnel in a state agency, incorporated city, village, town or county, education institution or political subdivision.

(22) High school—A school accredited as a high school by the Texas Education Agency.

(23) Lead instructor—An individual charged with the responsibility of conducting a training school under the provision of the Code.

(24) Municipality—Any incorporated city, village, or town of this state and any county or political subdivision or district in this state. Municipality pertains to a municipality as herein defined.

(25) Participating volunteer fire fighter—An individual who voluntarily seeks certification and regulation by the Commission under the Government Code, Chapter 419, Subchapter D.

(26) Participating volunteer fire department—A fire department that voluntarily seeks regulation by the Commission under the Government Code, Chapter 419, Subchapter D.

(27) Part-time fire protection employee—An individual who is designated as a part-time fire protection employee and who receives compensation, including benefits and reimbursement for expenses. A part-time fire protection employee is not full-time as defined in this section.

(28) Recognition of training—A document issued by the Commission stating that an individual has completed the training requirements of a specific phase level of the Basic Fire Suppression Curriculum.

(29) School—Any school, college, university, academy, or local training program which offers fire service training and included within its meaning the combination of course curriculum, instructors, and facilities.

(30) Trainee—An individual who is participating in a commission approved training program.

(31) Training officer—The officer or supervisor, by whatever title he or she may be called, that is in charge of a commission approved training program.

(32) Volunteer fire protection personnel—Any person who has met the requirements for membership in a volunteer fire service organization, who is assigned duties in one of the following categories: fire suppression, fire inspection, fire and arson investigation, marine fire fighting, aircraft fire fighting, fire training, fire education, fire administration and others in related positions necessarily or customarily appertaining thereto.

(33) Years of experience—Defined as full years of service while an individual is certified as fire protection personnel and is an employee of a government entity, a member in a volunteer fire service organization, and/or an employee of a regulated non- governmental fire department. Concurrent experience may not be used twice.

#### §421.7. Recognition of Previous Volunteer Training.

Recognition of previous training. Volunteer fire fighters may seek recognition towards completion of the commission's basic fire suppression curriculum for previous hours of training received before December 31, 1992, if:

(1) documentation of previous hours of training received is evaluated by the commission staff and deemed equivalent to the requirements of the commission approved basic fire suppression curriculum; or

(2) previous hours of training received were documented by the State Firemen's and Fire Marshals' Association of Texas before April 1, 1993.

#### §421.9. Designation of Fire Protection Duties.

(a) An individual who performs one or more fire protection duties, listed in the Texas Government Code, §419.021(3)(C), for a fire department of local government shall be designated to only one of the following categories:

(1) fire protection personnel;

(2) a part-time fire protection employee; or

(3) a volunteer fire fighter or other auxiliary fire fighter.

(b) A fire department or local government regulated by the commission may not designate the same person under more than one category under this section. The designation shall be made on the records of the department and the designation shall be made available for inspection by the commission or sent to the commission on request.

(c) A fire department or local government regulated by the commission shall report to the commission on the proper form, within 14 calendar days of a person's employment to, termination from, or change of designation to a position as fire protection personnel or part-time fire protection employee. In the case of a termination, the employing entity shall report an individual's last known home address to the commission.

(d) A fire department may not in a calendar year compensate, reimburse, or provide benefits to a person the department has designated as a volunteer or other auxiliary fire fighter in an amount that is equal to or more than what a person receives working 2,080 hours at the federal minimum wage.

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 May 11, 1998.

TRD-9807619

T. R. Thompson

General Counsel

Texas Commission on Fire Protection

Earliest possible date of adoption: June 21, 1998

For further information, please call: (512) 918-7189



## Chapter 423. Fire Suppression

### Subchapter A. Minimum Standards for Structure Fire Protection Personnel Certification

#### **37 TAC §§423.1, 423.3, 423.5, 423.7, 423.9, 423.11**

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

The Texas Commission on Fire Protection proposes the repeal of §§423.1, 423.3, 423.5, 423.7, 423.9, and 423.11, concerning minimum standards for structure fire protection personnel certification. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal

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

Mr. Calagna also has determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that obsolete language will be replaced with new sections that implement legislative changes. There are no additional costs of compliance for small or large businesses and for individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed repeal.

*§423.1. Minimum Standards for Basic Structural Fire Protection Personnel.*

*§423.3. Minimum Standards for Intermediate Structure Fire Protection Personnel*

*§423.5. Minimum Standards for Advanced Structure Fire Protection Personnel Certification.*

*§423.7. Minimum Standards for Master Structure Fire Protection Personnel Certification.*

*§423.9. Higher Levels of Certification.*

*§423.11. International Fire Service Accreditation Congress (IFSAC) 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.

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T. R. Thompson  
General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189

◆ ◆ ◆  
**37 TAC §§423.1, 423.3, 423.5, 423.7, 423.9, 423.11, 423.13**

The Texas Commission on Fire Protection proposes new §§423.1, 423.3, 423.5, 423.7, 423.9, 423.11, and 423.13, concerning minimum standards for structure fire protection personnel certification. New §423.1 reorganizes existing language to clarify that the provisions apply to all persons holding structure fire protection personnel positions. New §423.3 adds language to integrate volunteer training to qualify for basic structure fire protection personnel certification. New §§423.5, 423.7, 423.9, 423.11, and 423.13, pertaining to higher levels of structure certification renumber existing sections pertaining to the same subject matter.

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the new

sections are in effect there will be no fiscal implications for state or local governments. The elimination of an additional testing requirement for certified volunteer fire fighters who become employed will result in a savings of \$30 per person to local governments that employ such persons.

Mr. Calagna also has determined that for each of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be elimination of duplication of examination requirements deemed unnecessary resulting from integration of paid and volunteer certification programs. There are no additional costs of compliance for small or large businesses or individuals required to comply with the new chapter. The commission has determined that the proposed new sections relating to will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The new sections are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel positions; and Texas Government Code §419.032, which provides the commission with authority to establish standards for employment as fire protection personnel.

Texas Government Code, §419.022 is affected by the proposed new sections.

*§423.1. Minimum Standards for Structure Fire Protection Personnel.*

(a) Training programs that are intended to satisfy the requirements for basic structure fire protection personnel certification must meet the curriculum, competencies, and hour requirements of this subchapter. All applicants for certification must meet the examination requirements of this section.

(b) All full-time employees of any local government entity, who are assigned structure fire protection duties must be certified by the commission within one year from the date of their employment in a structural fire protection personnel position.

(c) Prior to being assigned to fire suppression duties as a full-time employee, all personnel must complete a commission approved basic structure fire suppression program and successfully pass the commission examination pertaining to that curriculum.

(d) All personnel holding any level of structure fire protection personnel certification must comply with the continuing education requirements specified in § 441.7 of this title (relating to Continuing Education for Structure Fire Protection Personnel).

*§423.3. Minimum Standards for Basic Structure Fire Protection Personnel Certification.*

(a) In order to become certified as basic structure fire protection personnel, an individual must:

(1) complete a commission approved basic structure fire suppression program and successfully pass the commission

examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved basic structure fire suppression program shall consist of one or any combination of the following:

(A) completion of a commission approved Basic Fire Suppression Curriculum, as specified in Chapter 1 of the commission's document titled "Commission Certification Curriculum Manual," as approved by the commission in accordance with Chapter 443 of this title (relating to Certification Curriculum Manual); or

(B) completion of the four phase levels of the approved Basic Fire Suppression Curriculum, as specified in Chapter 1 of the commission's document titled "Commission Certification Curriculum Manual," as approved by the commission in accordance with Chapter 443 of this title (relating to Certification Curriculum Manual); or

(C) completion of an out-of-state training program deemed equivalent to the commission-approved basic fire suppression curriculum; or

(D) completion of a military training program deemed equivalent to a commission-approved basic fire suppression curriculum; or

(E) documentation of the receipt of an advanced certificate or training records from the State Firemen's and Fire Marshals' Association of Texas, that is deemed equivalent to a commission approved basic fire suppression curriculum.

(2) complete as a minimum the certification requirements and hold a current certification by the Texas Department of Health, as an emergency care attendant. Any higher level of emergency medical certification recognized by the Texas Department of Health, such as EMT or paramedic may also be used to satisfy the emergency medical training requirement of this section.

(b) A basic fire suppression program may be submitted to the commission for approval by another jurisdiction as required in Texas Government Code, §419.032(d), Appointment of Fire Protection Personnel. These programs include out-of-state and military programs and shall be deemed equivalent by the commission if the subjects taught, subject content, and total hours of training meet or exceed those contained in Chapter 1 of the commission's document titled "Commission Certification Curriculum Manual," as approved by the commission in accordance with Chapter 443 of this title (relating to Certification Curriculum Manual).

(c) Except as provided in subsection (a)(1)(E) of this section, the commission approved basic fire suppression curriculum must be taught by a training facility that has been certified by the commission as provided in Chapter 427, of this title (relating to Certified Training Facilities).

(d) A person who holds or is eligible to hold a certificate upon employment as a part-time structural firefighter may be certified as a structural fire protection personnel, of the same level of certification, without meeting the applicable examination requirements.

(e) If a person holds a current certification as a part-time structural firefighter, the Texas Department of Health emergency care attendant certification may be satisfied by documentation of equivalent training or certification in lieu of current certification by the Texas Department of Health.

(f) Individuals from another jurisdiction who possess valid documentation of accreditation from the International Fire Service Accreditation Congress as a Fire Fighter II and Driver Operator (Fire

Fighter III, Fire Officer I, and Driver Operator if accredited under the 1987 or earlier edition of NFPA 1001) shall be eligible to take the commission examination for basic structural fire protection personnel.

§423.5. Minimum Standards for Intermediate Structure Fire Protection Personnel Certification.

(a) Applicants for Intermediate Structure Fire Protection Personnel Certification must complete the following requirements:

(1) hold as a prerequisite a Basic Structure Fire Protection Personnel Certification as defined in §423.3 of this title (relating to Minimum Standards for Basic Structure Fire Protection Personnel Certification);

(2) acquire a minimum of four years of fire protection experience and complete the courses listed in one of the following options:

(A) Option 1—Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsections (c) and (d) of this section;

(B) Option 2—Complete a minimum of 96 hours of instruction in any National Fire Academy courses;

(C) Option 3—Successfully complete three semester hours of college courses listed in Option 1 and a minimum of 48 hours in any National Fire Academy courses.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Intermediate Structure Fire Protection Personnel Certification.

(c) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's document titled "Commission Certification Curriculum Manual" or for experience in the fire service, may not be counted toward higher levels of certification.

(d) The training required in this section must be in addition to any training used to qualify for any lower level of Structure Fire Protection Personnel Certification. Repeating a course or course of similar content cannot be used towards higher levels of certification.

§423.7. Minimum Standards for Advanced Structure Fire Protection Personnel Certification.

(a) Applicants for Advanced Structure Fire Protection Personnel certification must complete the following requirements:

(1) hold as a prerequisite an Intermediate Structure Fire Protection Personnel Certification as defined in §423.5 of this title (relating to Minimum Standards for Intermediate Structure Fire Protection Personnel Certification);

(2) acquire a minimum of eight years of fire protection experience and complete the courses listed in one of the following options:

(A) Option 1—Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsection (c) and (d) of this section; or

(B) Option 2—Complete a minimum of 96 hours of instruction in any National Fire Academy courses; or

(C) Option 3—Successfully complete three semester hours of college courses listed in Option 1 and a minimum of 48 hours in any National Fire Academy courses.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Advanced Structure Fire Protection Personnel Certification.

(c) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's document titled "Commission Certification Curriculum Manual" or for experience in the fire service, may not be counted toward higher levels of certification.

(d) The training required in this section must be in addition to any training used to qualify for any lower level of Structure Fire Protection Personnel Certification. Repeating a course or course of similar content cannot be used towards higher levels of certification.

§423.9. Minimum Standards for Master Structure Fire Protection Personnel Certification.

(a) Applicants for Master Structure Fire Protection Personnel Certification must complete the following requirements:

(1) hold as a prerequisite an Advanced Structure Fire Protection Personnel Certification as defined in § 423.7 of this title (relating to Minimum Standards for Advanced Structure Fire Protection Personnel Certification); and

(2) acquire a minimum of twelve years of fire protection experience, and 60 college semester hours or an associate degree, which includes at least 18 college semester hours in fire science subjects.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Structure Fire Protection Personnel Certification.

§423.11. Higher Levels of Certification.

(a) An individual may receive higher levels of certification in structural fire protection while being assigned to another discipline, provided that all requirements for the higher level or levels of certification must be met.

(b) Repetitive training cannot be used toward higher levels of certification.

§423.13. International Fire Service Accreditation Congress (IF-SAC) Certification.

Individuals holding current commission Structure Fire Protection Personnel Certification may be granted International Fire Service Accreditation Congress (IFSAC) Certification by making application to the commission for the IFSAC seal and paying applicable fees.

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 May 11, 1998.

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T. R. Thompson

General Counsel

Texas Commission on Fire Protection

Earliest possible date of adoption: June 21, 1998

For further information, please call: (512) 918-7189



## Subchapter B. Minimum Standards for Aircraft Crash and Rescue Fire Protection Personnel

### 37 TAC §§423.201, 423.203, 423.205, 423.207, 423.209

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

The Texas Commission on Fire Protection proposes the repeal of §§423.201, 423.203, 423.205, 423.207, and 423.209, concerning minimum standards for aircraft crash and rescue fire protection personnel certification. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state and local governments.

Mr. Calagna also has determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that obsolete language will be replaced with new sections that implement legislative changes. There are no additional costs of compliance for small or large businesses and for individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed repeal.

*§423.201. Minimum Standards for Aircraft Crash and Rescue Fire Protection Personnel.*

*§423.203. Minimum Standards for Basic Aircraft Rescue and Fire Protection Personnel Certification.*

*§423.205. Minimum Standards for Intermediate Aircraft Rescue and Fire Protection Personnel.*

*§423.207. Minimum Standards for Advanced Aircraft Rescue and Fire Protection Personnel Certification.*

*§423.209. Minimum Standards for Master Aircraft and Fire Protection Personnel 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 May 11, 1998.

TRD-9807588

T. R. Thompson

General Counsel



## Subchapter B. Minimum Standards for Aircraft Fire Protection Personnel

### 37 TAC §§423.201, 423.203, 423.205, 423.207, 423.209

The Texas Commission Fire Protection proposes new §§423.201, 423.203, 423.205, 423.207, and 423.209, concerning minimum standards for aircraft fire protection personnel. New §423.201 concerning aircraft fire protection personnel clarifies existing language concerning requirements for assignment to aircraft fire suppression duties to include testing and training in an approved fire suppression course as well as testing and training in an approved aircraft fire protection course. Certification must be obtained within one year of assignment rather than two. Emergency Care Attendant certification is not required for assignment, but is required for aircraft fire protection personnel certification in addition to testing and training in both basic structure fire suppression and aircraft fire protection pursuant to new §423.203. New §§423.205, 423.207, and 423.209, concerning higher levels of aircraft certification change the terminology from "aircraft rescue and fire protection personnel" to "aircraft fire protection personnel."

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the new sections are in effect there will be no fiscal implications for state or local governments.

Mr. Calagna also has determined that for each of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be that the public is assured that personnel assigned to aircraft fire protection duties are adequately trained prior to assignment. There are no additional costs of compliance for small or large businesses or individuals required to comply with the new chapter. The commission has determined that the proposed new sections relating to minimum standards for aircraft fire protection personnel will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The new sections are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; Texas Government Code, §410.022, which provides the commission authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions; Texas Government Code §419.032, which provides the commission with authority to establish standards for employment as fire protection personnel; and Texas Government Code, §419.038, which provides the

commission with authority to establish requirements for aircraft certification.

Texas Government Code, §419.022 is affected by the proposed new sections.

#### §423.201. Minimum Standards for Aircraft Fire Protection Personnel.

(a) Aircraft fire protection personnel are employees of a local governmental entity who, as a permanent duty assignment, fight aircraft fires at airports; stand by for potential crash landings; and perform aircraft and fire fighting duties.

(b) All personnel identified as aircraft fire protection personnel must be certified to at least the basic level by the commission within one year from their employment in an aircraft fire protection personnel position.

(c) Prior to being assigned to aircraft fire suppression duties, all personnel must:

(1) successfully complete a commission approved basic fire suppression course and pass the commission's examination pertaining to that curriculum; and

(2) successfully complete a commission approved basic aircraft fire protection course and pass the commission's examination pertaining to that curriculum.

(d) "Stand by" means the act of responding to a designated position in the movement area on the airfield at which initial response fire and rescue units will await the arrival of an aircraft experiencing an announced emergency.

(e) "Movement area" is comprised of all runways, taxiways, and other areas of the airport which are used for taxiing or hover taxiing, take-off, and landing of aircraft, exclusive of loading ramps and aircraft parking areas.

(f) All personnel holding any level of aircraft fire protection personnel certification shall be required to comply with the continuing education specified in §441.9 of this title (relating to Continuing Education Requirements for Aircraft Fire Protection Personnel).

(g) Aircraft fire protection personnel who are assigned structure fire suppression duties must be certified, as a minimum, as basic structural fire protection personnel.

#### §423.203. Minimum Standards for Basic Aircraft Fire Protection Personnel Certification.

(a) Training programs that are intended to satisfy the requirements for basic aircraft fire protection personnel certification must meet the curriculum, competencies, and hour requirements of these sections. All applicants for certification must meet the examination requirements of this section.

(b) In order to obtain basic aircraft fire protection personnel certification the individual must:

(1) hold or be eligible to hold basic structure fire protection personnel certification;

(2) complete a training program specific to aircraft fire suppression consisting of one of the following:

(A) a commission approved Basic Aircraft Fire Suppression curriculum as specified in Chapter 2 of the Commission Certification Curriculum Manual for Paid Fire Protection Personnel as approved by the commission in accordance with Chapter 443 of this title (relating to Certification Curriculum Manual). This course must be taught by a training facility that has been certified by the

commission as provided in Chapter 427 of this title (relating to Certified Training Facilities); or

(B) an out-of-state training program that has been submitted to the commission for evaluation and found to be equivalent to or to exceed the commission approved basic aircraft fire suppression curriculum.

(C) a military training program that has been submitted to the commission for evaluation and found to be equivalent to or to exceed the commission approved basic aircraft fire suppression curriculum;

(3) successfully pass a commission examination pertaining to aircraft fire protection conducted according to the rules set forth in Chapter 439 of this title (relating to Examinations for Certification).

(c) Out-of-state or military training programs which are submitted to the commission for the purpose of determining equivalency will be considered equivalent if the subjects taught, subject content, hours of training in each subject, and total hours of training meet or exceed the requirements set forth in Chapter 2 (pertaining to Basic Aircraft Fire Protection) of the Commission Certification Curriculum Manual for Paid Fire Protection Personnel.

(d) A person who holds or is eligible to hold a certificate upon employment as a part-time aircraft firefighter may be certified as an aircraft fire protection personnel, of the same level of certification, without meeting the applicable examination requirements.

(e) If a person holds a current certification as a part-time aircraft firefighter, the Texas Department of Health emergency care attendant certification may be satisfied by documentation of equivalent training or certification in lieu of current certification by the Texas Department of Health.

§423.205. Minimum Standards for Intermediate Aircraft Fire Protection Personnel Certification.

(a) Applicants for Intermediate Aircraft Fire Protection Personnel Certification must complete the following requirements:

(1) hold as a prerequisite a Basic Aircraft Fire Protection Personnel Certification as defined in § 423.203 of this title (relating to Minimum Standards for Basic Aircraft Fire Protection Personnel Certification);

(2) acquire a minimum of four years of fire protection experience and complete the courses listed in one of the following options:

(A) Option 1—Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsections (c) and (d) of this section; or

(B) Option 2—Complete a minimum of 96 hours of instruction in any National Fire Academy courses; or

(C) Option 3—Successfully complete three semester hours of college courses listed in Option 1 and a minimum of 48 hours in any National Fire Academy courses.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Intermediate Aircraft Fire Protection Personnel Certification.

(c) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's document titled

"Commission Certification Curriculum Manual" or for experience in the fire service, may not be counted toward higher levels of certification.

(d) The training required in this section must be in addition to any training used to qualify for any lower level of Aircraft Fire Protection Personnel Certification. Repeating a course or course of similar content cannot be used towards higher levels of certification.

§423.207. Minimum Standards for Advanced Aircraft Fire Protection Personnel Certification.

(a) Applicants for Advanced Aircraft Fire Protection Personnel certification must complete the following requirements:

(1) hold as a prerequisite an Intermediate Aircraft Fire Protection Personnel Certification as defined in §423.205 of this title (relating to Minimum Standards for Advanced Aircraft Fire Protection Personnel Certification);

(2) acquire a minimum of eight years of fire protection experience and complete the courses listed in one of the following options:

(A) Option 1—Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsections (c) and (d) of this section; or

(B) Option 2—Complete a minimum of 96 hours of instruction in any National Fire Academy courses; or

(C) Option 3—Successfully complete three semester hours of college courses listed in Option 1 and a minimum of 48 hours in any National Fire Academy courses.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Advanced Aircraft Fire Protection Personnel Certification.

(c) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's document titled "Commission Certification Curriculum Manual" or for experience in the fire service, may not be counted toward higher levels of certification.

(d) The training required in this section must be in addition to any training used to qualify for any lower level of Aircraft Fire Protection Personnel Certification. Repeating a course or course of similar content cannot be used towards higher levels of certification.

§423.209. Minimum Standards for Master Aircraft Fire Protection Personnel Certification.

(a) Applicants for Master Aircraft Fire Protection Personnel Certification must complete the following requirements:

(1) hold as a prerequisite an Advanced Aircraft Fire Protection Personnel Certification as defined in §423.207 of this title (relating to Minimum Standards for Advanced Aircraft Fire Protection Personnel Certification); and

(2) acquire a minimum of twelve years of fire protection experience, and 60 college semester hours or an associate degree, which includes at least 18 college semester hours in fire science subjects.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Aircraft Fire Protection Personnel 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 May 11, 1998.

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T. R. Thompson  
General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



## Subchapter C. Minimum Standards for Marine Fire Protection Personnel

### 37 TAC §§423.301, 423.303, 423.305, 423.307, 423.309

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

The Texas Commission on Fire Protection proposes the repeal of §§423.301, 423.303, 423.305, 423.307, and 423.309, concerning minimum standards for marine fire protection personnel. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state and local governments.

Mr. Calagna also has determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that obsolete language will be replaced with new sections that implement legislative changes. There are no additional costs of compliance for small or large businesses and for individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed repeal.

§423.301. *Minimum Standards for Marine Fire Protection Personnel.*

§423.303. *Minimum Standards for Basic Marine Fire Protection Personnel Certification.*

§423.305. *Minimum Standards for Intermediate Marine Fire Protection Personnel.*

§423.307. *Minimum Standards for Advanced Marine Fire Protection Personnel Certification.*

§423.309. *Minimum Standards for Master Marine Fire Protection Personnel 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 May 11, 1998.

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T. R. Thompson  
General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



The Texas Commission on Fire Protection proposes new sections §§423.301, 423.303, 423.305, 423.307, and 423.309, concerning minimum standards for marine fire protection personnel. New §423.301 and §423.303 clarifies the requirements for assignment and certification as marine fire protection personnel in the same manner as aircraft fire protection personnel, including eligibility for structure certification by meeting testing and training requirements for structure certification. New §§423.305, 423.307, and 423.309, readopt existing provisions for higher levels of marine certification.

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the new sections are in effect there will be no fiscal implications for state or local governments.

Mr. Calagna also has determined that for each of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be that the public is assured that personnel assigned to marine fire protection duties are adequately trained prior to assignment. There are no additional costs of compliance for small or large businesses or individuals required to comply with the new chapter. The commission has determined that the proposed new sections relating to minimum standards for marine fire protection personnel will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The new sections are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions; Texas Government Code §419.032, which provides the commission with authority to establish standards for employment as fire protection personnel; and Texas Government Code, §419.037, which pro-



vides the commission with authority to establish requirements for marine certification.

Texas Government Code, §419.022 is affected by the proposed new sections.

§423.301. Minimum Standards For Marine Fire Protection Personnel.

(a) Marine Fire Protection Personnel are employees of a local governmental entity who work aboard a fire boat with a minimum pumping capacity of 2,000 gallons per minute, and fights fires that occur on or adjacent to a waterway, waterfront, channel, or turning basin.

(b) All full time employees of any local government entity, who are assigned marine fire protection duties must be certified by the commission within one year from the date of their employment in a marine fire protection personnel position.

(c) Prior to being assigned to marine fire suppression duties, all personnel must:

(1) successfully complete a commission approved basic fire suppression course and pass the commission's examination pertaining to that curriculum; and

(2) successfully complete a commission approved basic marine fire suppression course and pass the commission's examination pertaining to that curriculum.

(d) All personnel holding any level of Marine Fire Protection Personnel certification shall be required to comply with the continuing education specified in §441.11 of this title (relating to Continuing Education Requirements for Marine Fire Protection Personnel).

§423.303. Minimum Standards For Basic Marine Fire Protection Personnel Certification.

(a) Training programs that are intended to satisfy the requirements for Basic Marine Fire Protection Personnel certification, must meet the curriculum, competencies, and hour requirements of this subchapter. All applicants for certification must meet the examination requirements of this section.

(b) In order to obtain basic Marine Fire Protection Personnel certification the individual must:

(1) hold or be eligible to hold basic structure fire protection personnel certification;

(2) complete a training program specific to marine fire protection consisting of one of the following:

(A) complete the commission approved Basic Marine Fire Protection Curriculum as specified in Chapter 3, of the commission's document titled "Commission Certification Curriculum Manual", as approved by the commission in accordance with Chapter 443, of this title, relating to Certification Curriculum Manual. The commission approved marine fire protection curriculum must be taught by a training facility that has been certified by the commission as provided in Chapter 427 of this title (relating to Minimum Standards for Certified Training Facilities); or

(B) an out-of-state training program that has been submitted to the commission for evaluation and found to be equivalent to or exceed the commission approved Basic Marine Fire Protection Curriculum; or

(C) a military training program that has been submitted to the commission for evaluation and found to be equivalent to the commission approved Basic Marine Fire Protection Curriculum.

(3) successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification) prior to assignment.

(c) Out-of-state or military training programs which are submitted to the commission for the purpose of determining equivalency will be considered equivalent if the subjects taught, subject content, hours of training in each subject, and total hours of training meet or exceed the requirements set forth in Chapter 3 (pertaining to Marine Fire Protection) of the Commission's Certification Curriculum Manual for Paid Fire Protection Personnel.

(d) A person who holds or is eligible to hold a certificate upon employment as a part-time marine fire protection personnel may be certified as a marine fire protection personnel, of the same level of certification, without meeting the applicable examination requirements.

(e) If a person holds a current certification as a part-time marine fire protection personnel, the Texas Department of Health emergency care attendant certification may be satisfied by documentation of equivalent training or certification in lieu of current certification by the Texas Department of Health.

§423.305. Minimum Standards For Intermediate Marine Fire Protection Personnel Certification.

(a) Applicants for Intermediate Marine Fire Protection Personnel Certification must complete the following requirements:

(1) hold as a prerequisite a Basic Marine Fire Protection Personnel Certification as defined in §423.303 of this title (relating to Minimum Standards for Basic Marine Fire Protection Personnel Certification).

(2) acquire a minimum of four years of fire protection experience and complete the courses listed in one of the following options:

(A) Option #1 - Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsection (c) and (d) of this section; or

(B) Option #2 - Complete a minimum of 96 hours of instruction in any National Fire Academy courses.

(C) Option #3 - Successfully complete three semester hours of college courses listed in Option #1 and a minimum of 48 hours in any National Fire Academy courses.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Intermediate Marine Fire Protection Personnel Certification.

(c) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's document titled "Commission Certification Curriculum Manual" or for experience in the fire service, may not be counted toward higher levels of certification.

(d) The training required in this section must be in addition to any training used to qualify for any lower level of Marine Fire Protection Personnel Certification. Repeating a course or course of similar content cannot be used towards higher levels of certification.

§423.307. Minimum Standards For Advanced Marine Fire Protection Personnel Certification.

(a) Applicants for Advanced Marine Fire Protection Personnel certification must complete the following requirements:

(1) hold as a prerequisite an Intermediate Marine Fire Protection Personnel Certification as defined in § 423.305 of this title (relating to Minimum Standards for Intermediate Marine Fire Protection Personnel Certification).

(2) acquire a minimum of eight years of fire protection experience and complete the courses listed in one of the following options:

(A) Option #1 - Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsections (c) and (d) of this section; or

(B) Option #2 - Complete a minimum of 96 hours of instruction in any National Fire Academy courses; or

(C) Option #3 - Successfully complete three semester hours of college courses listed in Option #1 and a minimum of 48 hours in any National Fire Academy courses.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Advanced Marine Fire Protection Personnel Certification.

(c) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's document titled "Commission Certification Curriculum Manual" or for experience in the fire service, may not be counted toward higher levels of certification.

(d) The training required in this section must be in addition to any training used to qualify for any lower level of Marine Fire Protection Personnel Certification. Repeating a course or course of similar content cannot be used towards higher levels of certification.

§423.309. Minimum Standards for Master Marine Fire Protection Personnel Certification.

(a) Applicants for Master Marine Fire Protection Personnel Certification must complete the following requirements:

(1) hold as a prerequisite an Advanced Marine Fire Protection Personnel Certification as defined in § 423.307 of this title (relating to Minimum Standards for Advanced Marine Fire Protection Personnel Certification); and

(2) acquire a minimum of twelve years of fire protection experience, and 60 college semester hours or an associate degree, which includes at least 18 college semester hours in fire science subjects.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Marine Fire Protection Personnel 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 May 11, 1998.

TRD-9807622

T. R. Thompson

General Counsel

Texas Commission on Fire Protection

Earliest possible date of adoption: June 21, 1998

For further information, please call: (512) 918-7189

◆ ◆ ◆  
Chapter 425. Fire Protection Instructor

Subchapter A. Fire Service Instructor Certification

**37 TAC §§425.1, 425.3, 425.5, 425.7, 425.9**

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

The Texas Commission on Fire Protection proposes the repeal of §§425.1, 425.3, 425.5, 425.7, and 425.9, concerning minimum standards for fire service instructor certification. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state and local governments.

Mr. Calagna also has determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that obsolete language will be replaced with new sections that implement legislative changes. There are no additional costs of compliance for small or large businesses and for individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to tcfp@mail.capnet.state.tx.us.

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.028(3), which provides the commission with authority to certify persons as qualified fire protection instructors under conditions the commission prescribes.

Texas Government Code, §419.028 is affected by the proposed repeal.

§425.1. *Minimum Standards for Fire Service Instructor Certification.*

§425.3. *Minimum Standards for Basic Fire Service Instructor Certification.*

§425.5. *Minimum Standards for Intermediate Fire Service Instructor Certification.*

§425.7. *Minimum Standards for Advanced Fire Service Instructor Certification.*

§425.9. *Minimum Standards for Master Fire Service Instructor 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.

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T. R. Thompson  
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◆ ◆ ◆  
Chapter 425. Fire Instructors

Subchapter A. Fire Service Instructor Certification

37 TAC §§425.1, 425.3, 425.5, 425.7, 425.9

The Texas Commission on Fire Protection proposes new §§425.1, 425.3, 425.5, 425.7, and 425.9, concerning minimum standards for fire instructor certification. New §425.1 readopts existing language. New §425.3 integrates provisions allowing for volunteer instructors to be certified as basic fire service instructors. New §425.5 and §425.7 clarify the college course requirements for intermediate and advanced fire service instructor certification. New §425.9 allows for volunteer instructors to obtain master fire service instructor certification.

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the new sections are in effect there will be no fiscal implications for state government. The cost to local governments for obtaining instructor training courses may decrease by approximately \$250 per person due to the changes in requirements for persons who may teach instructor courses.

Mr. Calagna also has determined that for each of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be that volunteer instructors are considered the same as paid instructors and the availability of approved fire instructor courses may increase. There are no additional costs of compliance for small or large businesses or individuals required to comply with the new chapter. The commission has determined that the proposed new sections relating to fire instructor certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The new sections are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.028, which provides the commission the authority to certify persons as qualified fire protection instructors under conditions the commission prescribes.

Texas Government Code, §419.028 is affected by the proposed new sections.

§425.1. Minimum Standards for Fire Service Instructor Certification.

(a) Fire service instructor certificates will be issued by the commission when an individual completes the training and teaching

requirements designated in the various certification levels. Complete course descriptions are on file in the commission office for all instructor courses listed in this section.

(b) An out-of-state or military instructor training program may be accepted by the commission as meeting the training and experience requirements for certification as a fire service instructor if the program has been submitted to the commission for evaluation and found to be equivalent to or to exceed the commission approved instructor course for that particular level of fire service instructor certification. A program that has been accredited by the International Fire Service Accreditation Congress shall be considered for evaluation for equivalence to the commission's training requirements for the corresponding level of certification.

§425.3 Minimum Standards for Basic Fire Service Instructor Certification.

(a) In order to become certified as a basic fire service instructor the individual must:

(1) be a member of a paid, volunteer, or regulated non-governmental fire department;

(2) have a minimum of three years experience relating to fire protection in one or more or any combination of the following:

(A) a paid, volunteer, or regulated non-governmental fire department; or

(B) a department of a state agency, education institution or political subdivision providing fire protection training and related responsibilities;

(3) be a high school graduate or possess a GED certificate;

(4) possess an active certificate from the commission in a discipline with a commission-approved curriculum.

(5) have completed "Instructional Techniques for Company Officers" or 15 class hours of teacher instructional training courses; and

(6) submit an instructor application, with documentation to verify the aforementioned requirements, to the commission for processing.

(b) Approved areas of instruction shall include the following.

(1) Possession of one or more active certifications as stated in subsection (a)(4) of this section will be considered as documentation of knowledge/expertise to instruct in all of the subject areas identified in the curricula in which the certificate(s) are held.

(2) Individuals desiring to instruct in basic and advanced subjects they have not previously been approved for must have completed the course they are seeking to instruct or have completed comparable training in the same subject area. Proof of training shall be attached to and submitted with a Course/School Prior Approval Form when making application for course approval by the commission. Proof of training in a subject need be submitted only once. The following items are acceptable for proof of training:

(A) submit a copy of a commission approved certificate of completion bearing the course approval number and course identification number;

(B) college semester courses of equivalent training identified on college transcripts; or

(C) provide complete written documentation of equivalent training for staff review.

(c) The basic fire service instructor certification meets requirements of NFPA 1041, Standard for Fire Service Instructor Professional Qualifications, for Fire Instructor Level I.

§425.5. Minimum Standards for Intermediate Fire Service Instructor Certification.

(a) In order to become certified as an intermediate fire service instructor, the individual must:

(1) have completed all the requirements listed under § 425.3(a) and (b) of this title (relating to Minimum Standards for Basic Fire Service Instructor Certification) except for §425.3(a)(5). (Note: Basic fire service instructor certification is not a prerequisite for intermediate fire service instructor certification); and

(2) have completed a commission approved "Methods of Teaching" course consisting of at least three college semester hours or 40 class hours, or the National Fire Academy course, "Instructional Methodology."

(b) The intermediate fire service instructor certification meets requirements of NFPA 1041, Standard for Fire Service Instructor Professional Qualifications, for Fire Instructor Level I and Fire Instructor Level II. Instructors wanting to meet NFPA 1041 for Fire Service Instructor Level II must meet the requirements for Fire Service Instructor I.

§425.7. Minimum Standards for Advanced Fire Service Instructor Certification.

(a) In order to become certified as an advanced fire service instructor the individual must:

(1) hold as a prerequisite an intermediate fire service instructor certificate;

(2) be a member of a paid, volunteer, or regulated non-governmental fire department and have as a minimum five years of experience in one or more or any combination of the following:

(A) a paid, volunteer, or regulated non-governmental fire department; or

(B) a department of a state agency, education institution or political subdivision—devoting full time to fire service training and related responsibilities; and

(3) successfully complete the following commission approved instructor training courses:

(A) a commission approved "Instructional Aids" course of at least three college semester hours or 40 class hours. (The National Fire Academy course, "Instructional Methodology," can be substituted for "Methods of Teaching" and "Instructional Aids"); and

(B) a commission approved course in "Analysis and Course Making" consisting of at least three college semester hours or 40 class hours; and

(C) a commission approved course in "Organization and Use of Instructional Materials" consisting of at least three college semester hours or 40 class hours. (The National Fire Academy course "Course Development" can be substituted for "Analysis and Course Making" and "Organization and Use of Instructional Material.")

(b) The advanced fire service instructor certification meets requirements of NFPA 1041, Standard for Fire Service Instructor Professional Qualifications, for Fire Instructor Level III. Instructors wanting to meet NFPA 1041 for Fire Service Instructor Level III must meet the requirements for Fire Service Instructor II.

§425.9. Minimum Standards for Master Fire Service Instructor Certification.

(a) In order to become certified as a master fire service instructor the individual must:

(1) hold as a prerequisite an advanced instructor certification;

(2) hold as a prerequisite a master structural fire protection personnel certification, a master aircraft fire protection personnel certification, master inspector certification, or master fire and arson investigator certification; and

(3) be a member of a paid, volunteer, or regulated non-governmental fire department.

(b) The master fire service instructor certification meets requirements of NFPA 1041, Standard for Fire Service Instructor Professional Qualifications, for Fire Instructor Level IV only if Fire Administration I and Fire Administration II (college level) are completed. Instructors wanting to meet NFPA 1041 for Fire Service Instructor Level IV must meet the requirements for Fire Service Instructor Level III.

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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T. R. Thompson

General Counsel

Texas Commission on Fire Protection

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## Chapter 425. Fire Protection Personnel Instructors

### Subchapter B. Instructor Training Courses

#### 37 TAC §425.201

*(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 Commission on Fire Protection or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Commission on Fire Protection proposes the repeal of §425.201, concerning instructor training courses. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state and local governments.

Mr. Calagna also has determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that obsolete language will be replaced with new sections that implement legislative changes. There are no additional costs of compliance for small or large businesses and for individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.028(3), which provides the commission with authority to certify persons as qualified fire protection instructors under conditions the commission prescribes.

Texas Government Code, §419.028 is affected by the proposed repeal.

*§425.201. Instructor Training Courses.*

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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T. R. Thompson

General Counsel

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## Chapter 425. Fire Instructors

### Subchapter B. Fire Education Specialist Certification

#### 37 TAC §§425.201, 425.203, 425.205, 425.207, 425.209

The Texas Commission on Fire Protection proposes new §§425.201, 425.203, 425.205, 425.207, and 425.209, concerning minimum standards for fire education specialist certification. New §425.201 readopts existing language and renumbers the section. New §425.203 adds language to recognize volunteer fire department experience to qualify for basic fire education specialist certification. New §425.205 and §425.207 clarify course requirements for intermediate and advanced fire education specialist certification. New §425.209 increases the number of fire science hours for master fire education specialist from 15 to 18 to align with master requirements for other certifications.

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the new sections are in effect there will be no fiscal implications for state government. The cost to local governments for obtaining instructor training courses may decrease by approximately \$250 per person due to the changes in requirements for persons who may teach instructor courses.

Mr. Calagna also has determined that for each of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be that volunteer instructors are considered the same as paid instructors and the availability of approved fire instructor courses may increase. There are no additional costs of compliance for small or large businesses or individuals required to comply with the new chapter. The commission has determined that the proposed

new sections relating to fire education specialist certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The new sections are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.028, which provides the commission the authority to certify persons as qualified fire protection instructors under conditions the commission prescribes.

Texas Government Code, §419.028 is affected by the proposed new sections.

§425.201. Minimum Standards for Fire Education Specialist Certification.

(a) Fire education specialist certificates will be issued by the commission when an individual completes the training and teaching requirements designated in the various certification levels. Complete course descriptions are on file in the commission office for all instructor courses listed in this section.

(b) An out-of-state or military instructor training program may be accepted by the commission as meeting the training and experience requirements for certification as a fire education specialist if the program has been submitted to the commission for evaluation and found to be equivalent to or to exceed the commission approved instructor course for that particular level of fire education specialist certification.

§425.203. Minimum Standards for Basic Fire Education Specialist Certification.

(a) In order to become certified as a basic fire education specialist the individual must:

(1) be a full-time employee of a department of a state agency, an education institution or political subdivision providing fire protection training and have a minimum of three years full-time experience in one or more or any combination of the following:

(A) a paid, volunteer, or regulated non-governmental fire department; or

(B) a department of a state agency, an education institution or political subdivision providing fire protection training;

(2) be a high school graduate or possess a GED certificate;

(3) have completed "Instructional Techniques for Company Officers" or 15 class hours of teacher instructional training courses; and

(4) submit an instructor application, with documentation to verify the aforementioned requirements, to the commission for processing.

(b) Approved areas of instruction shall include the following.

(1) Individuals shall provide acceptable proof of training at the time of application in each subject area they desire to provide instruction in. Individuals must have completed the course they are

seeking to instruct or have completed comparable training in the same subject area. Proof of training in a subject need be submitted only once. The following items are acceptable for proof of training:

(A) submit a copy of a commission approved certificate of completion bearing the course approval number and course identification number;

(B) college semester courses of equivalent training identified on college transcripts; or

(C) provide complete written documentation of equivalent training for staff review.

(2) Individuals desiring to instruct in basic and advanced subjects they have not previously been approved for must meet the requirements of paragraph (1) of this subsection for acceptable proof of training. Proof of training shall be attached to and submitted with a Course/School Prior Approval Form when making application for course approval by the commission.

(c) The basic fire education specialist certification meets requirements of NFPA 1041, Standard for Fire Service Instructor Professional Qualifications, for Fire Instructor Level I.

§425.205. Minimum Standards for Intermediate Fire Education Specialist Certification.

(a) In order to become certified as an intermediate fire education specialist, the individual must:

(1) have completed all the requirements listed under §425.203(a) and (b) of this title (relating to Minimum Standards for Basic Fire Education Specialist Certification) except for §425.203(b)(3). (Note: Basic fire education specialist certification is not a prerequisite for intermediate fire education specialist certification); and

(2) have completed a commission approved "Methods of Teaching" course consisting of at least three college semester hours or 40 class hours, or the National Fire Academy course, "Instructional Methodology."

(b) The intermediate fire education specialist certification meets requirements of NFPA 1041, Standard for Fire Service Instructor Professional Qualifications, for Fire Instructor Level I and Fire Instructor Level II. Instructors wanting to meet NFPA 1041 for Fire Service Instructor Level II must meet the requirements for Fire Service Instructor I.

§425.207. Minimum Standards for Advanced Fire Education Specialist Certification.

(a) In order to become certified as an advanced fire education specialist must:

(1) hold as a prerequisite an intermediate fire education specialist certificate;

(2) be a full-time employee of a department of a state agency, an educational institution or political subdivision—devoting full time to fire service training and related responsibilities and have a minimum of five years full-time experience in one or more or any combination of the following:

(A) a paid, volunteer, or regulated non-governmental fire department; or

(B) a department of a state agency, an education institution or political subdivision—devoting full time to fire service training and related responsibilities; and

(3) successfully complete the following commission approved instructor training courses:

(A) a commission approved "Instructional Aids" course of at least three college semester hours or 40 class hours. (The National Fire Academy course, "Instructional Methodology" can be substituted for "Methods of Teaching" and "Instructional Aids"); and

(B) a commission approved course in "Analysis and Course Making" consisting of at least three college semester hours or 40 class hours; and

(C) a commission approved course in "Organization and Use of Instructional Materials" consisting of at least three college semester hours or 40 class hours. (The National Fire Academy course "Course Development" can be substituted for "Analysis and Course Making" and "Organization and Use of Instructional Material.")

(b) The advanced fire education specialist certification meets requirements of NFPA 1041, Standard for Fire Service Instructor Professional Qualifications, for Fire Instructor Level III. Instructors wanting to meet NFPA 1041 for Fire Service Instructor Level III must meet the requirements for Fire Service Instructor II.

§425.209. Minimum Standards for Master Fire Education Specialist Certification.

(a) In order to become certified as a master fire education specialist the individual must:

(1) hold as a prerequisite an advanced fire education specialist certification; and

(2) acquire one of the following combinations of college education and the listed years of experience in a paid fire department, or department of a state agency, education institution or political subdivision—devoting full time to fire service training and related responsibilities:

(A) an associate degree or 60 college semester hours either of which must include 12 college semester hours in fire science and 12 years of experience; or

(B) an associate degree or 60 college semester hours, either of which must include at least 15 college semester hours in fire science subjects and at least nine years of experience; or

(C) an associate degree in fire science and at least six years of experience; or

(D) a baccalaureate degree or 120 college semester hours, either of which must include at least 18 college semester hours in fire science subjects and at least six years of experience; or

(E) a masters degree which must include at least 18 college semester hours in fire science hours and at least four years of experience.

(b) The master fire education specialist certification meets requirements of NFPA 1041, Standard for Fire Service Instructor Professional Qualifications, for Fire Instructor Level IV only if Fire Administration I and Fire Administration II (college level) are completed. Instructors wanting to meet NFPA 1041 for Fire Service Instructor Level IV must meet the requirements for Fire Service Instructor III.

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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T. R. Thompson  
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## Chapter 425. Fire Protection Instructor

### Subchapter C. Fire Education Specialist Certification

#### 37 TAC §§425.301, 425.303, 425.305, 425.307, 425.309

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

The Texas Commission on Fire Protection proposes the repeal of §§425.301, 425.303, 425.305, 425.307, and 425.309, concerning minimum standards for fire education specialist certification. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state and local governments.

Mr. Calagna also has determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that obsolete language will be replaced with new sections that implement legislative changes. There are no additional costs of compliance for small or large businesses and for individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.028(3), which provides the commission with authority to certify persons as qualified fire protection instructors under conditions the commission prescribes.

Texas Government Code, §419.028 is affected by the proposed repeal.

*§425.301. Minimum Standards for Fire Education Specialist Certification.*

*§425.303. Minimum Standards for Basic Fire Education Specialist Certification.*

*§425.305. Minimum Standards for Intermediate Fire Education Specialist Certification.*

*§425.307. Minimum Standards for Advanced Fire Education Specialist Certification.*

*§425.309. Minimum Standards for Master Fire Education Specialist 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.

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## Chapter 425. Fire Instructors

### Subchapter C. Associate Instructor Certification

#### 37 TAC §425.301

The Texas Commission on Fire Protection proposes new section §425.301, concerning minimum standards for associate instructor certification. New §425.301 clarifies course requirements for associate instructor certification.

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the new sections are in effect there will be no fiscal implications for state government. The cost to local governments for obtaining instructor training courses may decrease by approximately \$250 per person due to the changes in requirements for persons who may teach instructor courses.

Mr. Calagna also has determined that for each of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be that volunteer instructors are considered the same as paid instructors and the availability of approved fire instructor courses may increase. There are no additional costs of compliance for small or large businesses or individuals required to comply with the new chapter. The commission has determined that the proposed new sections relating to associate instructor certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The new section is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.028, which provides the commission the authority to certify persons as qualified fire protection instructors under conditions the commission prescribes.

Texas Government Code, §419.028 is affected by the proposed new section.

*§425.301. Minimum Standards for Associate Instructor Certification.*

(a) The Associate Instructor certificate is designed for an individual that is not:

- (1) fire protection personnel; or
- (2) a part-time fire protection employee; or
- (3) a volunteer fire fighter; or

(4) an employee of a department of a state agency, an employee of an educational institution or political subdivision providing fire protection training.

(b) An out-of-state or military instructor training program may be accepted by the commission as meeting the training and experience requirements for certification as an associate instructor if the program has been submitted to the commission for evaluation and found to be equivalent to or to exceed the commission approved instructor course for associate instructor certification.

(c) In order to be certified as an Associate Instructor the individual must:

(1) have completed a commission approved "Methods of Teaching" course consisting of at least three college semester hours or 40 class hours; and

(2) submit an instructor application, with documentation to verify the aforementioned items to the commission for processing.

(d) Approved areas of instruction shall include the following.

(1) Individuals shall provide acceptable proof of training at the time of application in each basic and advanced subject area in which they desire to provide instruction. Individuals must have completed the course they are seeking to instruct or have completed comparable training in the same subject area. Proof of training in a subject need be submitted only once. The following items are acceptable for proof of training:

(A) submit a copy of a commission approved certificate of completion bearing the course approval number and course identification number;

(B) college semester courses of equivalent training identified on college transcripts; or

(C) provide complete written documentation of equivalent training for staff review.

(2) Individuals desiring to instruct in basic and advanced subjects they have not previously been approved for must meet the requirements of this section for acceptable proof of training. Proof of training shall be attached and submitted with a Course/School Prior Approval Form when making application for course approval by the commission.

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

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T. R. Thompson  
General Counsel

Texas Commission on Fire Protection

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Chapter 425. Fire Protection Instructor

## Subchapter D. Associate Instructor Certification

### 37 TAC §425.401

*(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 Commission on Fire Protection or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Commission on Fire Protection proposes the repeal of §425.401, concerning minimum standards for associate instructor certification. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state and local governments.

Mr. Calagna also has determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that obsolete language will be replaced with new sections that implement legislative changes. There are no additional costs of compliance for small or large businesses and for individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.028(3), which provides the commission with authority to certify persons as qualified fire protection instructors under conditions the commission prescribes.

Texas Government Code, §419.028 is affected by the proposed repeal.

§425.401. *Minimum Standards for Associate Instructor 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 May 11, 1998.

TRD-9807593

T. R. Thompson  
General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



## Chapter 425. Fire Instructor

### Subchapter D. Instructor Training Courses

#### 37 TAC §425.401

The Texas Commission on Fire Protection proposes new §425.401, concerning instructor training courses. New



§425.401 reorganizes existing language to clarify the qualifications of persons who may teach approved instructor training courses.

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the new sections are in effect there will be no fiscal implications for state government. The cost to local governments for obtaining instructor training courses may decrease by approximately \$250 per person due to the changes in requirements for persons who may teach instructor courses.

Mr. Calagna also has determined that for each of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be that volunteer instructors are considered the same as paid instructors and the availability of approved fire instructor courses may increase. There are no additional costs of compliance for small or large businesses or individuals required to comply with the new chapter. The commission has determined that the proposed new sections relating to instructor training courses will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mail to tcfp@mail.capnet.state.tx.us.

The new section is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.028, which provides the commission the authority to certify persons as qualified fire protection personnel instructors under conditions the commission prescribes.

Texas Government Code, §419.028 is affected by the proposed new section.

§425.401. Instructor Training Courses.

(a) In order for a Methods of Teaching, Instructional Aids, Analysis and Course Making, or Organization and Use of Instructional Materials course to be accepted by the commission toward any level of instructor certification, the course must be taught by an individual who holds one of the following two qualifications:

(1) a bachelor's degree with the following:

(A) as a minimum, a minor in education, or 12 semester hours of education instructional courses, or 120 class hours in the following courses: Methods of Teaching, Instructional Aids, Analysis and Course Making, and Organization and Use of Instructional Materials; and

(B) three years' teaching experience in a fire department, department of a state agency, educational institution, or political subdivision of the state, during which time the individual taught a minimum of 200 class hours; or

(2) an associate's degree with the following:

(A) 12 semester hours of education instructional courses or 120 class hours in the following courses: Methods of Teaching, Instructional Aids, Analysis and Course Making, and Organization and Use of Instructional Materials; and

(B) five years' teaching experience in a fire department, department of a state agency, educational institution, or political subdivision of the state, during which time the individual taught a minimum of 400 class hours.

(b) Other related information:

(1) Descriptions of all approved instructor training courses are on file in the office of the commission.

(2) In all cases the National Fire Academy course, Course Development, can be substituted for both Analysis and Course Making and Organization and Use of Instructional Materials.

(3) In all cases the National Fire Academy course, Instructional Methodology, can be substituted for both Methods of Teaching and Instructional Aids.

(4) The commission has entered into an agreement of reciprocity with the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) concerning the commission's Methods of Teaching Course and the TCLEOSE Basic Instructor Course. For the purpose of instructor certification, both agencies will consider the courses equivalent.

(5) The commission has entered into an agreement of reciprocity with the Texas Department of Health for the purpose of instructor certification. The commission will recognize the Texas Department of Health's 40-hour state instructor certification course as meeting the training requirements for the Texas Commission on Fire Protection's Intermediate Instructor 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 May 11, 1998.

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T. R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



## Chapter 427. Certified Training Facilities

**37 TAC §§427.1, 427.3, 427.5, 427.7, 427.9, 427.11, 427.13, 427.15, 427.17, 427.19**

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

The Texas Commission on Fire Protection proposes the repeal of §§427.1, 427.3, 427.5, 427.7, 427.9, 427.11, 427.13, 427.15, 427.17, and 427.19, concerning certified training facilities. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state and local governments.

Mr. Calagna also has determined that for each of the first five years the repeal is in effect the public benefit anticipated as

a result of enforcing the repeal will be that obsolete language will be replaced with new sections that implement legislative changes. There are no additional costs of compliance for small or large businesses and for individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.028(2), which provides the commission the authority to certify facilities operated for training fire protection personnel or recruits.

Texas Government Code, §419.028 is affected by the proposed repeal.

§427.1. *Minimum Standards for Certified Training Facilities for Fire Protection Personnel.*

§427.3. *Facilities.*

§427.5. *Apparatus.*

§427.7. *Protective Clothing.*

§427.9. *Equipment.*

§427.11. *Reference Material.*

§427.13. *Records.*

§427.15. *Testing Procedures.*

§427.17. *Staff.*

§427.19. *General Information.*

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

Filed with the Office of the Secretary of State, on May 11, 1998.

TRD-9807594

T. R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



The Texas Commission on Fire Protection proposes new §§427.1, 427.3, 427.5, 427.7, 427.9, 427.11, 427.13, 427.15, 427.17, and 427.19, pertaining certified training facilities. The chapter is comprised of sections pertaining to requirements for certification as certified training facilities for fire protection personnel including facility requirements, apparatus, protective clothing, equipment, reference materials, records, testing procedures, staff, and general information. New §427.1 adds certification requirements for training facilities that provide basic instruction for certification as a hazardous materials technician and streamlines the documentation required for approval of a course where the facility has previously been approved. New §427.3 concerning facilities eliminates obsolete language concerning insurance key rate credit and adds new subsection (7) concerning an area for performance skills training and

testing. New §427.5 and §427.7 concerning apparatus and protective clothing readopt existing language. New §427.9 concerning equipment allows the use of training simulators and mock training aids. New §427.11 and §427.13 readopts existing language concerning reference materials and records. New §427.15 adds training facility testing requirements for hazardous material technician training. Section 427.15 also includes provisions applicable to volunteer training facilities conducting an approved basic fire suppression phase level training program for volunteer fire fighters. New §427.17 concerning staff streamlines existing language. New §427.19 adds language to recognize training through a program that has been approved by the commission as equivalent. The new Chapter is intended to integrate and continue to recognize training at volunteer training facilities currently certified by the commission.

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the new sections are in effect there will be fiscal implications for state and local governments. The commission may experience an increase in training facility certification fees totaling \$200 per year from the addition of approvals for hazardous materials technician courses. Local governments that choose to obtain approval to teach basic instruction for hazardous materials technician will incur an additional \$20.00 certification fee.

Mr. Calagna also has determined that for each of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be uniformity in training for hazardous materials technician training and providing more flexibility for scheduling training by integrating the volunteer phase level training program. There are no additional costs of compliance for small or large businesses or individuals required to comply with the new chapter. The commission has determined that the proposed new sections relating to certified training facilities will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The new sections are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.028, which provides the commission the authority to certify facilities operated for training fire protection personnel or recruits.

Texas Government Code, §419.028 is affected by the proposed new sections.

§427.1. *Minimum Standards for Certified Training Facilities for Fire Protection Personnel.*

(a) A training facility that provides basic instruction, for certification, to fire protection personnel in any of the following disciplines must be certified by the Texas Commission on Fire Protection:

- (1) structural fire protection personnel;
- (2) aircraft fire protection personnel;

- (3) marine fire protection personnel;
- (4) fire inspector;
- (5) arson investigator or fire investigator;
- (6) hazardous materials technician.

(b) A certified training facility may be approved to instruct in any one or all of the basic fire protection personnel curricula. Minimum requirements for each curriculum must be met to receive certification.

(c) Minimum requirements for certification as a certified training facility shall include facilities, apparatus, equipment, reference materials, and records to support a quality education and training program. The resources must provide for classroom instruction, demonstrations, and practical exercises for the trainees to develop the knowledge and skills required for basic fire protection personnel certification.

(d) The facilities and training shall be performance oriented, when required. Practical performance training with maximum participation by trainees shall be an integral part of the training program. The evaluation process for each phase of training will emphasize, as required, performance testing to determine if the trainee has acquired the knowledge and skills to achieve the required level of competency as required by the respective curriculum.

(e) It must be clearly understood that the minimum standard for training facilities is applicable only as the title implies and does not address the additional training facility resources which are required for the continuing in-service training essential to the development and maintenance of a well-coordinated and effective fire service organization.

(f) An organization, installation, or facility must submit a written application for certification as a certified training facility to the commission. Such application will include descriptions and addresses of physical facilities together with inventory of apparatus, equipment, and reference material to be utilized in conducting the basic curriculum as specified by the commission. It is not required that the equipment be owned by, permanently assigned to, nor kept at a training facility, but must be readily available for instructional purposes. A training facility must submit a letter of commitment with the original training facility certification application authorizing the use of resources not controlled by the training facility from the provider of said resources. Photographs of resources annotated to reflect their identity must be included with the application. When seeking basic course approvals, the facility shall certify that the resources are provided in accordance with this chapter.

(g) All training must be submitted to the commission for approval at least 20 days prior to the proposed starting date of the training.

(h) A certified training facility must submit a written request to the commission to be issued, at no charge, one Commission Certification Curriculum Manual which is to be utilized by the certified training facility instructors. The certified training facility instructors are responsible for ensuring that all subjects are taught as required by the respective curriculum. Additional copies of the Commission Certification Curriculum Manual may be purchased from the commission. Certified training facilities that renew their certification will receive appropriate updates, at no charge, to the Commission Certification Curriculum Manual.

§427.3. Facilities.

The following minimum resources, applicable to the curricula, are required for certification as a certified training facility. These facilities may be combined or separated utilizing one or more structures. In either event the facilities must be available and used by the instructor and trainees.

(1) A training tower equivalent to two or more stories in height. The term "training tower" as used in these standards is a structure suitable for training in the practical application of ladder evolutions, rescue drills, hose advancement, and rope work.

(2) A facility for classroom instruction shall have seating capacity for anticipated trainees conducive for an effective learning environment.

(3) Area for practical application of principles and procedures of fire fighting, hose loading, pumper operation, to include friction loss, nozzle reaction, fire stream patterns, and GPM discharge utilizing various layouts for hand lines and master stream appliances.

(4) An enclosed area or room for use in practical training with self-contained breathing apparatus. This may be a smoke and fire room or enclosed area which can be charged with smoke-producing devices to provide a realistic training environment.

(5) A structure suitable for interior live fire training and meeting the requirements of the basic curriculum pertaining to the particular discipline(s) which the training facility is approved to teach, shall be available for use by the instructors to teach interior live fire training. NFPA 1403, Standard on Live Fire Training Evolutions in Structures shall be used as a guide when conducting interior live fire training.

(6) Facilities to conduct exterior live fire training as required by the basic curriculum pertaining to the particular discipline(s) which the training facility is approved to teach, shall be available for use by the instructors to teach exterior live fire training.

(7) If performance skills are part of the curriculum, suitable area(s) for practicing required skills, demonstration of skills, and performance testing must be available.

§427.5. Apparatus.

(a) Certified training facility–approved for basic structural fire protection personnel.

(1) A pumper apparatus fully equipped as required by the basic fire suppression curriculum shall be readily available for use by the instructors for instructional purposes.

(2) Ladders or a ladder truck as required by the basic fire suppression curriculum shall be readily available for use by the instructors for instructional purposes.

(b) Certified training facility–approved for basic aircraft fire protection personnel. Fire apparatus that is equipped to perform aircraft operations as required by the basic aircraft fire protection curriculum must be readily available for use by the instructors for instructional purposes.

§427.7. Protective Clothing.

Each and every set of protective clothing, including proximity clothing, that will be used during the course of instruction for a commission approved basic fire protection personnel curriculum shall comply with § 435.1(b) of this title (relating to Protective Clothing).

§427.9. Equipment.

The following minimum equipment, applicable to the curriculum(s) the training facility is certified to teach, are required for certification

as a certified training facility. The equipment must be available for use by the certified training facility:

(1) self-contained breathing apparatus in sufficient numbers to enable each trainee to wear the equipment for at least the life of one breathing air tank during the training. (Note: Must comply with §435.3(2) of this title (relating to Self-contained Breathing Apparatus)):

(2) standard classroom equipment to include chalkboard, speaker rostrum, supportive instructional aids available to include audio- visual projection equipment. The use of cutaways, models, flip charts, and other visual aids are recommended to enhance effectiveness of the instruction. (Note: The instructor needs to ensure all necessary equipment is available for trainees to use regarding the basic performance skills as identified in appropriate curriculum and to comply with § 427.15 of this title (relating to Testing Procedures)); and

(3) other equipment, which may include training simulators and mock training aids, and tools required by the applicable curriculum.

#### §427.11. Reference Material.

A reference library is required. The library must contain the publications required to conduct research and develop lesson plans covering the material required in the applicable basic curriculum.

#### §427.13. Records.

(a) Training records shall be maintained by the training facility that reflect:

(1) who was trained, subject, instructor, and date of instruction. (Note: Individual records are required rather than class records); and

(2) individual trainee test scores to include performance testing.

(b) All training records must be maintained for a minimum of three years.

#### §427.15. Testing Procedures.

(a) A system for evaluating the effectiveness of the instruction, and the comprehension of the trainee is required.

(b) If performance skills are part of the applicable curriculum, performance testing shall be done and records kept indicating that each trainee has demonstrated an ability to consistently perform, individually and as a member of a team, all tasks and operations associated with the training in a safe manner and level of competency which contributes to the successful achievement of the purpose for which the task or operation is being performed.

(c) Performance testing should be utilized to the maximum extent practical. The performance skills contained in the applicable basic curriculum shall be utilized to satisfy performance skills requirements. Each trainee shall be prepared to demonstrate any performance skill before a commission representative as may be required in Chapter 439 (relating to Examinations for Certification).

(d) Written tests shall be designed to encompass the contents of the subjects being taught and phrased in a manner which can be readily understood by a trainee whose comprehension is at a level consistent with the academic level of the material being presented.

(1) Periodic written tests serve the dual purpose of permitting the instructor to evaluate the effectiveness of the instruction and the comprehension of the trainees. The instructor must determine that each trainee understands and comprehends the subject matter

being presented. Trainees must maintain a grade average of not less than 70% for all periodic tests administered during the course.

(A) A minimum of eight periodic written tests shall be administered during the course for certification of structural fire protection personnel, covering the subjects listed in the basic fire suppression curriculum.

(B) A minimum of four periodic written tests shall be administered during the course for certification of aircraft fire protection personnel, marine fire protection personnel, fire inspectors, arson investigator, and fire investigator covering the subjects listed in the applicable curriculum.

(C) A minimum of two periodic written tests shall be administered during the course for certification of hazardous materials technicians covering the subjects listed in the applicable curriculum.

(2) Comprehensive written tests shall be administered utilizing one of the following options.

(A) Option A. A midterm and a final comprehensive written test shall be administered, if this option is utilized. The first or midterm comprehensive test shall be given no later than midway through the curriculum and shall relate to subjects presented from the beginning of the training until the date of test. The final comprehensive test shall be given at the conclusion of the training curriculum and shall relate to subject matter presented from the beginning of the training until the date of the test. Each trainee must maintain a grade average of not less than 70% for the two comprehensive tests. A trainee may be allowed one retest at the discretion of the training facility.

(B) Option B. A final comprehensive test shall be administered at the conclusion of the course and shall cover all subjects listed in the training curriculum. Each trainee must score a grade of not less than 70% on the final examination. A trainee may be allowed one retest, at the discretion of the training facility.

(C) Option C. If the training facility is conducting an approved basic fire suppression phase level program, a test will be administered by the certified training facility at the completion of each phase of the curriculum. Trainees must obtain a grade of not less than 70% for all tests administered for each phase.

(3) The tests in paragraphs (1) and (2) of this subsection shall be in addition to the commission examination required in Chapter 439 of this title (relating to Examinations for Certification).

(e) A master copy of written tests will be maintained for review by commission representatives. The certified training facility shall maintain copies of all tests for a minimum of three years.

#### §427.17. Staff.

(a) A training officer, as a minimum, must possess an intermediate fire service instructor certification (refer to § 425.3 of this title (relating to Intermediate Fire Service Instructor)). A newly appointed training officer must, as a minimum, possess an intermediate fire service instructor certification within one year from date of appointment.

(b) A coordinator, as a minimum, must possess an intermediate fire education specialist certification (refer to § 425.303 of this title (relating to Intermediate Fire Education Specialist Certification)). A newly appointed coordinator must as a minimum possess an intermediate fire education specialist certification within one year from date of appointment.

(c) All instructors, except guest instructors must possess fire instructor certification The instructor or instructors that will be

providing instruction must be approved by the commission to instruct in the applicable curriculum or subjects.

(d) The lead instructor, as a minimum, shall possess an intermediate fire instructor certification. The lead instructor must have completed the course he or she is seeking to instruct or have completed comparable training in the same subject area.

(e) Guest instructors, including fire protection personnel utilized on a limited basis, are not required to be certified as instructors. A guest instructor is defined as an individual with special knowledge, skill, and expertise in a specific subject area who has the ability to enhance the effectiveness of the training. Guest instructors can teach under the endorsement of the instructor responsible for the subject being taught.

§427.19. General Information.

(a) All Texas certified training facilities shall meet these minimum requirements. No training credit will be recognized from a Texas training facility that has not been certified by the commission, unless the program has been approved by the commission as being equivalent. The commission shall take action on an application for certification of a training facility within 90 days from receipt of same.

(b) Certified training facilities are subject to inspection by the commission at any time during regular business hours.

(c) In order to retain the certification as a certified training facility, schools desiring to make substantial changes in the facility or other conditions under which the school was approved shall coordinate such plans with the commission.

(d) The commission shall be notified, in writing, within 14 days of any change in the certified training.

(e) The commission may revoke the certification of a training facility when, in the judgment of the commission, the training facility:

(1) is inadequate and fails to provide the quality of training for which the facility was approved;

(2) fails to comply with commission rules and/or these minimum standards; or

(3) fails to submit required reports in a timely manner or submits false reports to the commission.

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

Filed with the Office of the Secretary of State, on May 11, 1998.

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T. R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



## Chapter 429. Minimum Standards for Fire Inspectors

### 37 TAC §§429.1, 429.3, 429.5, 429.7, 429.9

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Fire Protection or in the Texas Register*

*office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Commission on Fire Protection proposes the repeal of §§429.1, 429.3, 429.5, 429.7, and 429.9, concerning minimum standards for fire inspector certification. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state and local governments.

Mr. Calagna also has determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that obsolete language will be replaced with new sections that implement legislative changes. There are no additional costs of compliance for small or large businesses and for individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed repeal.

*§429.1. Minimum Standards for Fire Inspection Personnel.*

*§429.3. Minimum Standards for Basic Fire Inspector Certification.*

*§429.5. Minimum Standards for Intermediate Fire Inspector Certification.*

*§429.7. Minimum Standards for Advanced Fire Inspector Certification.*

*§429.9. Minimum Standards for Master Fire Inspector 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 May 11, 1998.

TRD-9807595

T. R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



The Texas Commission on Fire Protection proposes new §§429.1, 429.3, 429.5, 429.7, and 429.9, concerning standards for fire inspectors. The chapter includes sections concerning assignment of fire inspection personnel, basic fire inspector certification, and higher levels including intermediate, advanced, and master certification. New §429.1 clarifies the

requirement of training and testing prior to assignment to fire code enforcement duties to be consistent with the suppression disciplines. New §429.3 concerning basic fire inspector certification eliminates language that allowed training to be completed within one year of initial appointment inasmuch as new §429.1 requires training prior to assignment. New §§429.5, 429.7, and 429.9 readopt existing language pertaining to higher levels of fire inspector certification.

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the new sections are in effect there will be no fiscal implications for state or local governments.

Mr. Calagna also has determined that for each of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be that the public is assured that personnel assigned fire code enforcement duties are adequately trained prior to assignment. There are no additional costs of compliance for small or large businesses or individuals required to comply with the new chapter. The commission has determined that the proposed new sections relating to standards for fire inspector certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The new sections are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed new chapter.

§429.1. Minimum Standards for Fire Inspection Personnel.

(a) All full-time personnel, as employed by a government entity who are assigned fire code enforcement activities, must be certified by the commission as fire inspectors.

(b) All full-time employees of a governmental entity who are assigned fire code enforcement duties must be certified, as a minimum, as a basic fire inspector as specified in §429.3 of this title (relating to Minimum Standards for Basic Fire Inspector Certification) within one year of initial appointment to such position.

(c) Prior to being assigned to fire code enforcement duties as a full-time employee, all personnel must complete a commission approved basic fire inspection training program and successfully pass the commission examination pertaining to that curriculum.

(d) All individuals holding any level of fire inspector certification shall be required to comply with the continuing education requirements in §441.13 of this title (relating to Continuing Education Requirements for Fire Inspection Personnel).

(e) Code enforcement is defined as the enforcement of laws, codes, and ordinances of the authority having jurisdiction pertaining to fire prevention.

§429.3. Minimum Standards for Basic Fire Inspector Certification.

(a) Training programs that are intended to satisfy the requirements of this section must meet the curriculum, competencies, and hour requirements of this section. All applicants for certification must meet the examination requirements of this section.

(b) In order to be certified by the commission as a Basic Fire Inspector an individual must:

(1) complete a commission approved fire inspection training program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved basic fire inspection training program shall consist of one of the following:

(A) completion of the commission approved Basic Fire Inspector Curriculum, as specified in Chapter 4 of the commission's document titled "Commission Certification Curriculum Manual," as approved by the commission in accordance with Chapter 443 of this title (relating to Certification Curriculum Manual); or

(B) successful completion of an out of state training program which has been submitted to the commission for evaluation and found to meet the minimum requirements as listed in the commission approved Basic Fire Inspector Curriculum as specified in Chapter 4 of the commission's document titled "Commission Certification Curriculum Manual"; or

(C) successful completion of the following college courses: Fundamentals of Fire Protection 3 semester hours; Fire Protection Systems 3 semester hours; Fire Prevention 3 semester hours; Building Code 3 semester hours; Building Construction 3 semester hours; Hazardous Materials I 3 semester hours; Fundamentals of Speech 3 semester hours. Total semester hours 21\* \*NOTE: Building Code and Building Construction may be combined into a single three semester hour class. If this is the case, the total semester hours may be reduced to 18; or

(D) successful completion of a minimum of 240 hours of instruction in a National Fire Academy resident program for fire inspection. The resident program must include the basic course, Fire Inspection Principles (80 hours), and a minimum of 160 hours of instruction in at least two of the following courses:

- (i) Fire Prevention Specialist II (80 hours); or
- (ii) Plans Review for Inspectors (80 hours); or
- (iii) Code Management: A Systems Approach (80 hours); or
- (iv) Management of Fire Prevention Programs (80 hours); or
- (v) Strategic Analysis of Fire Prevention Programs (80 hours).

(c) National Fire Academy resident courses of equal or greater class hours that replace a course discontinued by the National Fire Academy may be used towards requirements for certification in place of the discontinued course.

(d) A person who holds or is eligible to hold a certificate upon employment as a part-time fire inspector may be certified as a fire inspector, of the same level of certification, without meeting the applicable examination requirements.

§429.5. Minimum Standards for Intermediate Fire Inspector Certification.

(a) Applicants for Intermediate Fire Inspector Certification must complete the following requirements:

(1) hold as a prerequisite a Basic Fire Inspector Certification as defined in §429.3 of this title (relating to Minimum Standards for Basic Fire Inspector Certification);

(2) acquire a minimum of four years of fire protection experience and complete the courses listed in one of the following options:

(A) Option 1—Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsections (c) and (d) of this section; or

(B) Option 2—Complete a minimum of 96 hours of instruction in any National Fire Academy courses; or

(C) Option 3—Successfully complete three semester hours of college courses listed in Option 1 and a minimum of 48 hours in any National Fire Academy courses.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Intermediate Fire Inspector Certification.

(c) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's document titled "Commission Certification Curriculum Manual" or for experience in the fire service, may not be counted toward higher levels of certification.

(d) The training required in this section must be in addition to any training used to qualify for any lower level of Fire Inspector Certification. Repeating a course or course of similar content cannot be used towards higher levels of certification.

§429.7. Minimum Standards for Advanced Fire Inspector Certification.

(a) Applicants for Advanced Fire Inspector certification must complete the following requirements:

(1) hold as a prerequisite an Intermediate Fire Inspector Certification as defined in §429.5 of this title (relating to Minimum Standards for Intermediate Fire Inspector Certification);

(2) acquire a minimum of eight years of fire protection experience and complete the courses listed in one of the following options:

(A) Option 1—Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsections (c) and (d) of this section; or

(B) Option 2—Complete a minimum of 96 hours of instruction in any National Fire Academy courses; or

(C) Option 3—Successfully complete three semester hours of college courses listed in Option 1 and a minimum of 48 hours in any National Fire Academy courses.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Advanced Fire Inspector Certification.

(c) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's document titled "Commission Certification Curriculum Manual" or for experience

in the fire service, may not be counted toward higher levels of certification.

(d) The training required in this section must be in addition to any training used to qualify for any lower level of Fire Inspector Certification. Repeating a course or course of similar content cannot be used towards higher levels of certification.

§429.9. Minimum Standards for Master Fire Inspector Certification.

(a) Applicants for Master Fire Inspector Certification must complete the following requirements:

(1) hold as a prerequisite an Advanced Fire Inspector Certification as defined in § 429.7 of this title (relating to Minimum Standards for Advanced Fire Inspector Certification); and

(2) acquire a minimum of 12 years of fire protection experience, and 60 college semester hours or an associate degree, which includes at least 18 college semester hours in fire science subjects.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Fire Inspector 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.

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T. R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



## Chapter 431. Minimum Standards for Fire and Arson Investigator

### 37 TAC §§431.1, 431.3, 431.5, 431.7, 431.9, 431.11

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

The Texas Commission on Fire Protection proposes the repeal of §§431.1, 431.3, 431.5, 431.7, 431.9, and 431.11, concerning minimum standards for fire and arson investigator certification. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state and local governments.

Mr. Calagna also has determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that obsolete language will be replaced with new sections that implement legislative changes. There are no additional costs of compliance for small or large businesses and for individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to tcfp@mail.capnet.state.tx.us.

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed repeal.

§431.1. *Minimum Standards for Fire and Arson Investigation Personnel.*

§431.3. *Minimum Standards for Basic Fire and Arson Investigator Certification.*

§431.5. *Minimum Standards for Intermediate Fire and Arson Investigator Certification.*

§ 431.7. *Minimum Standards for Advanced Fire and Arson Investigator Certification.*

§431.9. *Minimum Standards for Master Fire and Arson Investigator Certification.*

§431.11. *Minimum Standards for Fire and Arson Investigator Certification for Law Enforcement Personnel.*

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

Filed with the Office of the Secretary of State, on May 11, 1998.

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T. R. Thompson

General Counsel

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## Chapter 431. Fire Investigation

### Subchapter A. Minimum Standards for Arson Investigator Certification

#### 37 TAC §§431.1, 431.3, 431.5, 431.7, 431.9, 431.11

The Texas Commission on Fire Protection proposes new §§431.1, 431.3, 431.5, 431.7, 431.9, and 431.11, concerning Fire Investigation including new Subchapter A pertaining to arson investigator certification. New Subchapter A redesignates the existing "fire and arson investigator" as simply "arson investigator" and is intended to apply to investigators who are licensed peace officers. New §431.1 clarifies the requirement of training and testing prior to assignment to arson investigation duties in a manner consistent with suppression disciplines and corrects a cross reference relating to continuing education requirements. New §431.3 deletes language allowing training to be completed within one year of appointment to comply with the requirement of testing and training prior to assignment in new §431.1. New §§431.5, 431.7, 431.9, and 431.11 concerning higher levels of arson investigator certification

readopt existing language with the simplified designation of "arson investigator."

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the new sections are in effect there will be no fiscal implication for state or local governments.

Mr. Calagna also has determined that for each of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be that the public is assured that personnel assigned to arson investigation duties by a fire department are adequately trained prior to assignment to such duties. There are no additional costs of compliance for small or large businesses or individuals required to comply with the new chapter. The commission has determined that the proposed new sections relating to fire investigation will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to tcfp@mail.capnet.state.tx.us.

The new sections are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed new sections.

§431.1. Minimum Standards for Arson Investigation Personnel .

(a) All full-time personnel employed by any local government entity in Texas who are assigned arson investigation duties must be certified by the commission.

(b) All full-time employees of a local government entity in Texas who are assigned arson investigation duties must be certified, as a minimum, as a basic arson investigator as specified in §431.3 of this title (relating to Minimum Standards for Basic Arson Investigator Certification) within one year from the date of initial appointment to such position.

(c) Prior to being assigned to arson investigation duties as a full-time employee, all personnel must complete a commission approved basic fire investigator training program and successfully pass the commission examination pertaining to that curriculum.

(d) All individuals holding any level of arson investigation certification shall be required to comply with the continuing education requirements in §441.15 of this title (relating to Continuing Education Requirements for Arson Investigator or Fire Investigator.

§431.3. Minimum Standards for Basic Arson Investigator Certification.

(a) Training programs that are intended to satisfy the requirements of this section must meet the curriculum, competencies, and hour requirements of this section. All applicants for certification must meet the examination requirements of this section.



(b) In order to be certified by the commission as a Basic Arson Investigator an individual must:

(1) possess a current basic peace officer's license from the Texas Commission on Law Enforcement Officer Standards and Education;

(2) hold a current commission as a peace officer with the employing entity for which the arson investigations will be done;

(3) complete a commission approved basic fire investigation training program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved basic fire investigation training program shall consist of one of the following:

(A) completion of the commission approved Basic Fire Investigator Curriculum, as specified in Chapter 5 of the commission's document titled "Commission Certification Curriculum Manual," as approved by the commission in accordance with Chapter 443 of this title (relating to Certification Curriculum Manual); or

(B) successful completion of the National Fire Academy Resident Fire Arson Investigator Course; or

(C) successful completion of an out of state training program which has been submitted to the commission for evaluation and found to meet the minimum requirements as listed in the commission approved Basic Fire Investigator Curriculum as specified in Chapter 5 of the commission's document titled "Commission Certification Curriculum Manual"; or

(D) successful completion of the following college courses: Arson Investigator I 3 semester hours Arson Investigator II 3 semester hours Hazardous Materials I 3 semester hours Building Construction 3 semester hours Fire Protection Systems 3 semester hours Total semester hours 15 NOTE: The three semester hour course "Building Codes and Construction" may be substituted for Building Construction.

(c) A person who holds or is eligible to hold a certificate upon employment as a part-time arson investigator may be certified as an arson investigator, of the same level of certification, without meeting the applicable examination requirements.

§431.5. Minimum Standards for Intermediate Arson Investigator Certification.

(a) Applicants for Intermediate Arson Investigator Certification must complete the following requirements:

(1) hold as a prerequisite a Basic Arson Investigator Certification as defined in §431.3 of this title (relating to Minimum Standards for Basic Arson Investigator Certification);

(2) acquire a minimum of four years of fire protection experience and complete the courses listed in one of the following options:

(A) Option 1—Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsections (c) and (d) of this section; or

(B) Option 2—Complete a minimum of 96 hours of instruction in any National Fire Academy courses; or

(C) Option 3—Successfully complete three semester hours of college courses listed in Option 1 and a minimum of 48 hours in any National Fire Academy courses.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Intermediate Arson Investigator Certification.

(c) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's document titled "Commission Certification Curriculum Manual" or for experience in the fire service, may not be counted toward higher levels of certification.

(d) The training required in this section must be in addition to any training used to qualify for any lower level of Arson Investigator Certification. Repeating a course or course of similar content cannot be used towards higher levels of certification.

§431.7. Minimum Standards for Advanced Arson Investigator Certification.

(a) Applicants for Advanced Arson Investigator certification must complete the following requirements:

(1) hold as a prerequisite an Intermediate Arson Investigator Certification as defined in §431.5 of this title (relating to Minimum Standards for Intermediate Arson Investigator Certification);

(2) acquire a minimum of eight years of fire protection experience and complete the courses listed in one of the following options:

(A) Option 1—Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsections (c) and (d) of this section; or

(B) Option 2—Complete a minimum of 96 hours of instruction in any National Fire Academy courses; or

(C) Option 3—Successfully complete three semester hours of college courses listed in Option 1 and a minimum of 48 hours in any National Fire Academy courses.

(D) Option 4—Advanced Arson for Profit (Bureau of Alcohol, Tobacco, and Firearms resident or field course, 80 hours)

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Advanced Arson Investigator Certification.

(c) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's document titled "Commission Certification Curriculum Manual" or for experience in the fire service, may not be counted toward higher levels of certification.

(d) The training required in this section must be in addition to any training used to qualify for any lower level of Arson Investigator Certification. Repeating a course or course of similar content cannot be used towards higher levels of certification.

§431.9. Minimum Standards for Master Arson Investigator Certification.

(a) Applicants for Master Arson Investigator Certification must complete the following requirements:

(1) hold as a prerequisite an Advanced Arson Investigator Certification as defined in §431.7 of this title (relating to Minimum Standards for Advanced Arson Investigator Certification); and

(2) acquire a minimum of twelve years of fire protection experience, and 60 college semester hours or an associate degree, which includes at least 18 college semester hours in fire science subjects.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Master Arson Investigator Certification.

§431.11. Minimum Standards for Arson Investigator Certification for Law Enforcement Personnel.

A permanent, full-time, full-paid law enforcement officer designated as a arson investigator by an "appropriate" local authority is eligible for certification by complying with this chapter.

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

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T. R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



## Subchapter B. Fire Investigator Certification

### 37 TAC §431.201 §431.203

The Texas Commission on Fire Protection proposes new §431.201 and §431.203, concerning Fire Investigation including new Subchapter B concerning fire investigator certification. New Subchapter B incorporates provisions previously in repealed Chapter 451 concerning fire cause and origin investigation and redesignates the "fire cause and origin investigator" as simply "fire investigator" and is intended to apply to investigators who are not licensed peace officers. New §431.201 and §431.203 transfer existing language from repealed Chapter 451 and allows certified arson investigators no longer holding a current commission as a peace officer to maintain certification as a "fire investigator."

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the new sections are in effect there will be no fiscal implications for state or local governments.

Mr. Calagna also has determined that for each of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be requirements for fire investigator certification are simplified and provide for maintenance of investigator certification after employment. There are no additional costs of compliance for small or large businesses or individuals required to comply with the new chapter. The commission has determined that the proposed new sections relating to fire investigation will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire

Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The new sections are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed new sections.

§431.201. Minimum Standards for Fire Investigation Personnel.

(a) All individuals holding a Fire Investigator certification shall be required to comply with the continuing education requirements in §441.15 of this title (relating to Continuing Education Requirements for Arson Investigator or Fire Investigator).

(b) An individual certified under this subchapter shall limit his or her investigation to determining fire cause and origin. If evidence of criminal conduct in violation of the Penal Code, Chapter 28 (Arson, Criminal Mischief, and other Property Damage or Destruction) is discovered, the investigator shall immediately transfer custody and control of the investigation to a certified arson investigator or licensed peace officer.

(c) A person who previously held an arson investigator certification who no longer holds a current commission as a peace officer may apply for certification as a fire investigator in accordance with this subchapter.

§ 431.203. Minimum Standards for Fire Investigator Certification.

(a) Training programs that are intended to satisfy the requirements of this section meet the curriculum, competencies, and hour requirements of this section. All applicants for certification must meet the examination requirements of this section.

(b) In order to be certified by the commission as a Fire Investigator an individual must complete a commission approved basic fire investigation training program as specified in § 431.3(b)(3) of this title (relating to Minimum Standards for Basic Arson Investigator Certification) and successfully pass the commission examination as specified in Chapter 439 of this title.

(c) A person who holds or is eligible to hold a certificate upon employment as a part-time fire investigator may be certified as a full-time fire investigator without meeting the applicable examination requirements.

(d) A person who holds or is eligible to hold a certificate as a Fire Investigator may be certified as an Arson Investigator by meeting the requirements of Chapter 431, Subchapter A, but shall not be required to repeat the applicable examination requirements.

(e) There are no higher levels of certification for the Fire Investigator.

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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T. R. Thompson

General Counsel

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## Chapter 435. Firefighter Safety

### 37 TAC §§435.1, 435.3, 435.5, 435.7

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

The Texas Commission on Fire Protection proposes the repeal of §§435.1, 435.3, 435.5, and 435.7, concerning fire fighter safety. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state and local governments.

Mr. Calagna also has determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that obsolete language will be replaced with new sections that implement legislative changes. There are no additional costs of compliance for small or large businesses and for individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022(4), which provides the commission with authority to assist in performing staffing studies for fire departments; Texas Government Code, §419.040, which provides the commission with authority to approve standards for protective clothing used by fire protection personnel; Texas Government Code, §419.041, which provides the commission with authority to approve standards for self-contained breathing apparatus (SCBA); and Texas Government Code, §419.042, which provides the commission with authority to adopt standards for protective clothing and SCBA.

Texas Government Code, §§419.022, 419.040, 419.041, and 419.042 are affected by the proposed repeal.

§435.1. *Protective Clothing.*

§435.3. *Self-Contained Breathing Apparatus.*

§ 435.5. *Commission Recommendations.*

§435.7. *Fire Department Staffing Studies.*

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 May 11, 1998.

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T. R. Thompson

General Counsel

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The Texas Commission on Fire Protection proposes new §§435.1, 435.3, 435.5, and 435.7, concerning fire fighter safety. The new chapter includes sections pertaining to protective clothing, self-contained breathing apparatus, recommended safety standards, and fire department staffing studies. New §435.1 redefines personnel required to have protective clothing consistent with applicable National Fire Protection Association Standards. New §§435.3, 435.5, and 435.7 readopt existing language.

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the new sections are in effect there will be no fiscal implications to state government. The cost to local government may increase by \$650 per person representing the cost of protective clothing if the entity employs fire protection personnel other than those assigned fire suppression duties who are exposed to hazardous conditions from fire and other emergencies.

Mr. Calagna also has determined that for each of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be that public employees exposed to hazardous conditions from fire and other emergencies are adequately protected. There are no additional costs of compliance for small or large businesses or individuals required to comply with the new chapter inasmuch as the employing local government is required to provide the clothing or an allowance. The commission has determined that the proposed new sections relating to fire fighter safety will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The new sections are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.042, which provides the commission with authority to adopt standards for protective clothing and SCBA.

Texas Government Code, §§419.022, 419.040, 419.041, and 419.042 are affected by the proposed new chapter.

§435.1. *Protective Clothing.*

The employing entity shall:

(1) purchase, provide, and maintain a complete set of protective clothing for all fire protection personnel who would be exposed to hazardous conditions from fire or other emergencies or where the potential for such exposure exists or provide an adequate clothing allowance and require the fire protection personnel to purchase and maintain a complete set of protective clothing. A complete set of protective clothing shall consist of garments, including bunker coats, bunker pants, boots, gloves, helmets, and

protective hoods, worn by fire protection personnel in the course of performing fire-fighting operations;

(2) ensure that all protective clothing which are used by fire protection personnel assigned to fire suppression duties comply with the minimum standards of the National Fire Protection Association:

(A) the National Fire Protection Association standard applicable to protective clothing is the standard in effect at the time the entity contracts for new, rebuilt, or used protective clothing;

(B) an entity may continue to use protective clothing in use or contracted for before a change in the National Fire Protection Association standard, unless the commission determines that the protective clothing constitutes an undue risk to the wearer, in which case the commission shall order that the use be discontinued and shall set an appropriate date for compliance with the revised standard;

(C) fire fighter boots purchased or contracted for prior to May 16, 1988, are not required to meet the minimum standards for protective clothing;

(D) protective hoods purchased or contracted for prior to August 16, 1991, are not required to meet the minimum standards for protective clothing;

(E) protective clothing for proximity fire fighting purchased or contracted for prior to August 14, 1992, are not required to meet the standards for protective clothing;

(3) maintain and provide upon request by the commission, a departmental standard operating procedure regarding the use of protective clothing during fire suppression operations.

#### §435.3. Self-contained Breathing Apparatus.

The employing entity shall:

(1) purchase, provide, and maintain a complete self-contained breathing apparatus for each on duty fire protection personnel who would be exposed to hazardous atmospheres from fire or other emergencies or where the potential for such exposure exists;

(2) ensure that all self-contained breathing apparatus used by fire protection personnel complies with the minimum standards of the National Fire Protection Association identified in NFPA 1981, Standard on Open-Circuit Self-contained Breathing Apparatus for Fire Fighters:

(A) the National Fire Protection Association standard applicable to a self-contained breathing apparatus is the standard in effect at the time the entity contracts for new, rebuilt, or used self-contained breathing apparatus;

(B) an entity may continue to use a self-contained breathing apparatus that meets the requirements of an earlier edition of NFPA 1981, unless the commission determines that the continued use of the self-contained breathing apparatus constitutes an undue risk to the wearer, in which case the commission shall order that the use be discontinued and shall set an appropriate date for compliance with the revised standard;

(C) an entity may continue to use a self-contained breathing apparatus in use or contracted for before a change in the National Fire Protection Association standard, unless the commission determines that the continued use of the self-contained breathing apparatus constitutes an undue risk to the wearer, in which case the commission shall order that the use be discontinued and shall set an appropriate date for compliance with the revised standard;

(3) ensure that at least monthly, inspections of respiratory protection equipment are conducted and include a check of the entire unit for deteriorated components, air tightness of cylinders and valves, gauge comparison, reducing valve and bypass valve operation, and check of the regulator, exhalation valve, and low-air alarm. The SCBA shall be cleaned and returned to service;

(4) ensure that compressed breathing air from any source, including but not limited to transferred air from vendor cylinders to other cylinders, fire department air compressors, cascade systems and private sources, that is used to fill the cylinders of a self-contained breathing apparatus complies with the minimum standards of the National Fire Protection Association for air quality testing of compressed breathing air and identified in NFPA 1500, 1992 edition, Standard on Fire Department Occupational Safety and Health Program:

(5) ensure that at least every six months, samples of the air used to fill the cylinders of self-contained breathing apparatus are tested by a testing laboratory which currently holds accreditation to test breathing air from a nationally recognized accrediting organization. Air samples shall be taken directly from the point where self-contained breathing apparatus cylinders are connected for filling. If a fill station has more than one port where a self-contained breathing apparatus cylinder can be attached and if only one sample is taken from the fill station, then the sample shall be taken from the port that ensures that all components of the fill station are tested. It is "recommended" that the air used to fill cylinders of self-contained breathing apparatus be tested at least every three (3) months.

(6) develop procedures to ensure that all bottles used on self-contained breathing apparatus are tested as required by the manufacturer and the Department of Transportation;

(7) maintain and supply upon request by the commission, records and reports documenting compliance with commission requirements concerning self-contained breathing apparatus and a record of all tests shall be made and the record shall be retained for a period of no less than three years;

(8) maintain and provide upon request by the commission, a departmental standard operating procedure regarding the use of self-contained breathing apparatus; and

(9) flow test the regulators of all self-contained breathing apparatus annually or as recommended by the manufacturer. The flow test shall be performed in accordance with the manufacturer's recommendations.

#### §435.5. Commission Recommendations.

The commission recommends that all employing entities use as a guide, for all fire protection operations, the following publications:

(1) NFPA 1403 "Live Fire Training Evolutions";

(2) NFPA 1500 "Fire Department Occupational Safety and Health Program."

#### §435.7. Fire Department Staffing Studies.

(a) Section 419.022(a)(4) Texas Government Code provides that the commission may "on request, assist in performing staffing studies of fire departments." Staffing studies must take into consideration all the objectives and missions of the fire department. The commission does not have the resources or the staff to directly assist in performing the necessary tasks to perform a staffing study. Many staffing studies have been developed that can be used to assist in evaluating the needs of a fire department.

(b) A city should ultimately decide on the level of fire protection it is willing to provide to its citizens. The city and fire department should, as a minimum, address the needs of prevention, investigation and suppression as outlined in the appropriate NFPA Standards. That decision should be based on facts, the safety of its citizens, and the safety of the fire fighters providing that protection.

(c) The commission will assist by maintaining information pertinent to fire department staffing. The information shall be maintained in the Ernest A. Emerson Fire Protection Resource Library at the Texas Commission on Fire Protection. Copies shall be made available, free of charge, to anyone requesting such information to the extent permitted by copyright laws.

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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T. R. Thompson

General Counsel

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## Chapter 437. Fees

### **37 TAC §§437.1, 437.3, 437.5, 437.7, 437.9, 437.11, 437.13, 437.15, 437.17**

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

The Texas Commission Fire Protection proposes the repeal of §§437.1, 437.3, 437.5, 437.7, 437.9, 437.11, 437.13, 437.15, and 437.17, concerning fees. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state and local governments.

Mr. Calagna also has determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that obsolete language will be replaced with new sections that implement legislative changes. There are no additional costs of compliance for small or large businesses and for individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.025, which provides authority to set a fee for the standards manual;

§419.026, which provides authority to establish fees for certification and testing; and Texas Government Code, §419.034, which provide authority to collect fees for certificate renewal and proficiency testing.

Texas Government Code, §§419.025, 419.026, and 419.034 are affected by the proposed repeal.

§437.1. *Fees-Purpose and Scope.*

§437.3. *Fees-Certification.*

§437.5. *Fees-Renewal.*

§437.7. *Fees-Standards Manual.*

§437.9. *Fees-Commission Certification Curriculum Manual.*

§437.11. *Fees-Copying.*

§437.13. *Fees-Basic Certification Examination.*

§437.15. *Fees-Proficiency Examination.*

§437.17. *Fees-International Fire Service Accreditation Congress (IFSAC) Seal.*

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 May 11, 1998.

TRD-9807598

T. R. Thompson

General Counsel

Texas Commission on Fire Protection

Earliest possible date of adoption: June 21, 1998

For further information, please call: (512) 918-7189



### **37 TAC §§437.1, 437.3, 437.5, 437.7, 437.9, 437.11, 437.13, 437.15**

The Texas Commission on Fire Protection proposes new §§437.1, 437.3, 437.5, 437.7, 437.9, 437.11, 437.13, and 437.15 concerning fees. The new chapter includes sections concerning purpose and scope, fees for certification, renewal fees, standards manual fees, curriculum, manual fees, copying fees, and examination fees. New §437.1 concerning purpose and scope readopts existing language. New §437.3 certification fees eliminates unnecessary language listing each area of certification inasmuch as the same fee applies to all certificates issued by the commission whether the certificate holder is full-time, part-time, volunteer, or unaffiliated and clarifies the fees required for training facility certification. New §437.5 deletes language pertaining to inactive certificates and adds language concerning renewal of a certificate expired for less than one year. The section also establishes a procedure whereby the commission may consider requests for waiver of late fees. New §§437.7, 437.9, and 437.11 readopt existing language concerning manual and copying fees. New §437.13 simplifies the provisions concerning examination fees. New §437.15 establishes a fee of \$5.00 to recover the cost of International Fire Service Accreditation Congress seals issued by the commission.

Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the new sections are in effect there will be fiscal implications to state government resulting from the increase in certification fees for

volunteer certification from \$5.00 to \$20, estimated at approximately \$3,300 per year. There may be fiscal implications to local governments if the entity chooses to pay the increased certification fee for volunteer fire fighters in the amount of \$15.00 per person. Local governments may experience a cost savings resulting from the procedures for waiver of late fees depending on the number and amount of fees involved.

Mr. Calagna also has determined that for each of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be consistent standards and fees for both paid and volunteer fire service personnel. There are no additional costs of compliance for small or large businesses required to comply with the new chapter. Volunteer fire service personnel who seek certification from the commission will experience a \$15 annual increase in certification fees. The commission has determined that the proposed new sections relating to fees will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The new sections are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.026, which provides the commission with authority to establish fees for certification and examinations.

Texas Government Code, §419.026 is affected by the proposed new chapter.

#### §437.1. Fees—Purpose and Scope.

(a) The purpose of these sections is to set forth requirements governing the fees charged for the issuance of certificates to fire protection personnel, to establish the procedures for the collection of annual renewal fees, manual fees, Commission Certification Curriculum Manual fees, and copying fees as prescribed by the Government Code, Executive Branch, Chapter 419, §419.025 and §419.026, and commission rule.

(b) These sections shall govern all proceedings before and dealing with the Texas Commission on Fire Protection, concerning certification fees, renewal fees, manual fees, Commission Certification Curriculum Manual fees, and copying fees. Hearings and appellate proceedings regarding these fees shall be governed by these sections where applicable and by the rules of the practice and procedure of the Texas Commission on Fire Protection and the Administrative Procedure and Texas Register Act, Chapter 2001, Texas Government Code.

#### §437.3. Fees—Certification.

(a) A \$20 certification fee is required for each certificate issued by the commission.

(b) Certification fees shall not be combined with other fees such as renewal fees, fees for commission manuals, fees for Commission Certification Curriculum Manuals, or copying fees.

(c) The employing entity shall be responsible for all certification fees required as a condition of employment.

(d) Nothing in this section shall prohibit an individual from paying a certification fee for any certificate which he or she is qualified to hold, providing the certificate is not required as a condition of employment (see subsection (c) of this section concerning certification fees).

(e) If a person re-enters the fire service whose certificate(s) has been expired for one year or longer, the employing entity must:

(1) within 14 days of employment, notify the Commission that the individual has been employed;

(2) prior to assignment to any fire suppression duties, obtain documented proof that the individual has passed the proficiency test as required by §439.13 of this title (relating to Testing for Proof of Proficiency) within one calendar year prior to the date of employment; and

(3) within one year from the date of employment, make application for certification of the individual and pay the certification fee as required by subsection (a) and (b) of this section (concerning certification fees). Upon payment of the required fees, the certificates previously held by the individual for which he or she continues to qualify, will be re-issued. The employing entity has the option of making the application and paying the fee at any time within the one-year period.

(f) Any person who holds a certificate, and is no longer employed by an entity that is regulated by the Commission may submit in writing a request together with the required fee to receive a one-time certificate stating the level of certification in each discipline held by the person on the date that person left employment, pursuant to the Texas Government Code, §419.033(b). Multiple certifications may be listed on the one-time certificate. The one-time fee for the one-time certificate shall be the same as the current certification fee provided in subsection (a) of this section.

(g) A facility that provides basic level training for any discipline for which the Commission has established a Basic Curriculum must be certified by the commission. The training facility will be charged a separate certification fee for each discipline.

#### §437.5. Fees—Renewal.

(a) The annual renewal fee shall be \$20 and shall be assessed for each certified individual and certified training facility. If an individual holds more than one certificate, the commission may collect only one \$20 renewal fee which will renew all certificates held by the individual.

(b) Renewal fees shall not be combined with other fees, such as certification fees, fees for commission manuals, fees for Commission Certification Curriculum Manuals, and copying fees.

(c) The employing entity shall pay the renewal fee for all certificates which a person must possess as a condition of employment.

(d) If a person re-enters the fire service whose certificate(s) has been expired for less than one year, the employing entity must:

(1) within 14 days of employment notify the commission that the individual has been employed, and

(2) pay all applicable renewal fee(s) and any applicable late fee(s). Upon payment of the required fees, the certificates previously held by the individual, for which he or she continues to qualify, will be renewed.

(e) Nothing in this section shall prohibit an individual from paying a renewal fee for any certificate which he or she is qualified

to hold providing the certificate is not required as a condition of employment.

(f) Certification renewal notices will be mailed to all employing entities at least 60 days prior to October 31 of each calendar year.

(g) All certification renewal fees must be returned with the renewal notice to the commission.

(h) All certification renewal fees must be paid on or before the renewal date posted on the renewal notice to avoid penalty.

(i) All certification renewal fees received from one to 30 days after the renewal date posted on the renewal notice will cause the entity responsible for payment to be assessed a \$10 penalty in addition to the renewal fee for each individual for which a renewal fee was due.

(j) All certification renewal fees received more than 30 days after the renewal date posted on the renewal notice will cause the entity responsible for payment to be assessed a \$20 penalty in addition to the renewal fee for each individual for which a renewal fee was due.

(k) At the discretion of the commission, an informal conference may be held to determine what action should be taken, if any, in addition to the penalty assessed for certification renewal fees received after the due date.

(l) The certification period shall be from November 1 through October 31 of each calendar year.

(m) An individual certificate holder not employed by a fire department must notify the commission of his or her home address within 14 calendar days of a change of address.

(n) An individual or entity may petition the commission for a waiver of the late fees required by this section if the person's certificate expired because of the individual or employing entity's good faith clerical error, or expired as a result of termination of the person's employment where the person has been restored to employment through a disciplinary procedure or a court action. All required renewal fees including applicable late fees and all required continuing education must be submitted before the waiver request may be considered.

(1) Applicants claiming good faith clerical error must submit a sworn statement together with any supporting documentation that evidences the applicant's good faith efforts to comply with commission renewal requirements and that failure to comply was due to circumstances beyond the control of the applicant.

(2) Applicants claiming restoration to employment as a result of a disciplinary or court action must submit a certified copy of the order restoring the applicant to employment.

#### §437.7. Fees—Standards Manual.

(a) A fee of \$25 will be charged for each copy of the commission's standards manual. A \$12 annual subscription fee will be charged to receive revisions.

(b) Standards manual fees shall not be combined with certification fees or renewal fees. Standards manual fees may be combined with fees for the commission certification curriculum manual and copying fees.

#### §437.9. Fees—Commission Certification Curriculum Manual.

(a) A fee of \$30 will be charged for each set of the commission certification curriculum manual. A \$12 annual subscription fee will be charged to receive revisions.

(b) Fees for the commission certification curriculum manual shall not be combined with renewal fees or certification fees. Commission certification curriculum manual fees may be combined with commission standards manual fees and copy fees.

#### §437.11. Fees—Copying.

(a) All photographic reproduction of records or documents in the files of the Commission and prepared on standard office machines will be furnished for a fee.

(b) A fee will be charged for address and telephone number lists of fire service agencies.

(c) A fee will be charged for mailing peel-off labels of fire service agencies.

(d) Copy fees shall not be combined with renewal fees or certification fees. Copy fees may be combined with commission standards manual fees and commission certification curriculum manual fees.

#### §437.13. Fees—Examination

(a) A non-refundable fee of \$15 shall be charged for each written examination administered by the commission.

(b) Examination fees will not be combined with any other fees, such as renewal fees, fees for commission manuals, and copying fees.

(c) A non-refundable fee of \$15 shall be charged for each performance skills examination administered at a training facility providing field examiners. If the skills examination is administered at Austin, or other place designated by the commission, a non-refundable fee of \$50 shall be charged.

(d) A basic academy that receives a notice of course approval is entitled to one copy of the performance skills book at no charge. A fee of \$5.00 shall be charged for each additional performance skills book.

#### §437.15. Fees—International Fire Service Accreditation Congress (IFSAC) Seal.

A \$5.00 fee shall be charged for each IFSAC seal issued by the commission.

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

Filed with the Office of the Secretary of State, on May 11, 1998.

TRD-9807632

T. R. Thompson

General Counsel

Texas Commission on Fire

Earliest possible date of adoption: June 21, 1998

For further information, please call: (512) 918-7189



## Chapter 439. Examinations for Certification

**37 TAC §§439.1, 439.3, 439.5, 439.7, 439.9, 439.11, 439.13, 439.15, 439.17**

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

The Texas Commission on Fire Protection proposes the repeal of §§439.1, 439.3, 439.5, 439.7, 439.9, 439.11, 439.13, 439.15, and 439.17, concerning examinations for certification. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state and local governments.

Mr. Calagna has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that obsolete language will be replaced with new sections that implement legislative changes. There are no additional costs of compliance for small or large businesses and for individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.032(b), concerning basic certification examinations.

Texas Government Code, §419.032 is affected by the proposed repeal.

§439.1. *Effective Date.*

§439.3. *Requirements - General.*

§439.5. *Definitions.*

§439.7. *Procedures.*

§439.9. *Eligibility.*

§439.11. *Grading.*

§439.13. *Performance Skill Evaluation.*

§439.15. *Testing for Proof of Proficiency.*

§439.17. *Testing for Certification 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 May 11, 1998.

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T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189

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**37 TAC §§439.1, 439.3, 439.5, 439.7, 439.9, 439.11, 439.13, and 439.15**

The Texas Commission on Fire Protection proposes new §§439.1, 439.3, 439.5, 439.7, 439.9, 439.11, 439.13, and 439.15, concerning examinations for certification. The chapter includes sections pertaining to general requirements, definitions, procedures, eligibility, grading, performance skill

evaluation, proficiency testing, and testing for certification status. New §439.1 eliminates obsolete language pertaining to certified aircraft fire protection personnel applying for structure certification. New §439.3 simplifies the definition of a field examiner. New §439.5 concerning procedures adds language which pertains to application for testing at a certified volunteer training facility. New §439.7 allows the commission to retest an existing certificate holder as part of a disciplinary matter. New §439.9 readopts existing language pertaining to grading. New §439.11 clarifies the qualifications of an instructor for remedial training required for a second retest in a performance skills evaluation. New §439.13 conforms the requirements for proficiency examinations to statutory changes and provides a procedure for consideration of requests for waiver of examination requirements for certificates expired for more than one year. New §439.15 concerning testing for certification status outlines the type of programs considered which may be evaluated for equivalency to qualify for a commission examination.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the new sections are in effect there will be no fiscal implications for state government. There may be fiscal implications for local governments that have paid examination fees in the past for certified volunteer fire fighters that become employed by local governments who are no longer required to test again in the amount of \$65 per person.

Mr. Calagna has also determined that for each of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be elimination of unnecessary examination costs and an increase in the availability of certified fire protection personnel available for employment. There are no additional costs of compliance for small or large businesses or individuals required to comply with the new chapter. The commission has determined that the proposed new sections relating to examinations for certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The new sections are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.032, concerning basic certification examinations.

Texas Government Code, §419.032 is affected by the proposed new chapter.

§439.1. Requirements - General.

(a) In order to be certified by the commission as fire protection personnel, an individual must complete an approved curriculum as required for that discipline and pass a commission examination pertaining to that discipline.

(b) The commission examination shall consist of at least a written test.



(c) The commission examination may also include a performance test. If a performance test is included in the examination then the written test and the performance test together constitute a complete examination.

§439.3. Definitions.

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

(1) Certificate of Completion - A signed statement certifying that an individual has successfully completed a commission approved basic certification curriculum for a particular discipline, including having been evaluated by field examiners on performance skills identified by the commission. The Certificate of Completion will be on a form provided by the commission and is to be completed and signed by the provider of training and issued to the individual upon successful completion of the training. The certificate of completion must, as a minimum, identify the provider of training, the course I.D. number, the course approval number, hours of instruction, date issued, curriculum name, training officer or course coordinator, and the name of the person completing the course. The certificate of completion qualifies an individual to take an original certification examination.

(2) Commission - The Texas Commission on Fire Protection

(3) Curriculum - The competencies established by the commission as a minimum requirement for certification in a particular discipline.

(4) Eligibility - A determination of whether or not an individual has met the requirements set by the commission and would therefore be allowed to take a commission examination.

(5) Endorsement of eligibility - A signed statement testifying to the fact that an individual has met all requirements specified by the commission and is qualified to take a commission examination. An endorsement of eligibility will be issued, when appropriate, by a member of the commission staff. An endorsement of eligibility qualifies an individual to take a proficiency examination or an examination for certification status.

(6) Examination - A state test administered by the commission which an examinee must pass as one of the requirements for certification. Exams will be based on curricula as currently adopted in the Commission Certification Curriculum Manual. The state test can consist of only a written test or it can consist of a test that contains both a written portion and a performance skills portion.

(7) Examinee - An individual who has met the commission requirements and therefore qualifies to take the commission examination.

(8) Field examiner - An individual that has successfully completed the commission administered field examiner orientation and has received a certificate of completion from the commission. An approved field examiner must sign an agreement to comply with the commission's testing procedures. The field examiner must as a minimum, possess a Fire Instructor Certification. The field examiner must be approved by the commission to instruct all subject areas identified in the curriculum that they will be evaluating. The field examiner must work under the supervision of a staff examiner to administer commission examinations, except when evaluating performance skills during an approved basic certification school. The field examiner must receive an examiner orientation course every three years administered by a certified instructor authorized by the commission.

(9) Staff examiner - A member of the commission staff who has been assigned by the commission the responsibility to administer a commission examination. A staff examiner who conducts or supervises performance skill evaluations must meet the same requirements as field examiners.

§439.5. Procedures.

(a) Procedures for conducting written and/or performance examinations are determined by the commission.

(b) The commission shall prescribe the content of any certification examination that tests the knowledge and/or skill of the examinee concerning the discipline addressed by the examination.

(c) An individual who fails to pass a commission written examination will be given one additional opportunity to pass the examination. This opportunity must be exercised within 180 days after the date of the first failure. An examinee who fails to pass the examination within the required time may not sit for the same examination again until the examinee has re-qualified by repeating the entire approved curriculum applicable to that examination.

(d) To apply for a commission examination, the designated training officer or coordinator of the entity providing the training must have completed and submitted the Course/School Prior Approval Submission Form to the commission 20 calendar days prior to the proposed starting date of the course. Upon commission approval of the course, the commission will tentatively schedule a time and place for the examination. A reasonable attempt shall be made to schedule the examination as soon as possible after the completion of the applicable course and at a place agreeable to the provider of training. The provider of training will receive the following:

(1) Notice of Course Approval—This document will serve as notification that the course has been approved by the commission and will contain the Approval Number assigned by the commission, the course I.D. number and the number of hours approved for the course.

(2) Application for Testing form—The provider of training must have each examinee complete the Application for Testing form and return it to the commission office no later than the tenth day of instruction. In no case may the Application for Testing be submitted less than 14 calendar days prior to the tentatively scheduled examination date. The commission, upon receipt of the Application for Testing form, will confirm the time and place for the examination.

(3) Certificate of Completion form—This form must be completed by the provider of training and issued to each student when the student has successfully completed the applicable curriculum.

(e) To apply for a commission examination at a certified volunteer training facility, the designated training officer or coordinator of the entity providing the training must have each examinee complete the Application for Testing form and return it to the commission no later than 30 days prior to the requested examination date. Upon receipt of the Application(s) for Testing, the commission will tentatively schedule a time and place for the examination. A reasonable attempt shall be made to schedule the examination at a time and place agreeable to the provider of training and examinees. The provider of training will receive from the commission at least seven randomly selected performance skills objectives from Section II of the Performance Evaluation Forms booklet that each examinee must successfully complete prior to the commission examination.

(f) Commission examinations, or retests, for less than eight examinees must be conducted in Austin, Texas, or other place

designated by the commission. The commission must coordinate with the provider of training as to the time of the examination.

(g) Commission examinations, or retests, for less than eight examinees must be conducted in accordance with this section, provided that entity providing the training agrees to pay an examination fee equal to amount that would be charged for eight examinees.

(h) If a performance test is part of the commission examination, examinees that are required to take the commission examination in Austin, Texas, or other place designated by the commission, shall be required to furnish a complete set of protective clothing that complies with §435.1(2) of this title (relating to Protective Clothing). Examinees are encouraged, but not required, to provide a self-contained breathing apparatus that complies with §435.3(2) of this title (relating to Self-Contained Breathing Apparatus) that the examinee is familiar with and an extra full cylinder.

(i) If the designated training officer or coordinator of the entity providing the training determines that the time and/or place of the examination as set by the commission is not acceptable for good cause, he may request the commission to reschedule or relocate the examination providing the request is received at least 20 days prior to the original scheduled time of the examination or the new proposed time, whichever would result in the earliest notification. The commission shall give all such request due consideration and may reschedule or relocate the examination as necessary.

(j) Each examination must be administered by a member of the commission staff known as a "Staff Examiner."

(k) The staff examiner may administer the examination alone or with the assistance of one or more additional examiners. The additional examiners shall be known as field examiners and shall be approved by the commission.

(l) The staff examiner must:

(1) ensure that the examination remains secure and is conducted under conditions warranting honest results; and

(2) collect all examination materials from any examinee who is dismissed.

(m) The staff or field examiner must:

(1) monitor the examination while in progress;

(2) control entrance to and exit from the test site;

(3) permit no one in the room while the written test is in progress except examiners, examinees, and commission staff;

(4) assign or re-assign seating; and

(5) bar admission to or dismiss any examinee who fails to comply with any of the provisions of subsections (a) and (b) of this section.

(n) Examination booklets, answer sheets, scratch paper and grade roster(s) will be delivered to the staff examiner by means specified by the commission. The staff examiner must immediately document any errors detected in the examination materials provided.

(o) The staff examiner must remit to the commission all examination booklets, answer sheets and scratch paper in the return container provided by the commission immediately following the completion of the written examination.

(p) All official grading and notification must come from the commission. The commission staff must inform the training officer or coordinator of preliminary test results within three business days

after completion of the examination. The commission staff must notify the training officer or coordinator of the official test results in writing within 30 days after completion of the examination.

(q) The commission will provide one individual written grade report to each examinee, within 30 days after the completion of the examination. This report may be mailed to an address specified by the examinee. If the written grade report should prove to be undeliverable, it shall be the responsibility of the examinee to contact the commission office to make arrangements for an additional grade report.

(r) If performance skills are required as part of a certification examination, the entity applying for the certification examination shall be responsible for providing the required number of Approved Field Examiners. The number of Field Examiners shall be determined by the commission.

(s) Each written examination may have two types of questions: pilot and active. Pilot questions are new questions placed on the examination for statistical purposes only. These questions do not count against an examinee if answered incorrectly.

(t) The Basic Fire Suppression examination includes 150 active questions with an option of adding up to 20 pilot questions. The time allowed for the completion of the written examination will not exceed three hours.

#### §439.7. Eligibility.

(a) An examination may not be taken by one who currently holds an active certificate from the commission in the discipline to which the examination pertains, unless required by the commission in a disciplinary matter.

(b) In order to qualify for a commission examination, the examinee must:

(1) meet or exceed the minimum requirements set by the commission as a prerequisite for the specified examination;

(2) provide the staff examiner with a copy of a Certificate of Completion for the course required for the specific examination sought or an endorsement of eligibility issued by the commission;

(3) bring to the test site and display upon request some identification which contains a photograph of the examinee;

(4) report on time, to the proper location; and

(5) comply with all the written and verbal instructions of the examiner.

(c) No person shall be permitted to:

(1) violate any of the fraud provisions of this section;

(2) disrupt the examination;

(3) bring into the examination site any books, notes, or other written materials related to the content of the examination;

(4) refer to, use, or possess any such written material at the examination site;

(5) give or receive answers or communicate in any manner with another examinee during the examination;

(6) communicate at any time or in any way, the contents of an examination to another person for the purpose of assisting or preparing a person to take the examination;

(7) steal, copy, or in any way part of the examination;

(8) engage in any deceptive or fraudulent act either during an examination or to gain admission to it; or

(9) solicit, encourage, direct, assist, or aid another person to violate any provision of this section.

§439.9. Grading.

(a) For a score to be valid and remain valid:

(1) the examinee must complete the answer sheet, or otherwise record the answers, as instructed by the examiner; and

(2) if performance skills are required as a part of the examination, the examinee must demonstrate performance skill objectives in a manner consistent with performance evaluation forms provided by the commission. Passage of a performance skill requires successful completion of all mandatory tasks and accumulation of the number of points required for passage on each individual performance evaluation form.

(b) The minimum passing score on each written examination shall be 70%. This means that 70% of the total possible valid questions must be answered correctly. The commission may, at its discretion, invalidate any question.

(c) If the commission invalidates an examination score for any reason, it may also, at the discretion of the commission and for good cause shown, require a retest to obtain a substitute valid test score.

§439.11. Performance Skill Evaluation.

(a) State performance skill evaluation. If performance skill objectives are part of an approved curriculum the examinee must complete a state performance skill evaluation in accordance with subsection (b) of this section. The state performance skill evaluation may be part of an original certification examination administered at the conclusion of a basic certification course at an approved training facility, as part of a Test for Certification Status, or as part of a commission examination for Proof of Proficiency.

(b) Evaluation procedures. The state performance skill evaluation must consist of at least three successfully completed performance skill objectives evaluated by staff examiners or by field examiners under the supervision of a staff examiner after completion of an approved curriculum.

(1) The performance skill objectives must consist of one skill pertaining to self-contained breathing apparatus and at least two other skills identified as a critical skill in Section I of the Performance Evaluation Forms booklet.

(2) Each student's performance evaluation form for each skill must be signed by the examiner performing the evaluation.

(3) An examinee who fails a performance skill evaluation may be allowed a retest at a time and place to be determined by the staff examiner. If the candidate fails the retest, remedial training conducted by a certified instructor who is approved to teach in that specific subject area is required for a second retest. Remedial training must be of no less duration than the recommended curriculum instructional hours for the section in which the failed skill(s) is reflected. An examinee being retested on a performance skill must be retested on any skill, randomly selected by the staff examiner, from the same subject area as the performance skill objective that was failed.

(4) If the examinee fails the final retest as part of a state performance skill evaluation, the examinee must requalify by repeating the entire curriculum applicable to the examination.

(c) Original certification examination. If performance skill objectives are part of an original certification examination, the examinee must be evaluated for competency by an approved field examiner at a certified training facility on at least seven successfully completed performance skill objectives selected by the commission to qualify for a state performance skill evaluation. The evaluation for competency to qualify for the state performance skills evaluation may occur at any time during the course of instruction. The number of opportunities to successfully complete particular performance skill objectives evaluated during an academy is at the discretion of the training officer or course coordinator. The training facility must maintain copies of performance evaluation forms on each examinee to document competency. The instructor of a particular subject may not evaluate the performance skill related to that subject unless the instructor is an approved field examiner. At the conclusion of a course at an approved training facility, the examinee must complete the state performance skill evaluation in accordance with subsection (b) of this section.

(d) Testing for certification status. If performance skill objectives are part of a commission examination as provided in §439.17 of this title (relating to Testing for Certification Status), the performance skill evaluation must consist of at least three successfully completed performance skill objectives evaluated in accordance with subsection (b) of this section by staff examiners or by field examiners at an approved training facility with the consent of its training officer or course coordinator.

(e) Proficiency examination. If performance skill objectives are part of a commission examination as provided in §439.15 of this title (relating to Testing for Proof of Proficiency), the performance skill evaluation must consist of at least three successfully completed performance skill objectives evaluated in accordance with subsection (b) of this section by staff examiners or by field examiners at an approved training facility with the consent of its training officer or course coordinator.

§439.13. Testing for Proof of Proficiency.

(a) An individual whose certificate(s) has been expired for one year or longer may not renew the certificate or certificates that were previously held.

(b) The individual may obtain a new certificate or certificates in the discipline or disciplines which was previously held by passing a commission proficiency examination pertaining to the discipline or disciplines which was previously held and becoming certified within the time specified for that discipline or disciplines. The proficiency examination must be passed prior to assignment to fire suppression duties. If performance skills are part of the proficiency examination and it has been less than four years since the previously held certificate expired, the individual may be exempted from that portion of the examination if the individual can document twenty hours of continuing education for each year since the expiration of the certificate. The continuing education must be in subjects contained in the basic curriculum for the discipline. At least one-half of the continuing education must be hands-on performance skills.

(c) For the purposes of this section, the time that a person serves in the military who is called to active duty in accordance with applicable federal law or that a person serves in the state legislature who qualifies for legislative leave under the provisions of Texas Civil Statutes, Article 6252-4c, is not considered a break in service for any reason and the person is not required to complete the examination requirement upon return to employment to a fire protection personnel position in order to obtain a new certificate, provided that the individual must comply with the continuing education requirement

applicable to the certificate previously held by the individual after the effective date of this rule except as provided by federal law.

(d) An individual or entity may petition the commission for a waiver of the examination required by this section if the person's certificate expired because of the individual or employing entity's good faith clerical error, or expired as a result of termination of the person's employment where the person has been restored to employment through a disciplinary procedure or a court action. All required renewal fees including applicable late fees and all required continuing education must be submitted before the waiver request may be considered.

(1) Applicants claiming good faith clerical error must submit a sworn statement together with any supporting documentation that evidences the applicant's good faith efforts to comply with commission renewal requirements and that failure to comply was due to circumstances beyond the control of the applicant.

(2) Applicants claiming restoration to employment as a result of a disciplinary or court action must submit a certified copy of the order restoring the applicant to employment.

§439.15. Testing for Certification Status.

(a) If an individual who has never held certification in a discipline defined in §421.5 of this title (relating to the definition of fire protection personnel), seeks certification in that discipline two years or longer after passing a commission examination pertaining to that discipline, the individual shall:

(1) complete all requirements and become certified by the commission within the time specified for that discipline; and

(2) successfully complete the current commission requirements for certification in that discipline; or

(3) pass a commission certification examination pertaining to that discipline. The certification examination for some disciplines consists of a written examination only, while the certification examination for other disciplines consists of both a written portion and a performance skills portion. In any case, all portions of an examination must be passed before the individual is considered to have passed the examination. The certification examination must be passed prior to assignment to fire suppression duties. If it has been less than four years since an individual passed the performance skills portion of an examination pertaining to a discipline, the individual may be exempted from that portion of the examination if the individual can document twenty hours of continuing education for each year since the individual last passed the performance skills portion of an examination pertaining to the discipline. The continuing education must be in subjects contained in the basic curriculum for the discipline. At least one-half of the continuing education must be hands-on performance skills.

(b) If an individual completes an approved training program that has been evaluated and deemed equivalent to a basic certification curriculum approved by the commission, such as an out-of-state or military training program or a training program administered by the State Firemen and Fire Marshals' Association of Texas, the individual must document equivalent training to that required by the commission for certification in the discipline in question, and pass a commission examination for certification status in order to become eligible for certification by the commission as fire protection personnel. If the individual is employed as fire protection personnel, then the examination for certification status must be passed prior to assignment.

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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T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



## Chapter 441. Continuing Education

**37 TAC §§441.1, 441.3, 441.5, 441.7, 441.9, 441.11, 441.13, 441.15**

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

The Texas Commission on Fire Protection proposes the repeal of §§441.1, 441.3, 441.5, 441.7, 441.9, 441.11, 441.13, and 441.15, concerning continuing education. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state and local governments.

Mr. Calagna has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that obsolete language will be replaced with new sections that implement legislative changes. There are no additional costs of compliance for small or large businesses and for individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.032(b), which authorizes the commission to establish qualifications relating to continuing education or training programs.

Texas Government Code, §419.032 is affected by the proposed repeal.

§441.1. *Objective.*

§441.3. *Definitions.*

§441.5. *Requirements.*

§441.7. *Continuing Education for Structure Fire Protection Personnel.*

§441.9. *Continuing Education for Aircraft Crash And Rescue Fire Protection Personnel.*

§441.11. *Continuing Education for Marine Fire Protection Personnel.*

§441.13. *Continuing Education for Fire Inspection Personnel.*

§441.15. *Continuing Education for Fire And Arson Investigator.*

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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T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



**37 TAC §§441.1, 441.3, 441.5, 441.7, 441.9, 441.11, 441.13, 441.15, 441.17**

The Texas Commission on Fire Protection proposes new §§441.1, 441.3, 441.5, 441.7, 441.9, 441.11, 441.13, 441.15, and 441.17, concerning continuing education. The chapter is comprised of sections concerning objectives, definitions, general requirements, and continuing education requirements for each category of certification. New §441.1 outlines the basic objective of continuing education. New §441.3 provides definitions for the chapter. New §441.5 adds language concerning continuing education for hazardous materials technician training and interactive computer-based training. The section also clarifies the continuing education exemption for illness or injury and adds continuing education requirements for individual certificate holders not affiliated with a department. New §441.7 deletes language that disallowed continuing education credit for certain subjects in the basic curriculum for structure fire protection personnel. New §441.9 concerning continuing education for aircraft fire protection personnel clarifies that continuing education must meet federal requirements even if it exceeds 20 hours. New §§441.11, 441.13, and 441.15 concerning continuing education for marine, fire inspector, and fire investigator fire protection personnel delete language that disallowed credit for certain subjects from the basic curricula. New §441.17 adds a requirement of ten hours of continuing education for hazardous materials technician.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the new sections are in effect there will be no fiscal implications for state government. Local governments that choose to certify individuals as hazardous materials technicians will experience an increase in cost of \$50-\$200 depending on the source of training.

Mr. Calagna has also determined that for each of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be that the public is assured that persons holding hazardous materials technician certification maintain competency as well as individual certificate holders not employed by a fire department. There are no additional costs of compliance for small or large businesses. Individual certificate holders not employed by a fire department will incur costs of \$50-\$200 per year depending on the source of continuing education training. The commission has determined that the proposed new sections relating to continuing education will have no impact on private real property interests and no tak-

ings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The new sections are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.032(b), which authorizes the commission to establish qualifications relating to continuing education or training programs.

Texas Government Code, §419.032 is affected by the proposed new chapter.

§441.1. Objective.

Continuing education is intended to maintain or increase the knowledge and skills pertinent to the fire service.

§441.3. Definitions.

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

(1) Certification period—That period from the time a certificate is obtained or renewed until it is time for the certificate to be renewed again. See §437.5(b) of this title (relating to Fees—Renewal) for the definition of renewal period.

(2) Qualified instructor—An individual who may or may not be certified, but has, in either case, met as a minimum the requirements for basic instructor certification.

(3) Track A—Training intended to maintain previously learned skills as stated in the commission certification curriculum manual for the assigned discipline.

(4) Track B—Training intended to develop new skills in an assigned discipline.

§441.5. Requirements.

(a) Continuing education shall be required in order to renew certification which has a continuing education requirement stated in this chapter.

(b) The continuing education requirement for renewal of certification shall consist of a minimum of 20 hours of training to be conducted during the certification period. Only 20 total hours of continuing education shall be required to renew all Texas Commission on Fire Protection certificates if any individual holds more than one certificate, except as provided in §441.17 of this title (relating to Continuing Education for Hazardous Materials Technician).

(c) Track A training must be conducted by a qualified or certified instructor. Interactive computer-based continuing education training that is supervised and verified by a certified instructor is acceptable.

(d) The continuing education program must be administered by a certified instructor.

(e) No more than four hours per year in any one section of the appropriate chapter of the Commission Certification Curriculum Manual may be counted toward the 20-hour continuing education requirement for Track A.

(f) There shall be no "hour per subject limit" placed on Track B courses, except that emergency medical courses shall be limited to four hours per year.

(g) The administrative head of the department may select subject matter for continuing education appropriate for a particular discipline.

(h) The administrative head of the department must certify whether or not the individuals whose certificates are being renewed have complied with the continuing education requirements of this chapter on the certification renewal application. Unless exempted from the continuing education requirements, an individual who fails to comply with the continuing education requirements in this chapter shall be notified by the commission of the failure to comply.

(i) After notification from the commission of a failure to comply with continuing education requirements, an individual who holds a certificate is prohibited from performing any duties authorized by a required certificate until such time as the deficiency has been resolved and written documentation is furnished by the department head for approval by the commission, through its Fire Service Standards and Certification Division director. No person may assign duties or accept an assignment of duties in violation of this rule. Continuing education hours obtained to resolve a deficiency may not be applied to the continuing education requirements for the current certification period.

(j) Any person who is a member of a paid or volunteer fire department who is on extended leave for six months or longer because of illness or injury may be exempted from the continuing education requirement for the current renewal period. Such exemptions shall be reported by the head of the department to the commission at renewal time.

(k) Any individual who is not a member of a paid or volunteer fire department who is unable to perform work, substantially similar in nature as would be performed by fire protection personnel assigned to that discipline, may be exempted from the continuing education requirement for the current renewal period. Commission staff shall determine the exemption with documentation of the illness or injury and time frames provided by the individual.

(l) In order to renew certification for any discipline which has a continuing education requirement stated in this chapter, an individual holder of a basic certificate not employed by a regulated entity must comply with the continuing education requirements for that discipline. The continuing education must be in subjects contained in the basic curriculum for the discipline. At least one-half of the continuing education must be hands-on performance skills if performance skill objectives are part of the curriculum for the discipline. Only 20 total hours of continuing education for each certification period shall be required to renew all certificates the individual holds, except as provided in §441.17 of this title.

(m) In order to renew certification for any discipline which has a continuing education requirement stated in this chapter, an individual holder of a higher level certificate, not employed by a regulated entity, must comply with the continuing education requirements for that discipline. The continuing education may be either Track A or B. Only 20 total hours of continuing education for each certification period shall be required to renew all certificates the individual holds, except as provided in §441.17 of this title.

§441.7. Continuing Education for Structure Fire Protection Personnel.

(a) Continuing education will be required for personnel certified as structure fire protection personnel.

(b) Subjects selected to satisfy the continuing education requirement may be selected from either Track A, Track B, or a combination of the two.

§441.9. Continuing Education for Aircraft Fire Protection Personnel.

(a) Continuing education will be required for personnel assigned as aircraft fire protection personnel.

(b) Continuing education must meet the specific training requirements of FAR 139.319, j, 2 and 3 (pertaining to Aircraft Rescue and Firefighting Operational Requirements). Continuing education required by this subsection may exceed 20 hours, if necessary, to complete all required subjects.

§441.11. Continuing Education for Marine Fire Protection Personnel.

(a) Continuing education will be required for personnel certified as marine fire protection personnel for any certification period beginning after October 31, 1993.

(b) Subjects selected to satisfy the continuing education requirement may be selected from either Track A, Track B, or a combination of the two.

§441.13. Continuing Education for Fire Inspection Personnel.

(a) Continuing education will be required for personnel certified as fire inspection personnel.

(b) Subjects selected to satisfy the continuing education requirement may be selected from either Track A, Track B, or a combination of the two.

§441.15. Continuing Education for Arson Investigator or Fire Investigator.

(a) Continuing education will be required for personnel certified arson investigation or fire investigation personnel.

(b) Subjects selected to satisfy the continuing education requirement may be selected from either Track A, Track B, or a combination of the two.

§441.17. Continuing Education for Hazardous Materials Technician.

(a) Ten hours of continuing education will be required for individuals certified as a hazardous materials technician. This will be in addition to continuing education required by other sections of this chapter.

(b) Subjects selected to satisfy the continuing education requirement may be selected from either Track A or Track B, or a combination of the two.

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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T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189

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Chapter 443. Certification Curriculum Manual

**37 TAC §§443.1, 443.3, 443.5, 443.7, 443.9**

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

The Texas Commission on Fire Protection proposes the repeal of §§443.1, 443.3, 443.5, 443.7, and 443.9, concerning the certification curriculum manual. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state and local governments.

Mr. Calagna has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that obsolete language will be replaced with new sections that implement legislative changes. There are no additional costs of compliance for small or large businesses and for individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to tcfp@mail.capnet.state.tx.us.

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel.

Texas Government Code, §419.022 is affected by the proposed repeal.

*§443.1. Curriculum Approval by the Fire Protection Personnel Advisory Committee.*

*§443.3. Curriculum Approval by the Texas Commission On Fire Protection.*

*§443.5. Effective Date of New Curricula or Changes to Curricula Required by Law or Rule.*

*§443.7. Effective Date of New Curricula or Changes or Revisions to Existing Curricula Which are Voluntary.*

*§443.9. National Fire Protection Association Standard.*

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 May 11, 1998.

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T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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The Texas Commission on Fire Protection proposes new §§443.1, 443.3, 443.5, 443.7, and 443.9, concerning the certi-

fication curriculum manual. The new chapter contains sections pertaining to approval by the Fire Fighter Advisory Committee, approval by the commission, effective date of curricula required by law or rule, effective date of voluntary curricula, and compliance with National Fire Protection Association (NFPA) standards. The new §§443.1, 443.3, 443.5, 443.7, and 443.9 readopt existing language concerning procedures for adoption of curricula but reference the new Fire Fighter Advisory Committee created by 1997 legislative changes which combined the former Fire Protection Personnel Advisory Committee and the Volunteer Fire Fighter Advisory Committee. The new sections require approval by the advisory committee and commission, with required curricula going into effect the following January unless a safety consideration is involved. Voluntary curricula are effective on the date specified by the commission. The rules also require review and updating of curricula to meet new or revised NFPA professional qualification standards.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the new sections are in effect there will be no fiscal implications for state or local governments.

Mr. Calagna has also determined that for each of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be that the curriculum approval process is consistent with statutory changes made during the 1997 legislative session. There are no additional costs of compliance for small or large businesses or individuals required to comply with the new chapter. The commission has determined that the proposed new sections relating to the certification curriculum manual will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to tcfp@mail.capnet.state.tx.us.

The new sections are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel.

Texas Government Code, §419.022 is affected by the proposed new chapter.

§443.1. Curriculum Approval by the Fire Fighter Advisory Committee.

(a) All new curricula or changes to curricula for fire protection personnel must be submitted to the Fire Fighter Advisory Committee for approval.

(b) The Fire Fighter Advisory Committee may:

(1) submit new curricula or changes to curricula to a subcommittee formed of members of the Fire Fighter Advisory Committee for study and review before approval; or

(2) submit new curricula or changes to curricula to an advisory committee formed of members of the fire service who are recommended by the Fire Fighter Advisory Committee and appointed

by the Commission to report to the Fire Fighter Advisory Committee, for study and review before approval.

(c) All new curricula or changes to curricula approved by the Fire Fighter Advisory Committee shall be placed on the next scheduled meeting agenda of the Texas Commission on Fire Protection.

§443.3. Curriculum Approval by the Texas Commission on Fire Protection.

(a) All new curricula or changes to curricula approved by the Fire Fighter Advisory Committee must receive final approval by the Texas Commission on Fire Protection.

(b) Curricula not approved by the Commission shall be sent back to the Committee for further development. The Commission shall indicate to the Committee the reasons that the curriculum was not approved.

§443.5. Effective Date of New Curricula or Changes to Curricula Required by Law or Rule.

(a) New curricula will become effective on January 1 of the year following final approval by the commission.

(b) Changes to curricula will become effective on January 1 of the year following final approval by the commission.

(c) Changes to curricula which involve reference materials will become effective on January 1 of the year following final approval by the commission or on the date specified by the commission, as recommended by the Fire Fighter Advisory Committee, depending on the impact of the change will have on the curricula.

(d) Changes to curricula that involve a safety consideration as determined by the Fire Fighter Advisory Committee shall become effective immediately following final approval by the commission.

§443.7. Effective Date of New Curricula or Changes or Revisions to Existing Curricula Which Are Voluntary.

(a) New curricula will become effective on the date recommended by the Fire Fighter Advisory Committee and specified by the Commission.

(b) Changes to curricula will become effective on the date recommended by the Fire Fighter Advisory Committee and specified by the Commission.

(c) Changes to curricula that involve a safety consideration as determined by the Fire Fighter Advisory Committee shall become effective immediately following final approval by the Commission.

§443.9. National Fire Protection Association Standard.

(a) All curricula for fire protection personnel must, as a minimum, meet the standards, to include manipulative skills objectives and knowledge objectives, of the current NFPA standard pertaining to the discipline, if such a standard exist and subject to subsection (c) of this section.

(b) New curricula presented to the Fire Fighter Advisory Committee must, as a minimum, meet the standards of the current edition of the applicable NFPA standard for the discipline, if such a standard exist.

(c) If a NFPA standard is adopted or an existing NFPA standard is revised, all curricula for fire protection personnel must meet the standards of the new or revised applicable NFPA standard, on the first day of January following 365 days from the official adoption date of the applicable NFPA standard.

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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T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



## Chapter 445. Administrative Inspections and Penalties

**37 TAC §§445.1, 445.3, 445.5, 445.7, 445.9, 445.11, 445.13, 445.15, 445.17, 445.19, 445.21**

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

The Texas Commission on Fire Protection proposes the repeal of §§445.1, 445.3, 445.5, 445.7, 445.9, 445.11, 445.13, 445.15, 445.17, 445.19, and 445.21, concerning administrative inspections and penalties. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state and local governments.

Mr. Calagna has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that obsolete language will be replaced with new sections that implement legislative changes. There are no additional costs of compliance for small or large businesses and for individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.027, which provides the commission with authority to inspect each facility conducting training for fire protection personnel and recruits and fire departments for compliance with statutes and commission rules; and Texas Government Code, §419.906, which provides the commission with the authority to impose administrative penalties for violations of chapter 419 or commission rules.

Texas Government Code, §419.027 and §419.906 are affected by the proposed repeal.

§445.1. *Entity Inspections.*



- §445.3. *Right of Access.*
- §445.5. *Duty to Comply; Enforcement.*
- §445.7. *Procedures.*
- §445.9. *Minor Violations.*
- §445.11. *Major Violations.*
- §445.13. *Disciplinary Hearings.*
- §445.15. *Judicial Enforcement.*
- §445.17. *Liability for Violations.*
- §445.19. *Inspection Forms.*
- §445.21. *Effective 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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T.R. Thompson

General Counsel

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## Subchapter A. Paid Fire Department Inspections

### 37 TAC §§445.1, 445.3, 445.5, 445.7, 445.9, 445.11, 445.13, 445.15, 445.17, 445.19

The Texas Commission on Fire Protection proposes new §§445.1, 445.3, 445.5, 445.7, 445.9, 445.11, 445.13, 445.15, 445.17, and 445.19, concerning administrative inspections and penalties.

The chapter includes Subchapter A applicable to inspection of departments with paid fire protection personnel. New §445.1, concerning entity inspections, §445.5 concerning duty to comply, §445.17, concerning liability for violations, and §445.19 concerning inspections forms readopt existing language. New §445.3 clarifies the right of access of commission representatives to make inspections of regulated entities. New §445.7 streamlines the procedures for determining major and minor violations to allow more administrative discretion in the conduct of inspections. New §445.9 and §445.11 streamline the procedure for responding to violations and allow for the probation of administrative penalties. New §445.13 deletes notice requirements that conflicted with the Administrative Procedure Act. New §445.15 changes language to allow agency discretion in initiating disciplinary proceedings.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the new sections are in effect there will be no fiscal implications for state or local governments.

Mr. Calagna has also determined that for each of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be a more efficient administration of the commission's inspection program. There are no additional costs of compliance for small or large businesses or individuals required to comply with the new chapter. The commission has determined that the proposed

new sections relating to paid fire department inspections will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The new sections are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.027, which provides the commission with authority to inspect each facility conducting training for fire protection personnel and recruits and fire departments for compliance with statutes and commission rules; Texas Government Code, §419.036, concerning disciplinary actions; and Texas Government Code, §419.906, which provides the commission with the authority to impose administrative penalties for violations of chapter 419 or commission rules.

Texas Government Code, §§419.027, 419.036, and 419.906 are affected by the proposed new sections.

#### §445.1. Entity Inspections.

(a) The commission shall conduct at least biennial inspections of the entities that fall under the regulatory authority of the commission.

(b) The purpose of these inspections shall be to promote safety and proficiency in the fire service by ensuring compliance with state law and commission rules pertaining to minimum standards for fire protection personnel education, protective clothing, self-contained breathing apparatus, or any other aspect of the fire service regulated by the commission.

#### §445.3. Right of Access.

(a) A duly authorized representative of the commission may enter the premises of any entity regulated by the commission at any time during normal working hours and in such manner as to minimize interference with the operations of the entity to determine whether or not the entity is in compliance with the Code and the rules of the commission.

(b) No person shall refuse to permit, or interfere with an inspection authorized by the Code or commission rules.

(c) Interference with, or refusal to permit an inspection under the Code or commission rules is grounds for discipline.

(d) The commission's right of access will be enforced through either administrative or judicial procedures as is necessary or required.

#### §445.5. Duty To Comply; Enforcement.

(a) An entity regulated by the commission shall have the duty to implement and maintain compliance with the rules and the Code.

(b) Every regulated entity under the Code shall be given an inspection covering the categories established by the commission. An entity found to be in noncompliance with the Code or rules of the commission shall be subject to warnings, administrative penalties, and other discipline as appropriate.

#### §445.7. Procedures.

(a) The inspector shall, if possible, notify the current or acting, on duty and available, department head of the inspector's presence at the department and his intention to conduct a departmental inspection.

(b) During the course of the inspection, any noncompliance with state law or commission rule shall be noted. Violations shall be determined to be either minor or major violations based upon the following guidelines.

(1) Minor violations shall be defined as those violations which the inspector determines do not pose a serious threat to personnel safety due to lack of personnel protection equipment or training, are not widespread, or are not repeat violations of the same nature for which the entity was cited within the previous five years.

(2) Major violations shall be defined as those violations which in the inspector's opinion constitute an immediate threat to personnel safety, flagrant or repeated violations in the same or similar areas, fraud, or obvious attempts to circumvent state law or commission rule.

(c) In order to determine compliance with commission requirements pertaining to a particular item, the inspector may examine as many items of protective clothing and equipment deemed necessary by the inspector.

§445.9. Minor Violations.

If during the course of a departmental inspection, the inspector determines the department has committed minor violations, the following procedures shall apply.

(1) The inspector shall issue a formal notice of noncompliance identifying the findings of fact.

(2) The department then has 14 calendar days from the date the formal notice of noncompliance is received to correct the violations and provide the commission with proof of compliance or to provide the commission with a written schedule of actions which will be carried out to achieve compliance. The schedule of actions will allow necessary amounts of time for such things as obtaining items through city requisitions and bid processes, when necessary. Lack of funds is not an acceptable reason for delay.

(3) If the department fails to provide proof of compliance or a written schedule of actions within the 14 calendar days, an administrative penalty of up to \$300 may be recommended by the commission staff. If the department has been compelled to submit proof of compliance or a schedule of actions for the same or similar violations within the previous five years, the administrative penalty shall be up to \$600.

(4) In the event the department fails to achieve compliance in accordance with the agreed-upon schedule of actions, an administrative penalty of up to \$600 may be recommended by the commission staff unless the commission staff determines that sufficient reason exists for extending the time allowed for compliance.

(5) In all cases where an administrative penalty is recommended by the commission staff, the department may be granted 14 calendar days to pay the administrative penalty and come into compliance or submit a written notice of appeal.

(6) If the department fails to pay the administrative penalty and come into compliance within the required time frame, a hearing may be scheduled. If determined by the hearing process that violations occurred, the department may be:

(A) allowed extra time to come into compliance;

(B) assessed appropriate penalties which may be probated and may include suspension of certificates, administrative penalties, hearing costs, and attorneys fees;

(C) required to furnish proof of compliance.

§445.11. Major Violations.

If during the course of a departmental inspection the inspector determines the department has committed major violations, the following procedures shall apply.

(1) The inspector shall issue a formal notice of noncompliance identifying the findings of fact.

(2) An administrative penalty of up to \$500 may be recommended by the commission staff. If it is determined by the commission that the department has been subjected to an administrative penalty for the same or similar violations within the previous five years, the administrative penalty may be up to \$1,000.

(3) The department then has 14 calendar days from the date of the receipt of the formal notice of noncompliance to pay the administrative penalty, correct the violations, and to provide the commission with proof of compliance or submit written notice of appeal.

(4) If the department fails to pay the administrative penalty and come into compliance within the total 14 calendar day time frame, a hearing shall be scheduled. If determined by the hearing process that violations occurred, the department may be:

(A) allowed extra time to come into compliance;

(B) assessed appropriate penalties which may be probated and may include suspension of certificates, administrative penalties, hearing costs, and attorneys fees;

(C) required to furnish proof of compliance.

§445.13. Disciplinary Hearings.

Upon the filing of a complaint with the commission charging a regulated entity with a violation of the Code or commission regulations as grounds for disciplinary action, the commission shall provide for a hearing of the charges. The commission's rules of practice and procedure govern disciplinary proceedings under this chapter.

§445.15. Judicial Enforcement.

If a department is found to have committed major violations of the same or similar nature on three or more occasions within the previous five years, proceedings for injunctive relief, penalties, and discipline may be instituted; provided, however, that this section shall not prohibit the commission from resorting to judicial enforcement for any violation of the Code or rules.

§445.17. Liability for Violations.

The issuance of violation notices, administrative penalties, orders, and the permitting of a regulated entity to correct deficiencies in no way relieves the entity from the duty to, at all times, remain in complete compliance with the Code or commission rules or from the liability it could incur from failing to fulfill its statutory and regulatory duties.

§445.19. Inspection Forms.

The executive director, or his designee, shall develop forms for the inspection of records, equipment, clothing, and facilities which shall be on file at the commission office and available for public inspections.

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

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TRD-9807636  
T.R. Thompson  
General Counsel  
Texas Commission on Fire Protection  
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For further information, please call: (512) 918-7189

◆ ◆ ◆  
**Subchapter B. Volunteer Fire Department Inspections**

**37 TAC §§445.201, 445.203, 445.205, 445.207**

The Texas Commission on Fire Protection proposes new §§445.201, 445.203, 445.205, and 445.207, concerning administrative inspections and penalties. The new chapter includes Subchapter B concerning volunteer fire department inspections. New Subchapter B provides for inspections of volunteer fire departments. The new chapter incorporates sections from repealed volunteer rules to provide for voluntary inspections. New §445.201 allows a volunteer fire department to request inspection for compliance with voluntary standards pertaining to protective clothing, self-contained breathing apparatus, training facilities, and training records. New §445.203 provides for a report of the inspection. New §445.205 provides for administrative penalties only for intentional falsification of records. New §445.207 provides for a certificate of compliance upon successful completion of an inspection.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the new sections are in effect there will be no fiscal implications for state or local government.

Mr. Calagna has also determined that for each of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be that consolidation of inspections procedures for paid and volunteer departments provides better access to the standards for the public. There are no additional costs of compliance for small or large businesses or individuals required to comply with the new chapter. The commission has determined that the proposed new sections relating to volunteer fire department inspections will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to tcfp@mail.capnet.state.tx.us.

The new sections are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.027, which provides the commission with authority to inspect each facility conducting training for fire protection personnel and recruits and fire departments for compliance with statutes and commission rules; Texas Government Code, §419.036, concerning disciplinary actions; and Texas Government Code, §419.906, which provides the commission with the authority to

impose administrative penalties for violations of chapter 419 or commission rules.

Texas Government Code, §§419.027, 419.036, and 419.906 are affected by the proposed new sections.

§445.201. Request for Inspection.

A participating volunteer fire department may request an administrative inspection in accordance with Subchapter A of this Chapter, for compliance with the requirements pertaining to protective clothing, self-contained breathing apparatus, training facilities, and training records. The commission shall conduct an inspection as soon as practical. If such inspection cannot be conducted within 60 days of such request, the commission shall notify the volunteer fire department of a proposed alternate inspection date.

§445.203. Report of Inspection.

The commission inspector shall furnish a report to the volunteer fire department indicating areas of compliance and noncompliance. The volunteer fire department may submit a schedule of corrective action to the commission. The participating volunteer fire department may request a follow-up inspection to determine compliance.

§445.205. Administrative Penalties.

A participating volunteer fire department or volunteer fire fighter will not be subject to an administrative penalty under this subchapter as a result of an inspection, except for:

- (1) intentionally falsifying training records indicating compliance with curriculum training requirements when in fact the requirements were not met;
- (2) intentionally falsifying self-contained breathing apparatus records or air quality records indicating compliance with commission requirements when in fact the requirements were not met; or
- (3) intentionally falsifying protective clothing records or air quality records indicating compliance with commission requirements when in fact the requirements were not met.

§445.207. Certificate of Compliance.

Upon successful completion of an inspection concerning protective clothing and self-contained breathing apparatus, a volunteer fire department may apply to the commission for a certificate of compliance with the commission requirements for fire fighter safety. After the initial and any follow-up inspections are completed, the commission may conduct at least biennial inspections of a participating volunteer fire department in accordance with Subchapter A of this chapter.

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

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T.R. Thompson  
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Texas Commission on Fire Protection  
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For further information, please call: (512) 918-7189

◆ ◆ ◆  
**Chapter 447. Part-Time Fire Protection Employee**

**37 TAC §§447.1, 447.3, 447.5**

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

The Texas Commission on Fire Protection proposes the repeal of §§447.1, 447.3, and 447.5, concerning minimum standards for part-time fire protection employees. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state and local governments.

Mr. Calagna has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that obsolete language will be replaced with new sections that implement legislative changes. There are no additional costs of compliance for small or large businesses and for individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to tcfp@mail.capnet.state.tx.us.

The repeals are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.0321, which provides that the commission shall create a separate certification class for part-time fire protection personnel.

Texas Government Code, §419.0321 is affected by the proposed repeal.

§447.1. *Minimum Standards for Part-Time Fire Protection Employees.*

§447.3. *Minimum Standards for Advanced Levels of Part-Time Certification.*

§447.5. *Permissible Hours of Work for Part-Time Fire Protection Employees.*

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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T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



The Texas Commission on Fire Protection proposes new §§447.1, 447.3, and 447.5, concerning part-time fire protection employees. New §447.1 concerning standards for part-time fire protection employees removes the listing of difference categories of certifications and refers simply to disciplines that have a commission approved curricula. Part-time employees must meet the same training and certification requirements

as full-time fire protection personnel. New §447.3 concerning standards for advanced levels of part-time certification apply the same education and experience requirements applicable to the same level of full-time certification. New §447.5 readopts the same statutory limits on the number of permissible hours of work for part-time fire protection employees.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the new sections are in effect there will be no fiscal implications for state or local governments.

Mr. Calagna has also determined that for each of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be that the simplified and consolidated format will provide more consistency in application standards to full-time and part-time fire protection employees. There are no additional costs of compliance for small or large businesses or individuals required to comply with the new chapter. The commission has determined that the proposed new sections relating to part-time fire protection employees will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mail to tcfp@mail.capnet.state.tx.us.

The new sections are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.0321, which provides that the commission shall create a separate certification class for part-time fire protection employees.

Texas Government Code, §419.0321 is affected by the proposed new sections.

§447.1. *Minimum Standards for Part-Time Fire Protection Employees.*

(a) All part-time employees of a fire department or a local government who perform the duties of fire protection personnel must be certified by the commission. In order to be certified, part-time fire protection employees must be employed by a fire department or a local government and complete the requirements for fire protection personnel certification in the assigned discipline.

(b) A certified part-time fire protection employee may be certified in any discipline that has a commission approved curriculum.

(c) Certified part-time fire protection employees are subject to the same commission rules that apply to certified fire protection personnel.

(d) Fire departments or local governments that employ certified part-time fire protection employees are subject to the same commission rules that apply to fire departments and local governmental entities that employ fire protection personnel.

(e) Prior to being assigned to fire suppression duties, an individual must have completed a commission-approved curriculum and successfully passed the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification).

(f) A person who holds or is eligible to hold a certificate upon employment as fire protection personnel may be certified in the same discipline as a part-time fire protection employee as set forth in subsection (b) of this section without meeting the applicable examination requirements.

(g) If a person holds a current certification as a full-time structural fire fighter, the Texas Department of Health ECA certification requirement may be satisfied by documentation of equivalent training or certification in lieu of certification by the Texas Department of Health.

§447.3. Minimum Standards for Advanced Levels of Part-Time Certification.

Applicants for advanced levels of part-time certification must complete the same requirements as fire protection personnel seeking higher levels of certification. Years of experience for advanced part-time certifications shall be calendar years.

§447.5. Permissible Hours of Work for Part-Time Fire Protection Employees.

(a) Part-time fire protection employees may not:

(1) work more than 24 hours a week or average more than approximately 24 hours a week during a work cycle for any one fire department; or

(2) work more than 500 hours in a calendar year in fire suppression duties for any one fire department.

(b) Part-time fire protection employees may work on a temporary (fill-in) basis for a fire protection personnel who is absent from work due to vacation, illness, injury, or administrative leave.

(1) The hours worked in a temporary position shall not be counted when computing the hours worked in subsection (a)(1) of this section.

(2) If the hours worked in a temporary position are in fire suppression related duties, the hours worked shall be counted when computing the hours worked in subsection (a)(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.

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T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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## Chapter 449. Head of a Fire Department

### 37 TAC §449.1

*(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 Commission on Fire Protection or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Commission on Fire Protection proposes the repeal of §449.1, concerning the head of a fire department. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state and local governments.

Mr. Calagna has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that obsolete language will be replaced with new sections that implement legislative changes. There are no additional costs of compliance for small or large businesses and for individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.032(f), which provides that the commission shall adopt rules for the purpose of this subsection relating to presentation of evidence regarding volunteer fire fighter experience.

Texas Government Code, §419.032 is affected by the proposed repeal.

*§449.1. Minimum Standards for the Head of a Fire Department.*

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

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T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



The Texas Commission on Fire Protection proposes new §449.1, concerning minimum standards for head of a fire department. New §449.1 clarifies and streamlines the requirements for certification as head of a fire department. Certification as head of a department requires completion of all requirements for certification as fire protection personnel in any discipline with an approved curriculum including testing and training. Alternatively, an individual with ten years of volunteer fire fighter experience may qualify for a basic certification examination. The only basic certification requirement in any discipline that is waived for the head of a fire department is the requirement of current emergency care attendant certification with documentation of equivalent training or certification in another jurisdiction. Disciplines such as aircraft fire protection personnel certification and marine fire protection personnel certification which also require eligibility for certification as structure fire protection require new applicants to document meeting testing and training requirements for structure fire protection personnel, in addition to the specialized training. Certification as head of the department in any one discipline does not authorize an individual to perform duties in any discipline other than the one in which certification is obtained.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the new sections are in effect there will be no fiscal implications for state or local governments.

Mr. Calagna has also determined that for each of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be that the requirements for certification as head of a department are clarified and made consistent for all disciplines. There are no additional costs of compliance for small or large businesses or individuals required to comply with the new chapter.

The commission has determined that the proposed new sections relating to head of a fire department will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The new section is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.032(f), which provides that the commission shall adopt rules for the purpose of this subsection relating to presentation of evidence regarding volunteer fire fighter certification.

Texas Government Code, §419.032 is affected by the proposed new section.

§449.1. Minimum Standards for the Head of a Fire Department.

(a) An individual who is employed as the head of a fire department, on or after September 1, 1993, must be certified by the commission, as a minimum, as a basic structural fire protection personnel, basic aircraft fire protection personnel, marine fire protection personnel, basic fire inspector, basic arson investigator, or fire investigator within one year from the date of appointment or within one year of September 1, 1993, whichever is later. In order to be certified the individual must:

(1) complete the requirements for certification as fire protection personnel in any discipline that has a commission approved curriculum, or provide documentation in the form of a sworn affidavit of ten years experience as an active volunteer fire fighter in one or more volunteer fire departments that meet the requirements of subsection (b) of this section; and

(2) successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification); and

(3) comply with the continuing education requirement specified in Chapter 441 of this title (relating to Continuing Education) during the period of temporary appointment.

(b) The ten years of volunteer service must be with a volunteer fire department or departments that meet the following requirements during the relevant period:

(1) an active membership of 20 or more members; and

(2) a minimum of two drills (not meetings) each month, each lasting a minimum of two hours and each having been attended by a majority of all active members.

(c) For disciplines requiring emergency care attendant certification from the Texas Department of Health, the requirement may be satisfied by documentation of equivalent training or certification in another jurisdiction in lieu of current certification by the Texas Department of Health.

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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T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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## Chapter 451. Fire Cause and Origin Investigator

### 37 TAC §451.1, §451.3

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

The Texas Commission on Fire Protection proposes the repeal of §451.1 and §451.3, concerning minimum standards for fire cause and origin investigator certification. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state and local governments.

Mr. Calagna has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that obsolete language will be replaced with new sections that implement legislative changes. There are no additional costs of compliance for small or large businesses and for individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeals are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administrative of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed repeal.

§451.1. *Minimum Standards for Fire Cause and Origin Investigation Personnel.*

§451.3. *Minimum Standards Ffor Fire Cause and Origin Investigator 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.

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T.R. Thompson

General Counsel

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## Chapter 471. Standards for Volunteer Certification

### 37 TAC §§471.1, 471.3, 471.5, 471.7

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

The Texas Commission on Fire Protection proposes the repeal of §§471.1, 471.3, 471.5, and 471.7, concerning standards for volunteer certification. The subject matter of the repealed sections will be replaced by new sections dealing with the same subject.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal.

Mr. Calagna has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be replaced with new sections that comply with legislative changes. There are no additional costs of compliance for large or small businesses or individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeals are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

Texas Government Code, §419.071 is affected by the proposed repeal.

§471.1. *Procedures for Meetings.*

§471.3. *Minimum Standards Set by the Commission.*

§471.5. *Definitions.*

§471.7. *Minimum Standards for Participation.*

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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T.R. Thompson

General Counsel

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## Chapter 472. Volunteer Certification Curriculum Manual

### 37 TAC §§472.1, 472.3, 472.5, 472.7, 472.9

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

The Texas Commission on Fire Protection proposes the repeal of §§472.1, 472.3, 472.5, 472.7, and 472.9, concerning the volunteer certification curriculum manual. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal.

Mr. Calagna has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be replaced with new sections that comply with legislative changes. There are no additional costs of compliance for small or large businesses or individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

Texas Government Code, §419.071 is affected by the proposed repeal.

§472.1. *Curriculum Approval by the Volunteer Fire Fighter Advisory Committee.*

§472.3. *Curriculum Approval by the Texas Commission on Fire Protection.*

§472.5. *Effective Date of New Curricula or Changes to Curricula Required By Law Or Rule.*

§472.7. *Effective Date of New Curricula or Changes or Revisions to Existing Curricula which are Voluntary.*

§472.9. *National Fire Protection Association Standard.*

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 May 11, 1998.

TRD-9807607

T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



## Chapter 473. Volunteer Fire Fighter

### 37 TAC §§473.1, 473.3, 473.5, 473.7, 473.9

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

The Texas Commission on Fire Protection proposes the repeal of §§473.1, 473.3, 473.5, 473.7, and 473.9, concerning minimum standards for volunteer fire fighter. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implication for state or local governments as a result of enforcing or administering the repeal.

Mr. Calagna has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be replaced with new sections that comply with legislative changes. There are no additional costs of compliance for small or large businesses or individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

Texas Government Code, §419.071 is affected by the proposed repeal.

§473.1. *Minimum Standards for Basic Volunteer Fire Fighter.*

§473.3. *Minimum Standards for Intermediate Volunteer Fire Fighter.*

§473.5. *Minimum Standards for Advanced Volunteer Fire Fighter Certification.*

§473.7. *Minimum Standards for Master Volunteer Fire Fighter Certification.*

§473.9. *Maintaining 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.

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T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



## Chapter 475. Volunteer Fire Fighter Instructor and Instructor Training

### 37 TAC §§475.1, 475.3, 475.5, 475.7, 475.9, 475.11

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

The Texas Commission on Fire Protection proposes the repeal of §§475.1, 475.3, 475.5, 475.7, 475.9, and 475.11, concerning minimum standards for volunteer fire fighter instructor certification and training. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal.

Mr. Calagna has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be replaced with new sections that comply with legislative changes. There are no additional costs of compliance for small or large businesses or individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

Texas Government Code, §419.071 is affected by the proposed repeal.

§475.1. *Minimum Standards for Basic Volunteer Fire Fighter Instructor Certification.*

§475.3. *Minimum Standards for Intermediate Volunteer Fire Fighter Instructor Certification.*

§475.5. *Minimum Standards for Advanced Volunteer Fire Fighter Instructor Certification.*



§475.9. *Minimum Standards for Volunteer Associate Instructor Certification.*

§475.11. *Instructor Training Courses.*

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

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TRD-9807609

T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



## Chapter 476. Volunteer Fire Investigator

### 37 TAC §§476.1, 476.3, 476.5, 476.7, 476.9

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

The Texas Commission on Fire Protection proposes the repeal of §§476.1, 476.3, 476.5, 476.7, and 476.9, concerning minimum standards for volunteer fire investigator. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal.

Mr. Calagna has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be replaced with new sections that comply with legislative changes. There are no additional costs of compliance for small or large businesses or individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

Texas Government Code, §419.071 is affected by the proposed repeal.

§476.1. *Minimum Standards for Volunteer Fire Investigator.*

§476.3. *Minimum Standards for Basic Volunteer Fire Investigator.*

§476.5. *Minimum Standards for Intermediate Volunteer Fire Investigator.*

§476.7. *Minimum Standards for Advanced Volunteer Fire Investigator Certification.*

§476.9. *Minimum Standards for Master Volunteer Fire Investigator 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.

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T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



## Chapter 477. Volunteer Fire Fighter Training Facilities

### 37 TAC §§477.1, 477.3, 477.5, 477.7, 477.9, 477.11, 477.13

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

The Texas Commission on Fire Protection proposes the repeal of §§477.1, 477.3, 477.5, 477.7, 477.9, 477.11, and 477.13, concerning standards for volunteer fire fighter training facilities. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal.

Mr. Calagna has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be replaced with new sections that comply with legislative changes. There are no additional costs of compliance for small or large businesses or individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

Texas Government Code, §419.071 is affected by the proposed repeal.

§477.1. *Minimum Standards for Volunteer Fire Fighter Training Facilities.*

§477.3. *Apparatus-Training Facility.*

§477.5. *Equipment-Training Facility.*

§477.7. *Reference Material-Training Facility.*

§477.9. *Testing and Records.*

§477.11. *Staff-Training Facility.*

§477.13. *General Information-Training Facility.*

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

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T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



## Chapter 478. Volunteer Fire Inspector

### 37 TAC §§478.1, 478.3, 478.5, 478.7, 478.9

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

The Texas Commission on Fire Protection proposes the repeal of §§478.1, 478.3, 478.5, 478.7, and 478.9, concerning minimum standards for volunteer fire inspector. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal.

Mr. Calagna has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be replaced with new sections that comply with legislative changes. There are no additional costs of compliance for small or large businesses or individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

Texas Government Code, §419.071 is affected by the proposed repeal.

§478.1. *Minimum Standards for Volunteer Fire Inspection Personnel.*

§478.3. *Minimum Standards for Basic Volunteer Fire Inspector Certification.*

§478.5. *Minimum Standards for Intermediate Volunteer Fire Inspector.*

§478.7. *Minimum Standards for Advanced Volunteer Fire Inspector Certification.*

§478.9. *Minimum Standards for Master Volunteer Fire Inspector 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.

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T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



## Chapter 479. Examinations for Volunteer Fire Fighter Certification

### 37 TAC §§479.1, 479.3, 479.5, 479.7, 479.9, 479.11, 479.13

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

The Texas Commission on Fire Protection proposes the repeal of §§479.1, 479.3, 479.5, 479.7, 479.9, 479.11, and 479.13, concerning examinations for volunteer fire fighter certification. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal.

Mr. Calagna has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be replaced with new sections that comply with legislative changes. There are no additional costs of compliance for small or large businesses or individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

Texas Government Code, §419.071 is affected by the proposed repeal.

§479.1. *Requirements-General.*

§479.3. *Definitions.*

§479.5. *Procedures.*

§479.7. *Eligibility.*

§479.9. *Grading.*

§479.11. *Performance Skills.*

§479.13. *Testing For Certification 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.

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T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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## Chapter 481. Volunteer Fire Fighter Certification Fees

### 37 TAC §§481.1, 481.3, 481.5, 481.7, 481.9, 481.11

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

The Texas Commission on Fire Protection proposes the repeal of §§481.1, 481.3, 481.5, 481.7, 481.9, and 481.11, concerning volunteer fire fighter certification fees. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal.

Mr. Calagna has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be replaced with new sections that comply with legislative changes. There are no additional costs of compliance for small or large businesses or individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

Texas Government Code, §419.071 is affected by the proposed repeal.

§481.1. *Fees-Purpose and Scope.*

§481.3. *Fees-Participation and Certification.*

§481.5. *Fees-Standards Manual.*

§481.7. *Fees-Volunteer Curriculum Manual.*

§481.9. *Fees-Copying.*

§481.11. *Fees-Examinations.*

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 May 11, 1998.

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T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



## Chapter 483. Volunteer Fire Fighter Safety

### 37 TAC §§483.1, 483.3, 483.5

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

The Texas Commission on Fire Protection proposes the repeal of §§483.1, 483.3, and 483.5, concerning volunteer fire fighter safety. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal.

Mr. Calagna has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be replaced with new sections that comply with legislative changes. There are no additional costs of compliance for small or large businesses or individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

Texas Government Code, §419.071 is affected by the proposed repeal.

§483.1. *Protective Clothing for Volunteer Fire Fighters.*

§483.3. *Self-Contained Breathing Apparatus for Volunteer Fire Fighters.*

§483.5. *Commission Recommendations .*

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 May 11, 1998.

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T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



## Chapter 485. Volunteer Fire Fighter Continuing Education

### 37 TAC §§485.1, 485.3, 485.5, 485.7, 485.9, 485.11

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

The Texas Commission on Fire Protection proposes the repeal of §§485.1, 485.3, 485.5, 485.7, 485.9, and 485.11, concerning volunteer fire fighter continuing education. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal.

Mr. Calagna has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be replaced with new sections that comply with legislative changes. There are no additional costs of compliance for small or large businesses or individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

Texas Government Code, §419.071 is affected by the proposed repeal.

§485.1. *Objective.*

§485.3. *Definitions.*

§485.5. *Requirements.*

§485.7. *Subject for Satisfying Fire Fighter Requirements.*

§485.9. *Continuing Education for Volunteer Fire Inspection Personnel.*

§485.11. *Continuing Education for Volunteer Fire Investigation Personnel.*

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

Filed with the Office of the Secretary of State on May 11, 1998.

TRD-9807616

T.R. Thompson

General Counsel

Texas Commission on Fire Protection

Earliest possible date of adoption: June 21, 1998

For further information, please call: (512) 918-7189



## Chapter 487. Eligibility for Volunteer Fire Fighter Certification as Fire Protection Personnel

### 37 TAC §487.1, §487.3

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

The Texas Commission on Fire Protection proposes the repeal of §487.1 and §487.3, concerning eligibility for volunteer fire fighter certification as fire protection personnel. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal.

Mr. Calagna has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be replaced with new sections that comply with legislative changes. There are no additional costs of compliance for small or large businesses or individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

Texas Government Code, §419.071 is affected by the proposed repeal.

§487.1. *Eligibility.*

§487.3. *Employment Requirements.*

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 May 11, 1998.

TRD-9807617

T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



## Chapter 489. Volunteer Fire Department Inspections

### 37 TAC §§489.1, 489.3, 489.5, 489.7, 489.9

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

The Texas Commission on Fire Protections proposes the repeal of §§489.1, 489.3, 489.5, 489.7, and 489.9, concerning volunteer fire department inspections. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal.

Mr. Calagna has also determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be replaced with new sections that comply with legislative changes. There are no additional costs of compliance for small or large businesses or individuals required to comply with the changes. There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mail to [tcfp@mail.capnet.state.tx.us](mailto:tcfp@mail.capnet.state.tx.us).

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

Texas Government Code, §419.071 is affected by the proposed repeal.

§489.1. *Request for Inspection.*

§489.3. *Report of Inspection.*

§489.5. *Administrative Penalties.*

§489.7. *Training Facilities.*

§489.9. *Certificate of 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 May 11, 1998.

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T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 3. Income Assistance Services

The Texas Department of Human Services (DHS) proposes to amend §3.704, concerning types, §3.705, concerning selling of real property, and §3.902, concerning types of income, in its Income Assistance Services chapter. The purpose of the amendments is to comply with an agency initiative and the Program Simplification Workgroup on the simplification of certain income and resources in the Temporary Assistance for Needy Families (TANF) and Medical programs. In addition, the subsections have been renumbered and rule citations updated.

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

Mr. Bost also has determined that for each year of the first five years the sections are in effect they will have minimal impact on workload and benefit costs. Public benefit anticipated as a result of enforcing the sections will be that TANF policies will be made compatible with the current Food Stamp policies. It is not anticipated that these changes will affect small businesses. These changes are technical in nature and neither drastically increase or decrease client eligibility/benefits to the point that local businesses would be impacted. Data to analyze possible effects is very limited. TANF benefit costs may increase slightly because the Food Stamp policy is more lenient for the targeted income and resource criteria. A small percentage of the income and resource denials per month could be affected, but the associated benefits will be negligible. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Rita King at (512) 438-4148 in DHS's Client Self-Support Services Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-261, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

#### Subchapter G. Resources

##### 40 TAC §§3.704, 3.705

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public and financial assistance programs.

The amendments implement the Human Resources Code, §§22.001- 22.030 and §§31.001-31.0325.

##### §3.704. *Types of Resources.*

(a) Temporary Assistance for Needy Families (TANF)-Countable Resources. The Texas Department of Human Service (DHS) counts the following resources in TANF [Aid to Families with Dependent Children (AFDC)]. The following are countable resources in AFDC]:

~~[(1) Income-producing property. The Texas Department of Human Services (DHS) exempts personal possession retained for business purposes as an available resource.]~~

~~(1) [(2)] Individual retirement accounts (IRAs). DHS counts IRAs as resources, even if there is a penalty for early withdrawal. DHS deducts the early withdrawal penalty and counts the remainder as a resource;[-]~~

~~(2) [(3)] Keogh Plans. DHS counts Keogh Plans as resources, even if there is a penalty for early withdrawal, and counts the remainder as a resource. DHS does not count Keogh Plans as resources if there is a contractual withdrawal agreement among other people who are not household members who share the same fund. DHS considers this an inaccessible resource;[-]~~

~~[(4) Life insurance. DHS counts the cash value of life insurance policies.]~~

~~(3) [(5)] Liquid resources. DHS counts liquid resources which are readily negotiable unless they are excluded in subsection (b)(9)(44) of this section. Examples include cash, checking or savings accounts, savings certificates, stocks or bonds;[-]~~

~~(4) [(6)] Nonliquid resources. DHS counts nonliquid resources such as personal property, licensed and unlicensed vehicles, buildings, land, and any other property not specifically exempt ; and[-]~~

~~(5) Real property. DHS counts the value of real property unless otherwise exempt.~~

~~(b) Temporary Assistance for Needy Families (TANF)-Excludable Resources. DHS excludes the following resources in TANF [Aid to Families with Dependent Children. Exclusions from resources in AFDC are]:~~

~~(1) Burial plot. DHS exempts all burial plots owned by [one burial plot for each] household members [ member].~~

~~(2) Crime victim payments. DHS exempts payments received from crime victims compensation programs.~~

~~(3) [(2)] Disability payments. DHS exempts disability payments resulting from Agent Orange Settlement Agreements or the Radiation Exposure Compensation Act.~~

~~(4) Earned income tax credit (EITC). DHS exempts EITC payments as follows:~~

~~(A) for applicants, EITC payments are exempt for the month the payment is received and for the following months; and~~

~~(B) for ongoing recipients, EITC payments are exempt the month of receipt and the following 11 months.~~

~~[(4) Sale of a homestead. DHS counts the proceeds from the sale as an available resource.]~~

~~(5) [(3)] Homestead. DHS exempts the usual residence and surrounding property which is not separated by property owned by others.~~

~~(A) The exemption remains in effect if the surrounding property is separated from the home by public right of way, such as roads.~~

~~(B) The homestead exemption applies to only one house on the property.~~

~~(C) [(B)] The home and surrounding property remain exempt when temporarily unoccupied for reasons of employment, training for future employment, illness, casualty, or natural disaster and the household intends to return.~~

~~(D) DHS counts the proceeds from the sale of a homestead as an available resource.~~

~~(6) [(5)] Inaccessible resources. DHS exempts cash values of resources that are not legally available to the household.~~

~~(7) Income-producing property. DHS exempts personal possessions retained for business purposes and those necessary for the maintenance of vehicles exempted as income-producing property or necessary for transporting a physically disabled household member as an available resource.~~

~~(8) Life insurance. DHS exempts the cash value of life insurance policies.~~

~~(9) Liquid resources. DHS excludes liquid resources resulting from earned income of a child as specified in Human Resources Code §31.0031, for clients who are not members of the State Welfare Reform Control Group described in §3.6004 of this title (relating to Applicability of Aid to Families with Dependent Children (AFDC) Policies Resulting from Human Resources Code §31.0031, Dependent Child's Income; Human Resources Code §31.012, Mandatory Work or Participation in Employment Activities Through the Job Opportunities and Basic Skills Training Program; Human Resources Code §31.014, Two-Parent Families; and Human Resources Code §31.032, Investigation and Determination of Eligibility).~~

~~(10) [(6)] Lump sum payments. DHS counts income tax refunds as resources as stipulated in 45 Code of Federal Regulations §233.20(a)(3)(iv)(E) effective on August 1, 1996, and the Social Security Act as amended by Title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.~~

~~[(7) Earned income credits (EIC). EIC payments are exempt for the month the payment is received and for the following month.]~~

~~(11) [(8)] Prepaid burial insurance. DHS exempts one prepaid burial insurance policy, prepaid funeral plan, or prepaid funeral agreement with a cash value of \$1,500 or less for each member of the certified group.~~

~~(12) [(9)] Personal possessions. DHS exempts personal possessions such as clothing, jewelry, furniture, livestock, and farm equipment, if used to meet personal needs essential for daily living.~~

~~(13) Reimbursements. DHS counts reimbursements as a resource in the month after receipt, but exempts reimbursements for repairing or replacing a lost or damaged resource which would not otherwise affect eligibility [are exempt] if the applicant uses the reimbursement for the intended purpose.~~

~~(14) [(10)] Resources of an alien's sponsor. DHS determines the sponsor's countable resources in the same manner as the applicant's. DHS reduces the total value of the sponsor's resources by \$1,500 and considers the remainder available to the alien.~~

~~(15) [(44)] Resources exempted by federal law. DHS exempts government payments by the Individual and Family Grant Program or the Small Business Administration provided to rebuild a home or replace personal possessions damaged in a disaster, if the household is subject to legal sanction if the funds are not used as intended. DHS exempts payments made under the following Acts:~~

~~(A) Alaska Native Claims Settlement Act (Public Law 92-203, as amended by Public Law 100-241);~~

~~(B) Sac and Fox Indian Claims Agreement;~~

(C) Grand River Band of Ottawa Indians;

(D) Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians received according to the Maine Indian Claims Settlement Act of 1980;

(E) Confederated Tribes and Bands of the Yakima Indian National and the Apache Tribe of the Mescalero Reservation received from the Indian Claims Commission;

(F) Seneca Nation Settlement Act of 1990 (Public Law 101-503);

(G) DHS exempts payments from Indian lands held jointly with the tribe or land that can be sold only with approval of the Bureau of Indian Affairs;

(H) Navajo or Hopi Tribes (Public Law 93-531) [DHS exempts funds distributed by the Secretary of the Interior, as stipulated in Public Law 98-64, §2 (relating to Tribal Trust Funds) and in Public Law 97-458, §4 (relating to Judgement Funds Granted due to a Claim Against the United States)];

(I) DHS exempts reimbursements from the Uniform Relocation Assistance and Real Properties Acquisition Policy Act of 1970; and

(J) DHS exempts payments or allowances made under any federal law for the purpose of energy assistance.

(16) Retirement accounts. DHS exempts money in retirement, vested retirements, and 401K accounts, even if it is accessible with a penalty.

(17) [(42)] Vehicles used for transportation.

(A) For clients who are members of the State Welfare Reform Control Group described in §3.6004 of this title, (relating to Applicability of Aid to Families with Dependent Children (AFDC) Policies Resulting from Human Resources Code §31.0031, Dependent Child's Income; Human Resources Code §31.012, Mandatory Work or Participation in Employment Activities Through the Job Opportunities and Basic Skills Training Program; Human Resources Code §31.014, Two-Parent Families; and Human Resources Code §31.032, Investigation and Determination of Eligibility), DHS exempts the value of one vehicle owned and used by the certified group for transportation if the equity is less than \$1,500. If the equity exceeds \$1,500, DHS counts the excess as a resource. DHS counts the equity of all other vehicles.

(B) For all other TANF [AFDC] clients, DHS exempts licensed vehicles as specified in Human Resources Code §31.032(d)(2).

[(14) Liquid resources. DHS excludes liquid resources resulting from earned income of a child as specified in Human Resources Code, § 31.0031, for clients who are not members of the State Welfare Reform Control Group described in § 3.6004 of this title (relating to Applicability of Aid to Families with Dependent Children (AFDC) Policies Resulting from Human Resources Code § 31.0031, Dependent Child's Income; Human Resources Code § 31.012, Mandatory Work or Participation in Employment Activities Through the Job Opportunities and Basic Skills Training Program; Human Resources Code § 31.014, Two-Parent Families; and Human Resources Code § 31.032, Investigation and Determination of Eligibility).]

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

§3.705. *Selling of Real Property.*

Temporary Assistance for Needy Families (TANF) [Aid to Families with Dependent Children] applicants who have real property which exceeds the resource limits can be certified for assistance [for up to six months] if they agree to make a good faith effort to sell the property [and sign an agreement to reimburse DHS for AFDC benefits received during the six-month period].

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

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TRD-9807454

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: June 21, 1998

For further information, please call: (512) 438-3765



## Subchapter I. Income

### 40 TAC §3.902

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public and financial assistance programs.

The amendment implements the Human Resources Code, §§22.001- 22.030 and §§31.001-31.0325.

§3.902. *Types of Income.*

(a) Temporary Assistance for Needy Families (TANF)-Countable Income [Aid to Families with Dependent Children]. The Texas Department of Human Services (DHS) counts the following as income:

(1) (No change.)

(2) cash gifts and contributions. DHS counts these as income, unless they are made by a private, nonprofit organization on the basis of need and total \$300 or less per household in a federal fiscal quarter [exempt as stipulated in 45 Code of Federal Regulations §233.20(a)(3)(iv)(F)];

(3)-(7) (No change.)

(8) disqualified legal parent. DHS counts the income of a legal parent disqualified for noncompliance with social security number requirements, third party resource requirements, intentional program violations, child support requirements, employment services requirements or failure to report temporary absence of a child using regular budgeting policy and allowing an exclusion for diverted income only as specified in subsection (b)(2) of this section. DHS counts the income of a parent(s) disqualified because of alien status as specified in 45 Code of Federal Regulation (CFR) §233.50(c) effective on August 1, 1996, and the Social Security Act as amended by Title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, citizenship requirements as specified in §3.603(a) of this title (relating to Disqualification because Verification of Citizenship Is Pending), or exhaustion of time limits as specified in §3.501(b)(3) of this title (relating to Aid to Families with Dependent Children (AFDC) and Food Stamp Household Determination). The income of such a parent is counted as specified in 45 CFR §233.20(a)(3)(B)(vi) effective on August 1, 1996, and the Social Security Act as amended by Title I of Public

Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;

(9) ~~[(8)]~~ dividends;

(10) ~~[(9)]~~ government-sponsored programs;

(11) ~~[(10)]~~ interest, dividends, royalties;

~~[(11)] job training payments that duplicate assistance provided under the AFDC needs standard;~~

(12) (No change.)

(13) ~~noneducational grants [as stipulated in 45 Code of Federal Regulations §233.20(a)(3)(iv)(B)];~~

(14) Nonrecurring Lump Sum Payments. DHS counts lump sum payments as income as stipulated in 45 Code of Federal Regulations §233.20(a)(3)(ii)(F) effective on August 1, 1996, and the Social Security Act as amended by Title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, except when shortening the period of ineligibility. For this procedure DHS shortens the ineligibility period only if:

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

(15)-(16) (No change.)

~~[(17)] disqualified legal parent. DHS counts the income of a legal parent disqualified for noncompliance with social security number requirements, third party resource requirements, intentional program violations, child support requirements, employment services requirements or failure to report temporary absence of a child using regular budgeting policy and allowing an exclusion for diverted income only as specified in subsection (b)(1) of this section. DHS counts the income of a parent(s) disqualified because of alien status as specified in 45 Code of Federal Regulations (CFR) § 233.50(e), citizenship requirements as specified in § 3.603(a) of this title (relating to Disqualification because Verification of Citizenship Is Pending), or exhaustion of time limits as specified in § 3.501(b)(3) of this title (relating to Aid to Families with Dependent Children (AFDC) and Food Stamp Household Determination). The income of such a parent is counted as specified in 45 CFR § 233.20(a)(3)(B)(vi); ]~~

(17) ~~[(18)]~~ pensions;

(18) ~~[(19)]~~ retirement, survivors and disability income [insurance] (RSDI);

(19) ~~[(20)]~~ reimbursement. DHS counts reimbursements as income unless the reimbursement is irregular and unpredictable or the reimbursement is for a special item not included in DHS's standard of need;

(20) ~~[(21)]~~ retirement benefits;

(21) ~~[(22)]~~ royalties;

(22) ~~[(23)]~~ self-employment income. DHS counts self-employment income according to requirements in 45 Code of Federal Regulations §233.20(a)(6)(v)(B) effective on August 1, 1996, and the Social Security Act as amended by Title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ;

(23) ~~[(24)]~~ stepparents. DHS counts stepparents' income according to requirements in 45 Code of Federal Regulations §233.20(a)(3)(xiv) effective on August 1, 1996, and the Social Security Act as amended by Title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,

except for stepparent budgeting as stipulated in the Omnibus Budget Reconciliation Act of 1993;

(24) ~~[(25)]~~ trust funds. DHS counts as income trust withdrawals or dividends which could be received by the applicant;

(25) ~~[(26)]~~ unemployment compensation;

(26) ~~[(27)]~~ veterans' benefits. DHS counts veterans' benefits as income but exempts benefits that meet a special need not included in DHS's standard of need;

(27) ~~[(28)]~~ wages, salaries, and commissions received in cash or in kind. DHS exempts wages, salaries, and commissions received under the work subsidy component of the Job Opportunities and Basic Skills Training (JOBS) program, as specified in §3.7102 of this title (relating to Income and Resources from Work Subsidy); and

(28) ~~[(29)]~~ worker's compensation. DHS exempts any amount of the benefits that is for payment of medical expenses incurred before Medicaid eligibility began if the client uses the benefit to pay these expenses.

(b) Temporary Assistance for Needy Families (TANF)-Excludable Income. DHS excludes the following as income ~~[Aid to families with dependent children. Exclusions from income for AFDC are]:~~

(1) children's earned income. DHS exempts this income if the child is a full-time student as defined by the school or a part-time student working less than 30 hours a week. There is no limit on the number of hours a full-time student can work;

(2) ~~[(1)]~~ disability payments. DHS exempts disability payments resulting from Agent Orange Settlement Agreements or the Radiation Exposure Compensation Act;

(3) ~~[(2)]~~ diverted income. DHS diverts income for all persons allowed in 45 Code of Federal Regulations §233.20(a)(3)(ii)(C) effective on August 1, 1996, and the Social Security Act as amended by Title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;

(4) ~~[(3)]~~ Domestic Volunteer Service Act. DHS exempts payments received by volunteers for services performed in programs stipulated in the Domestic Volunteer Service Act of 1973, Title II (Public Law 93-113). DHS exempts payments made to applicants serving as VISTA volunteers under Title I;

(5) ~~[(4)]~~ earned income tax credits. DHS exempts this income in the 185%, 100%, and recognizable needs tests;

(6) ~~[(5)]~~ educational assistance. DHS exempts general education assistance payments as stipulated in 45 Code of Federal Regulations §233.20(a)(3)(iv) and §233.20(a)(4)(ii)(d) effective on August 1, 1996, and the Social Security Act as amended by Title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. DHS also exempts remaining amounts of educational assistance pursuant to 45 Code of Federal Regulations §233.20(a)(3)(vii) effective on August 1, 1996, and the Social Security Act as amended by Title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;

(7) ~~[(6)]~~ energy assistance. DHS exempts home energy assistance as stipulated in 45 Code of Federal Regulations §233.53(a)-(c) effective on August 1, 1996, and the Social Security Act as amended by Title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;



(8) ~~[(7)]~~ food stamp value;

(9) ~~[(8)]~~ foster care payments;

(10) government housing assistance. DHS exempts government rent or housing subsidies as stipulated in 45 Code of Federal Regulations §233.20(a)(3)(xii) effective on August 1, 1996, and the Social Security Act as amended by Title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;

(11) ~~[(9)]~~ in-kind income. DHS exempts the value of unearned in-kind assistance;

(12) ~~[(10)]~~ job training allowances. DHS exempts payments from other agencies that do not duplicate assistance provided under the TANF ~~[AFDC]~~ needs standard and all JTPA payments except on-the-job training (OJT) payments funded under Title II, Section 204 #5 of the JTPA. OJT payments funded under Title II, Section 204 of the JTPA are treated as earned income [as stipulated in 45 Code of Federal Regulations §233.20(a)(3)(vii)(a)-(b). DHS also exempts unearned income payments from the Job Training Partnership Act (JTPA) of 1982 for AFDC children and JTPA payments of \$500 or less per month for AFDC adults participating in the Work Experience Program, Limited Work Experience Program, or Summer Youth Program];

(13) job training payments. DHS exempts any portion that is earmarked as a reimbursement for training-related expenses;

(14) ~~[(11)]~~ native and Indian claims. DHS exempts payments made under the Alaska Native Claims Settlement Act (Public Law 92-203, as amended by Public Law 100-241), Seneca Nation Settlement Act of 1990 (Public Law 101-503), and funds distributed or held in trust by the Indian Claims Commission for members of Indian tribes under Public Laws 92-254; 94-540; 94-114, §6; 95-433; 96-420; 98-64, §2; and 93-134, §7 (as amended by Public Law 97-458, §4);

(15) ~~[(12)]~~ noneducational loans;

(16) ~~[(13)]~~ nutrition program assistance. DHS exempts the value of supplemental food assistance under the Child Nutrition Act of 1966 and special food services programs for children under the National School Lunch Act. DHS exempts benefits received under the Older Americans Act of 1965, Title VII, Nutrition Program for the Elderly;

(17) ~~[(14)]~~ relocation assistance benefits. DHS exempts benefits received under the Uniform Relocation Assistance and Real Property Acquisition Act, Title II;

(18) ~~[(15)]~~ SSI as stipulated in 45 Code of Federal Regulations §233.20(a)(3)(x) effective on August 1, 1996, and the Social Security Act as amended by Title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ;

(19) ~~[(16)]~~ third-party funds. DHS exempts money received and used for care and maintenance of a third-party beneficiary who is not a household member; and

(20) ~~[(17)]~~ vendor payments. DHS does not count payments made directly to the applicant's creditor or person providing the service if the person or organization making the payments is outside the household.~~[;]~~

~~[(18)]~~ children's earned income. DHS exempts this income if the child is a full-time student as defined by the school

or a part-time student working less than 30 hours a week. There is no limit on the number of hours a full-time student can work;]

~~[(19)]~~ government housing assistance. DHS exempts government rent or housing subsidies as stipulated in 45 Code of Federal Regulations § 233.20(a)(3)(xii);]

~~[(20)]~~ crime victim compensation. DHS exempts payments received from crime victims compensation programs.];

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

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

Filed with the Office of the Secretary of State, on May 7, 1998.

TRD-9807455

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

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For further information, please call: (512) 438-3765



## Chapter 15. Medicaid Eligibility

### Subchapter F. Budgets and Payment Plans

#### 40 TAC §15.503

The Texas Department of Human Services (DHS) proposes to amend §15.503, concerning protection of spousal income and resources, in its Medicaid Eligibility chapter. The purpose of the amendment is to correct the formula for determining the increased protected resource amount at appeal.

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

Mr. Bost also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be that the formula will be applied correctly statewide. The rule correction clarifies existing policy and has no impact on small or large businesses or providers. There will be no effect on small businesses as a result of enforcing or administering the amendment. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Questions about the content of this proposal may be directed to Judy Coker at (512) 438-3227 in DHS's Long-Term Care section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-234, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

§15.503. *Protection of Spousal Income and Resources.*

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

(j) Formula for increased PRA at appeal.

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

(4) The amount of resources to be protected is determined by using the formula specified in subparagraphs (A) through (D) of this paragraph[~~: the sum of the annual income multiplied by 100 is divided by the interest on a one-year CD which equals the maximum dollar amount of resources to be protected.~~]. This formula is to be used to determine the maximum amount of resources to be protected regardless of the actual income a resource may or may not be producing at the time of the original PRA or at the time of the appeal hearing.

(A) Subtract the community spouse's non-resource-producing income (including income diverted by the client, if any) from the monthly maintenance needs allowance (MMNA). The difference is additional monthly income needed by the community spouse.

(B) Multiply additional monthly income needed by the community spouse (from subparagraph (A) of this paragraph) by 12. The product equals annual income needed by the community spouse.

(C) Multiply annual income needed by the community spouse (from subparagraph (B) of this paragraph) by 100.

(D) Divide the product from subparagraph (C) of this paragraph by the interest rate for a one-year CD. Do not use a percentage.

(5) (No change.)

(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 May 7, 1998.

TRD-9807456

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

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For further information, please call: (512) 438-3765



## Part II. Texas Rehabilitation Commission

### Chapter 106. Contract Administration

#### Subchapter A. Acquisition of Client Goods and Services

##### 40 TAC §106.3

The Texas Rehabilitation Commission proposes an amendment to §106.3, concerning acquisition of client goods and services. In accordance with the Appropriations Act, §167, the Commission has reviewed the section and has determined that they should be readopted with changes.

The section is being amended to delete language from subsection (c)(3) and to add a new paragraph (6).

Charles E. Harrison, Jr., Deputy Commissioner for Financial Services, has determined that for the first five-year period the section is in effect, there will be no fiscal implications for state or local government.

Mr. Harrison 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 conformance with the language of the Rehabilitation Act Amendments of 1994. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Roger Darley, Assistant General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

The amendment is proposed under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, House Bill Number 1, Article IX, §167, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

No other statute, article, or code is affected by this proposal.

##### §106.3. *Criteria for Determining When a Contract Is Required.*

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

(c) If the business relationship with the other party involves purchase of client goods or services and one of the following conditions is met:

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

(3) the goods or services are provided according to Commission designated standards and criteria [~~and fees which exceed a Commission policy-defined dollar volume threshold, or other defined risk factors~~];

(4) (No change.)

(5) the need exists to clearly differentiate employee versus independent contractor status; then the appropriate instrument to establish the relationship with the other party is an express contract; [ - ]

(6) defined high risk factors, or other conditions, exist that would make the establishment of an express contract in the best interests of the Commission.

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

Filed with the Office of the Secretary of State on May 11, 1998.

TRD-9807651

Charles Schiesser

Chief of Staff

Texas Rehabilitation Commission

Earliest possible date of adoption: June 21, 1998

For further information, please call: (512) 424-4050



## Part XX. Texas Workforce Commission

### Chapter 800. General Administration

#### Subchapter B. Allocation and Funding

## 40 TAC §800.51

The Texas Workforce Commission (Commission) proposes an amendment to §800.51, concerning the allocation of funds to local workforce development areas.

The purpose of the amendment is to allow the Commission to locate other allocation and funding rules within Subchapter B that relate to allocations to various entities.

Randy Townsend, Director of Finance, has determined that for the first five-year period the rule is in effect, there will be no fiscal impact to state or to local governments as a result of enforcing or administering the rule. There will be no foreseeable cost reductions to the state or to local governments, no net effect on revenues as a result of enforcing and administering the rule, and no foreseeable implications relating to costs or revenues to the state or to local governments associated with implementing the rule. There will be no effect on small businesses. There are no anticipated costs to persons who are required to comply with the rule as proposed.

Alan Miller, Director of Workforce Development Division, 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 of the process by which funds are allocated for workforce services.

Comments on the proposal may be submitted to Sandra Smith, Education and Special Services, Texas Workforce Commission Building, 101 East 15th Street, Room 526BT, Austin, Texas 78778, fax (512) 305-9182. Comments may also be submitted via e-mail to Ms. Smith at [sandra.smith@twc.state.tx.us](mailto:sandra.smith@twc.state.tx.us).

The amendment is proposed under Texas Labor Code, §301.061, which provides the Texas Workforce Commission with the authority to adopt such rules as it deems necessary for the effective administration of the Act.

Texas Labor Code, Chapter 301 and Chapter 302, will be affected by the amendment.

### *§800.51. Scope and Purpose.*

(a)-(c) (No change)

(d) Subsections (a)-(c) of this section shall apply to all sections contained in this subchapter unless a section specifically states otherwise.

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 May 11, 1998.

TRD-9807564

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: June 21, 1998

For further information, please call: (512) 463-8812



## Chapter 807. Proprietary Schools

The Texas Workforce Commission (Commission) proposes the review, pursuant to the Rule Review Plan, the repeal of 40 TAC Chapter 807, §§807.3, 807.101, 807.121-807.131 and new §§807.1-807.6, 807.11-807.17, 807.31-807.37, 807.51-807.53, 807.61-807.65, 807.81-807.84, 807.91-807.104,

807.111-807.113, 807.121-807.126, 807.141-807.147, 807.161-807.164, 807.171-807.175, 807.191-807.194, 807.211-807.214, 807.221, 807.222, 807.231-807.235, 807.251 and 807.252, concerning Proprietary Schools. The proposed rules interpret and implement the provisions of Texas Education Code, Chapter 132, Proprietary Schools (the Act). The new rules as proposed incorporate the requirements previously contained in 40 TAC Chapter 807, which is concurrently proposed for repeal. The new rules are a reorganization of the provisions of 40 TAC Chapter 807 with some changes to the requirements including simplification of the wording, removal of repetition of the statute, clarification of particular responsibilities, and changes to requirements as dictated by the review of the rules proposed for repeal. For a detailed comparison between the new rules as proposed and the rules proposed for repeal, please contact the Proprietary School Section at the address and phone number given below.

Subchapter A of the proposed rules sets out the General Provisions. Specifically, §807.1 sets out the title and purpose of the rules, §807.2 sets out the definitions of terms, §807.3 sets out the information regarding the memorandum of understanding regarding improvement of quality of education and reduction of default rates, §807.4 sets out the waivers provisions, §807.5 sets out the exemptions provisions, and §807.6 sets out the processing periods.

Subchapter B of the proposed rules interprets and clarifies statutory provisions relating to certificates of approval. Specifically, §807.11 sets out the provisions for original certificates of approval, §807.12 sets out the provisions for renewal of certificates of approval, §807.13 sets out the provisions for changes in ownership, §807.14 sets out the provisions for changes in locations, §807.15 sets out the provisions for notification of legal action, §807.16 sets out the provisions for approval to offer associate degrees, and §807.17 sets out penalties and sanctions.

Subchapter C of the proposed rules interprets and clarifies statutory provisions relating to financial requirements. Specifically, §807.31 sets out definitions relating to financial stability, §807.32 sets out the standards for financial stability, §807.33 sets out the requirements for financial stability for an original certificate of approval, §807.34 sets out the requirements for financial stability for changes in ownership, §807.35 sets out the requirements for financial stability at renewal, §807.36 sets out the provisions for the submission of interim financial statements, and §807.37 sets out the provisions for audits required by the Commission.

Subchapter D of the proposed rules sets out the provisions regarding representatives. Specifically, §807.51 sets out the representative requirements, §807.52 sets out the standards regarding representatives, and §807.53 sets out the limitations regarding representatives.

Subchapter E of the proposed rules sets out the provisions regarding school directors and administrative staff. Specifically, §807.61 sets out the school director requirements, §807.62 sets out the school director qualifications and duties, §807.63 sets out the provisions for an acting school director, §807.64 sets out the requirements for a director of education, and §807.65 sets out the director of degree programs requirements.

Subchapter F of the proposed rules sets out the provisions regarding instructors. Specifically, §807.81 sets out the instructor qualifications, §807.82 sets out the temporary instructor provisions, §807.83 sets out the instructor application provisions,

and §807.84 sets out the schools' responsibilities regarding instructors.

Subchapter G of the proposed rules sets out the provisions regarding courses of instruction. Specifically, §807.91 sets out the definitions relating to courses of instruction, §807.92 sets out the general information for programs, §807.93 sets out the additional program application provisions, §807.94 sets out the stated occupation provisions, §807.95 sets out the curriculum content, §807.96 sets out the curriculum length, §807.97 sets out the provisions regarding program title, §807.98 sets out the provisions regarding equipment, §807.99 sets out the provisions regarding facilities, §807.100 sets out admission requirements relating to programs, §807.101 sets out school responsibilities regarding programs, §807.102 sets out requirements regarding program revisions, §807.103 sets out program requirements for degree granting schools, and §807.104 sets out penalties relating to courses of instruction.

Subchapter H of the proposed rules sets out the application fees and other charges. Specifically, §807.111 sets out the fee schedule, §807.112 sets out the fee schedule for renewal of a certificate of approval, and §807.113 sets out the provisions for installment payments of fees.

Subchapter I of the proposed rules sets out the provisions regarding advertising. Specifically, §807.121 sets out general information regarding advertising, §807.122 sets out provisions regarding the methods of advertising, §807.123 sets out provisions regarding the content of advertising, §807.124 sets out provisions regarding advertising of financial incentives, §807.125 sets out standards for the school catalog, and §807.126 sets out the provisions for advertisement monitoring.

Subchapter J of the proposed rules sets out the provisions regarding admissions. Specifically, §807.141 sets out general information regarding admission, §807.142 sets out admission requirements, §807.143 sets out requirements for receipt of enrollment policies, §807.144 sets out provisions for the enrollment agreement, §807.145 sets out provisions for the conduct policy, §807.146 sets out provisions regarding tuition and fees, and §807.147 sets out admission requirements for degree granting schools.

Subchapter K of the proposed rules sets out provisions regarding progress standards. Specifically, §807.161 sets out general requirements for progress standards, §807.162 sets out progress standards for residence schools, §807.163 sets out progress requirements for correspondence schools, and §807.164 sets out progress requirements for degree granting schools.

Subchapter L of the proposed rules sets out provisions regarding attendance standards. Specifically, §807.171 sets out general requirements for attendance, §807.172 sets out attendance requirements for degree granting schools, §807.173 sets out provisions for termination of enrollment, §807.174 sets out provisions for make up work in the case of an absence, and §807.175 sets out provisions for leaves of absence.

Subchapter M of the proposed rules sets out provisions for cancellation and refund policies. Specifically, §807.191 sets out the provision for canceling after a tour, §807.192 sets out the standards for consummation of refunds, §807.193 sets out refund requirements for residence schools, and §807.194 sets out penalties relating to refunds.

Subchapter N of the proposed rules sets out the provisions for records. Specifically, §807.211 sets out general information for records, §807.212 sets out the provisions for student records, §807.213 sets out the provisions for attendance record keeping, and §807.214 sets out the requirements for record keeping concerning employment of students.

Subchapter O of the proposed rules sets out the provisions for complaints. Specifically, §807.221 sets out the provisions regarding school policies concerning complaints and §807.222 sets out the provision regarding complaints and investigations.

Subchapter P of the proposed rules sets out the provisions for truck driver training. Specifically, §807.231 sets out general information relating to truck driver training, §807.232 sets out provisions regarding truck driver training qualifications and duties, §807.233 sets out provisions regarding truck driver training course requirements, §807.234 sets out provisions regarding motor vehicle insurance, and §807.235 sets out prohibited activities for truck driver schools, truck driver instructor trainers, and truck driver instructors.

Subchapter Q of the proposed rules sets out the provisions for closed schools. Specifically, §807.251 sets out the provisions for school closures and §807.252 sets out the provisions of the tuition protection fund.

The Commission's minimum, maximum, and median times for processing applications from the date the Commission received the initial applications to the date of the final decision using the Commission's performance in the past 12 months are respectively as follows: The Original Certificate of Approval processing period is a maximum of 152 days, a minimum of 2 days, and a median of 23 days. The Renewal Certificate of Approval processing period is a maximum of 102 days, a minimum of 2 days, and a median of 21 days. The Change of Owner processing period is a maximum of 90 days, a minimum of 2 days, and a median of 14 days. The Representative processing period is a maximum of 74 days, a minimum of 2 days, and a median of 7 days. The Instructor processing period is a maximum of 190 days, a minimum of 2 days, and a median of 46 days. The Director processing period is a maximum of 61 days, a minimum of 2 days and a median of 13 days. The Director of Education processing period is a maximum of 47 days, a minimum of 4 days and a median of 17 days. The data used to compile the processing periods is based on a mail tracking system. Based on limitations of the mail tracking system, the following qualifiers are provided: processing periods of one day were excluded from the calculations; in an indeterminate number of cases, the data reflects total processing times irrespective of whether additional information was needed to complete the applications; and errors may exist due to processing and data base conversion complications. The processing periods provided in §807.6 were based on a decrease in department staffing and an increase in the number of applications needing to be processed.

Randy Townsend, Director of Finance, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Randy Townsend, Director of Finance, and Michael De Long, Proprietary School Coordinator, have determined that there will be an effect on small businesses and anticipated economic costs to persons who are required to comply with the proposed rules. The Commission submitted drafts of the Proprietary School Rules to the proprietary schools and held two meetings

with the Proprietary School Task Force, which included persons representing the interests of proprietary schools, to discuss issues pertaining to the drafts of the rules and any costs incurred by the schools with respect to the rules. A first draft and a subsequent draft were submitted to the Proprietary School Task Force and written and verbal responses were received on both drafts. The concerns of the proprietary schools were also discussed at the two Task Force meetings. The requests for feedback from the schools were made to assist the Commission in determining what, if any, adverse effect there would be on small businesses. During the drafting stage of the proposed rules, the Commission has worked with the proprietary schools to incorporate provisions to reduce the costs to small businesses.

Furthermore, the Commission requested feedback from some proprietary schools to determine the costs of complying with the rules and to determine whether an adverse economic effect would be caused by the rules. The Commission estimates the cost of complying is approximately \$10 per hour of labor for the amount of time it would take to meet the requirements of the rule. Factors will cause the estimates to vary, such as the resources available to the school, the wage rate of the person performing the task, the size of the school, and numerous other variables will bear upon the actual costs of compliance for a particular school. Incidental costs such as postage and telephone calls are not included because of their minimal nature.

Based on the responses from the proprietary schools, the following are estimated costs for small businesses to comply with the rules. See the Figure. For responses where amounts varied, the first amount represents the lowest amount and the second amount represents the highest amount indicated as the estimated cost of complying with the rules.

Figure: 40 TAC Chapter 807–Preamble

For rules that do not add requirements on schools but merely detail how the proprietary schools should comply with the statute, there are no costs other than those required by the statute. Those costs are directly caused by the statute and not by any additional cost to small businesses caused by the rules. For example, the statute requires schools to obtain a bond, and the rules merely state that the bond shall be attached to the application for a certificate of approval.

The Commission anticipates the rules that will present no costs other than those directly required by the statute are as follows: §§807.1, 807.2, 807.51(c), 807.53(c)(5), and 807.53(c)(8)-(10). The Commission anticipates the rules that will present no labor costs are as follows: §§807.3, 807.6, 807.12(c), 807.13(a), 807.31, 807.113(a), 807.121(a), 807.122, 807.123(b)-(e), 807.124(a)-(b), 807.124(d), and 807.126(c).

The comparison between the costs estimated by the proprietary schools for small and large businesses is apparent from the chart. For the costs which could not be estimated, those costs for small businesses are estimated as equal to or more than those costs of large businesses, due to the various resources available to larger businesses.

The majority of currently approved proprietary schools are small businesses; however, many of these proprietary schools are not defined as "small proprietary schools" pursuant to §132.054 of the Act relating to the Small School Exemption, which states that "The Commission may exempt small proprietary schools

from any requirement of this chapter to reduce the cost to small schools of receiving a certificate of approval." To lessen the costs on small businesses the Commission has proposed §807.4 pertaining to waivers which would permit a school to request a waiver from all or part of these rules upon a showing of good cause due to undue economic hardship. The Commission intends to reduce the costs for small schools and small businesses in complying with the rules whenever feasible by applying §132.054 of the Act and §807.4 of the rules.

Michael De Long, Proprietary School Coordinator, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules shall be to provide rules that are easier to understand and follow regarding proprietary schools and to make the process simpler for prospective proprietary school owners to obtain a certificate of approval to operate as a proprietary school.

Comments on the proposed rules may be submitted to Michael De Long, Proprietary School Coordinator, Texas Workforce Commission, 101 East 15th Street, Austin, Texas, 78778-0001; telephone number (512) 936-3104; facsimile number (512) 936-3111; e-mail address Michael.Delong@twc.state.tx.us.

The Commission will hold a public hearing on the proposed rules to receive public comments from persons interested in the rules. Notice of this hearing will appear in the *Texas Register*.

## Subchapter A. General Provisions

### 40 TAC §§807.1–807.6

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

#### §807.1. Title and Purpose.

(a) These rules may be cited as the Proprietary School Rules.

(b) The purpose of these rules is to implement and interpret the provisions of the Texas Education Code, Chapter 132, Proprietary Schools. The Commission shall evaluate each school according to the standards of practice set forth in the Act and this chapter. The Commission will provide assistance, whenever possible, in complying with this chapter.

#### §807.2. Definitions.

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

(1) Academic quarter—A period of instruction that includes at least ten weeks of instruction, unless otherwise approved by the Commission.

(2) Academic semester—A period of instruction that includes at least 15 weeks of instruction, unless otherwise approved by the Commission.

(3) Accountant—An independent certified public accountant properly registered with the appropriate state board of accountancy.

(4) Act—Texas Education Code, Chapter 132, Proprietary Schools.

(5) Advertising—Any affirmative act designed to call attention to a school or program for the purpose of encouraging enrollment.

(6) Board—A local workforce development board as created under the Workforce and Economic Competitiveness Act.

(7) Clock hour—Fifty minutes of instruction during a 60-minute period.

(8) Commission—The Texas Workforce Commission.

(9) Coordinating Board—The Texas Higher Education Coordinating Board.

(10) Correspondence course—Distance education, either a seminar or a program, that is offered to non-residence school students via correspondence or other media from a remote site on a self-paced schedule, excluding programs using interactive instruction.

(11) Correspondence school—A school that offers only correspondence courses.

(12) Course of instruction—A program or seminar.

(13) Employment—A graduating or graduate student's employment in the same or substantially similar occupation for which the student was trained.

(14) Good reputation—A person is considered to be of good reputation if the person:

(A) has never been convicted of a felony related to the operation of a school, and the person has been rehabilitated, including completion of parole or probation, from any other convictions that would constitute risk of harm to the school or students as determined by the Commission;

(B) has never been successfully sued for fraud or deceptive trade practices within the last 10 years;

(C) does not own a school currently in violation of legal requirements, has never owned a school with repeated violations, and has never owned a school that closed with violations including, but not limited to, unpaid refunds; and

(D) has not knowingly falsified or withheld information from the Commission.

(15) Job placement—An affirmative effort by the school to assist the student in obtaining employment in the same or substantially similar stated occupation for which the student was trained.

(16) Master student registration list—A comprehensive list with an entry made for any person who signs an enrollment agreement, makes a payment to attend the school, or attends a class. The entry shall be made on the date the first of these events occurs.

(17) Program—A sequence of approved subjects offered by a school that teaches skills and fundamental knowledge required for employment in the stated occupation.

(18) Reimbursement contract basis—A school operating, or proposing to operate, under a contract with a state or federal entity in which the school receives payment upon completion of the training.

(19) Residence school—A school that offers at least one program that includes classroom instruction.

(20) School—A "proprietary school," as defined in the Act, that includes each location where courses of instruction shall be offered.

(21) Secondary education—Successful completion of public, private, or home schooling at the high school level or obtainment of a recognized high school equivalency credential.

(22) Seminar—A course of instruction that enhances a student's career, as opposed to a program that teaches skills and fundamental knowledge required for a stated occupation. A seminar may include a workshop, an introduction to an occupation or cluster of occupations, a short course that teaches part of the skills and knowledge for a particular occupation, language training, continuing professional education, and review for postsecondary examination.

(23) Seminar school—A school that offers only seminars.

(24) Small school—A "small school" as defined in the Act.

(25) Stated occupation—An occupation for which a program is offered that:

(A) is recognized by a state or federal law or by a state or federal agency as existing or emerging;

(B) is in demand; and

(C) requires training to achieve entry-level proficiencies.

(26) Student—Any individual solicited, enrolled, or trained in Texas by a school.

(27) Subject—A component of a program that includes specific content designed to advance the practical skills and knowledge necessary to prepare a student for employment in the stated occupation. A subject in a school is similar to a course at a community or technical college.

(28) Suspension of enrollments—A Commission sanction that requires the school to suspend enrollments, re-enrollments, advertising, and solicitation, and to cease, in any way, advising prospective students, either directly or indirectly, of the available courses of instruction.

(29) Tour—An inspection of the facilities and equipment pertaining to a course of instruction.

(30) Week—Seven consecutive calendar days.

### §807.3. Memorandum of Understanding for Regulation of Schools.

The Act requires the Commission to execute a memorandum of understanding with the Texas Guaranteed Student Loan Corporation and each state agency regulating schools to reduce default rates at the regulated schools and to improve the overall quality of the programs. Said memorandum of understanding is set out at 40 TAC §800.205. Copies are available at the Texas Workforce Commission, 101 East 15th Street, Room 614, Austin, Texas 78778.

### §807.4. Waivers.

(a) Upon a showing of extreme extenuating circumstances, a school governed by this chapter may request a waiver from the requirements of this chapter. The Commission shall grant the waiver only upon a specific finding of good cause establishing that:

(1) the imposition of the rule requirement from which the waiver is sought would cause undue economic hardship to the school and have a negative impact on the ability of the school to provide the students with the skills and knowledge required for employment;

(2) the quality of education shall in no way be diminished or sacrificed by the granting of the waiver; and

(3) the granting of the waiver will in no way limit the statutorily required application approval criteria contained in §132.055 of the Act.

(b) The Commission may revoke a waiver in the same manner as a revocation of a certificate of approval, if the Commission determines that the criteria contained in this section for a waiver no longer exists.

(c) A school may appeal a requested waiver denial or revocation in accordance with the provisions of Subchapter D of the Act.

§807.5. Exemptions.

(a) A school desiring exemption from regulation pursuant to the Act shall make application and provide information deemed necessary by the Commission.

(b) The Commission may inspect a school or require such information to ensure continued operation in compliance with the exemption provisions.

§807.6. Processing Periods.

(a) The time periods for processing applications from schools, including small businesses, for certificates of approval, as well as approvals for representatives, school directors, and instructors, shall be in accordance with the following time periods.

(1) The first period is the time from the receipt of an application to the date of the issuance of a written notice approving the application or outlining the reasons why the application is unacceptable. The time periods for each application are:

- (A) original certificate of approval - 40 days;
- (B) renewed certificate of approval - 40 days;
- (C) change in owner certificate of approval - 40 days;
- (D) original representatives - 21 days;
- (E) renewed representatives - 21 days;
- (F) school directors and instructors (approval contingent on issuance of school's approval) - 40 days; and
- (G) school directors and instructors (approval not contingent on issuance of school's approval) - 55 days.

(2) The second period is the time from receipt of the last item necessary to complete the application to the date of issuance of written notice approving or denying approval of the application. The time periods for each application are:

- (A) original certificate of approval - 40 days;
- (B) renewed certificate of approval - 40 days;
- (C) change in owner certificate of approval - 40 days;
- (D) original representative - (approval contingent upon issuance of school's approval) - 21 days;
- (E) original representative - (approval not contingent upon issuance of school's approval) - 21 days;
- (F) renewed representative - (approval contingent upon issuance of school's approval) - 21 days;
- (G) school directors and instructors - (approval contingent on issuance of school's approval) - 40 days; and
- (H) school directors and instructors - (approval not contingent on issuance of school's approval) - 55 days.

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

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

(A) the number of applications for certificates of approval, representatives, school directors, or instructors as appropriate to be processed exceeds by 15% or more the number processed in the same calendar quarter of the preceding year;

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

(C) other conditions exist that give good cause for exceeding the established periods.

(c) If the request for full reimbursement authorized in this section is denied, the applicant may then request a hearing by appealing to the Commission for a resolution of the dispute. The appeal will be processed in the same manner as other appeals involving schools pursuant to the Act.

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 May 11, 1998.

TRD-9807568

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: June 21, 1998

For further information, please call: (512) 463-8812



## Subchapter A. Proprietary School Advisory Commission

### 40 TAC §807.3

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

The repeal is proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed repeal affects the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

*§807.3. Memorandum of Understanding for Regulation of Proprietary Schools.*

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 May 11, 1998.



## Subchapter B. Certificates of Approval

### 40 TAC §§807.11–807.17

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

#### §807.11. Original Approvals.

A complete application for an original certificate of approval shall consist of the following:

- (1) a completed application form provided by the Commission;
- (2) a properly executed school bond;
- (3) complete and correct financial statements demonstrating the school is financially stable and capable of fulfilling its commitments for training;
- (4) the application fee as specified in this chapter; and
- (5) any other revisions or evidence necessary to bring the school's application for approval to a current and accurate status as requested by the Commission.

#### §807.12. Renewal.

(a) For small schools, the certificate of approval shall be renewed at least every three years, or more frequently as determined by the Commission. A complete application for renewal of a certificate of approval shall consist of the following:

- (1) a properly executed school bond continuation certificate;
- (2) complete and correct annual financial statements for the most recent fiscal year demonstrating the school is financially stable and capable of fulfilling its commitments for training;
- (3) the renewal fee and the fee for the tuition protection fund, if applicable, specified in this chapter; and
- (4) any other revisions or evidence necessary to bring the school's application for approval to a current and accurate status as requested by the Commission.

(b) For all other schools, the certificate of approval shall be renewed annually. A complete application for renewal of a certificate of approval shall consist of the following:

- (1) a completed application for renewal form provided by the Commission;
- (2) a properly executed school bond;

(3) complete and correct annual financial statements for the most recent fiscal year demonstrating the school is financially stable and capable of fulfilling its commitments for training;

(4) the renewal fee and the fee for the tuition protection fund, if applicable, specified by this chapter; and

(5) any other revisions or evidence necessary to bring the school's application for approval to a current and accurate status as requested by the Commission.

(c) The effective, expiration, and issuance dates are indicated on the certificate of approval. The Commission may reflect the date of renewal as the date following the date of expiration of the prior certificate of approval, if the school submitted a timely request for renewal and met all of the requirements contained in this chapter for renewal.

(d) The complete renewal application shall be postmarked on or before the due date as indicated in the Act.

#### §807.13. Change in Ownership.

(a) The Commission may consider the addition or deletion of any person defined as an owner under the Act as a change in school ownership.

(b) The Commission may require submission of a full application for approval for a change in ownership if:

(1) the Commission has a reasonable basis to believe the change in ownership of the school may significantly affect the school's continued ability to meet the criteria for approval; or

(2) the new school owner fails to file an application for a change in ownership at least 30 days prior to the ownership transfer.

(c) The Commission may require a partial application for approval for a change in ownership if the Commission reasonably believes the change in ownership will not significantly affect the school's continued ability to meet the criteria for approval.

(d) The purchaser of a school shall accept responsibility for all refund liabilities.

#### §807.14. Locations.

(a) A school shall obtain a certificate of approval for each location where courses of instruction will be offered, unless the school has a certificate of approval and meets one of the exceptions in this section.

(b) The Commission may approve the following as exempt from applying for approval for a new or additional location, if requested at least 30 days in advance:

(1) review seminars, including preparation for licensing examinations, educational institution entrance examinations, and reading improvement;

(2) classes in no more than one location at a time as an itinerant school;

(3) classes at facilities used for additional classrooms for instructional services only, which are within a one-mile radius of the main campus and are dependent on the main campus for administration, supervision, fiscal control, and student services; or

(4) short-term programs. Short term programs:

(A) include 200 clock hours or less of instruction; and

(B) are conducted with at least a 90-day interval between cessation of one program and the beginning of the next.



(c) The school shall file an application for a certificate of approval to reflect a new or additional location, including all documents deemed necessary by the Commission, and the appropriate fee. The Commission may issue the certificate of approval after inspection of the new facilities.

(d) If the Commission determines that a move of the school presents an unreasonable transportation hardship which would prevent a student from completing the training at the new location, the school shall provide a full refund of all monies paid and a release from all obligations to the student.

§807.15. Notification of Legal Action.

(a) Unless otherwise instructed by the Commission, a school shall notify the Commission in writing of any legal action to which the school, any of its owners, representatives, or management employees is a party.

(b) A school shall notify the Commission in writing of any legal action described in this section no later than five business days after the action is known to be filed or the school, owner, representative, or management employee is served.

(c) A school shall include with the notice required in this section, a file-marked copy of the petition, complaint, or other legal instrument, including copies of any judgments.

§807.16. Associate Degrees.

(a) If a school desires authorization to grant associate degrees, the school shall make application to the Coordinating Board and have:

- (1) a current certificate of approval from the Commission;
- (2) an accreditation by an agency or association recognized by the United States Secretary of Education;
- (3) a history of conducting classes for the past two years in Texas and compliance with the Act as a non-degree-granting school; and
- (4) an ability to fully operate as a degree granting school in compliance with the Coordinating Board's requirements.

(b) A certified and accredited branch campus of a fully and separately accredited school approved to grant a degree in Texas may apply to grant the same degree, provided that the branch campus is also in compliance with all other minimum standards, except for the history of conducting classes for the past two years.

(c) The Commission may recognize the authorization to grant degrees upon receipt of a copy of the letter of authorization issued by the Coordinating Board.

§807.17. Penalties and Sanctions Regarding Schools.

The Commission may impose penalties or sanctions for violations of the Act or this chapter, including:

- (1) collecting a late renewal fee from the school;
- (2) denying the school's application for a certificate of approval;
- (3) revoking the school's certificate of approval;
- (4) placing restrictions on the school's certificate of approval;
- (5) denying, suspending, or revoking the registration of the school's representatives;
- (6) filing a claim against the school's surety bond;

- (7) collecting a late refund penalty from the school;
- (8) assessing an administrative penalty;
- (9) applying for an injunction against the school;
- (10) asking the Attorney General to collect a civil penalty from any person who violates the Act or this chapter;
- (11) ordering a peer review of the school;
- (12) revoking a program approval;
- (13) denying a program approval;
- (14) requiring full or partial refunds to students for program violations or deficiencies;
- (15) suspending the admission of students to the school;
- (16) charging the school an investigation fee to resolve a complaint against the school; and
- (17) charging the school interest and penalties on late payments of fee installments.

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 May 11, 1998.

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J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 463-8812



## Subchapter C. Financial Requirements

### 40 TAC §§807.31-807.37

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.31. Definitions Relating to Financial Requirements.

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

- (1) Alternative bonding—A situation in which the school's bond amount exceeds the highest amount of unearned tuition as shown on the unearned tuition affidavit.
- (2) GAAP—Generally Accepted Accounting Principles.
- (3) GAAS—Generally Accepted Auditing Standards.
- (4) Sworn statement—A notarized statement including the following language: "I swear or affirm that the information in these statements is true and correct to the best of my knowledge."
- (5) Unearned tuition affidavit—A statement of the highest amount of unearned tuition at any time during the most recent fiscal

year, the projected highest unearned tuition at any time during the next fiscal year, and the gross amount minus refunds of student tuition and fees earned during the fiscal year in all programs approved under the Act.

§807.32. Financial Standards.

(a) The balance sheet required in this subchapter shall reflect the following:

- (1) positive equity or net worth balance;
- (2) unearned tuition as a current liability;
- (3) a current ratio of at least one-to-one; and
- (4) stockholder's equity or net worth exceeding the amount shown for goodwill, if applicable, under assets in the balance sheet.

(b) Compilations shall be accompanied by the owner's sworn statement.

(c) All financial statements shall identify the name, license number, and licensing state of the accountant associated with the statements and be in accordance with GAAP.

§807.33. Financial Requirements for Original Approvals.

(a) The prospective owner shall furnish the Commission with the following, for:

(1) a school owned by a sole proprietor, a reviewed personal balance sheet with notes that disclose the amount of payments for the next five years to meet debt agreements as required by GAAP; or

(2) all other ownership structures, an audited balance sheet consistent with GAAP and GAAS and certified by an accountant.

(b) The school shall submit a balance sheet, a list of the expected school-related expenses for the first three months of operation of the school, and a sworn statement signed by the owner affirming the availability of sufficient cash to cover projected expenses at the date of licensure. A school currently operating, or proposing to operate, on a reimbursement contract basis may request a waiver of this section from the Commission. Projected expenses may include the following:

(1) employee salaries, listed by position title, including withholding, unemployment taxes, and any other related expenses;

(2) lease payments for equipment listed by the name of the equipment;

(3) lease payments for facilities;

(4) accounting, legal, and other specifically identified professional fees; and

(5) an estimate of other expenses such as advertising, travel, textbooks, office supplies, classroom supplies, printing, telephone, utilities, taxes, and sales commissions.

(c) The prospective owner shall also furnish such other evidence as may be deemed appropriate by the Commission to establish financial stability.

§807.34. Financial Requirements for Changes in Ownership.

Prior to a change in ownership of a school, the purchaser shall furnish the Commission a balance sheet meeting the requirements outlined in this subchapter for original approvals, excluding the sufficient cash requirement for initial expenses. The purchaser shall furnish any

other evidence deemed appropriate by the Commission to establish financial stability.

§807.35. Financial Requirements for Renewal.

(a) A school shall submit annual financial statements as set forth in this section that shall be:

(1) audited by an accountant and consistent with GAAP;

(2) reviewed by an accountant and consistent with GAAP (except for the first renewal, which must be audited or compiled); or

(3) compiled by an accountant, containing an unearned tuition affidavit and at least one note disclosing the current and long-term liabilities. This note shall be similar to that required by GAAP for reviewed and audited statements. Compiled statements are acceptable under the following conditions:

(A) the gross annual revenue from student tuition and fees is \$50,000 or less;

(B) the courses of instruction are less than one month in length; or

(C) the school maintains alternative bonding.

(b) Each school shall furnish financial statements in association with an accountant annually and not later than 180 days from the close of the school's fiscal year. These statements shall include the following:

(1) balance sheet (calculation of unearned student tuition shall be based upon at least a quarterly pro rata basis or refund policy basis for the program, whichever would most accurately reflect recognition of income);

(2) statement of results of operation, which includes a statement of income and retained earnings;

(3) statement of cash flows; and

(4) the gross amount minus refunds of annual student tuition and fees for each school, separated from other revenues unrelated to training.

(c) An alternative bonded school may submit all of the following in lieu of the financial statements required in this section:

(1) an unearned tuition affidavit;

(2) a copy of the annual income tax form filed specifically for the business; and

(3) an owner's sworn statement certifying that the unearned tuition affidavit and the copy of the annual income tax form are true and correct.

(d) A school that is a subsidiary of a corporation may submit, in lieu of the statements required in this section, the annual audited financial statements of the parent corporation provided that:

(1) said statements are accompanied by an audited list of any student tuition refunds payable by the subsidiary school at the close of its fiscal year. The statements shall also be accompanied by an owner's sworn statement reflecting the gross amount minus refunds of student tuition and fees earned during the fiscal year on all programs approved under the Act; and

(2) the parent corporation ensures that each student enrolled in the subsidiary school receives either the training agreed upon or a refund as provided in the Act, and submits either a certified resolution of its board of directors to this effect or any other evidence

as deemed appropriate by the Commission to establish financial responsibility by the parent corporation.

§807.36. Interim Financial Statements.

If a school chooses to submit interim financial statements in addition to the annual financial statements to establish financial stability, those interim statements shall meet the minimum requirements of this subchapter.

§807.37. Commission Ordered Audits.

If the Commission determines that reasonable cause exists to question the validity of any financial information submitted, or the financial stability of the school, the Commission may require at the school's expense:

(1) an audit of a school that has been certified by an accountant; or

(2) the owner to furnish any other evidence deemed appropriate by the Commission to establish financial stability.

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. Representatives

### 40 TAC §§807.51-807.53

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.51. Representative Requirements.

(a) The school shall apply annually to register representatives on forms provided by the Commission and with the appropriate fee.

(b) A representative shall be of good reputation and under the control of the school and is deemed to be the agent of the school. The school is responsible for any representations or misrepresentations, expressed or implied, made by a representative.

(c) Any student solicited or enrolled by an unregistered representative is entitled to a refund of all monies paid and a release from all obligations. Any contract signed by a prospective student as a result of solicitation or enrollment by an unregistered representative is null and void and unenforceable.

§807.52. Representative Standards.

A representative shall:

(1) have sufficient knowledge of the school to provide complete and accurate information regarding the school to prospective students;

(2) refer questions about financial aid and entrance testing to the appropriate school officials; and

(3) invite the student applicant to tour the school's facilities, inspect equipment, and speak with students.

§807.53. Representative Limitations.

(a) The representative shall not begin solicitation of students until the school receives notice of approval for the school and registration of the representative from the Commission.

(b) Employees and other agents of recruiting firms shall not serve as representatives.

(c) A representative shall not:

(1) solicit in public places other than educational settings, job fairs, or organized meetings;

(2) offer as an inducement or enticement any material consideration to a prospective student prior to enrollment, such as cash, food, housing, or gifts;

(3) administer the entrance test;

(4) advise students about financial aid, other than informing the student of the general availability of financial aid;

(5) give false, misleading, or deceptive information about any aspect of the school's operation, programs, completion or employment rates, examination success rates, job placement, or salary potential;

(6) concurrently solicit for or represent more than one school, unless the owner of each school being represented is informed that the representative is also soliciting for or representing other schools;

(7) engage in acts or practices that have a tendency to intimidate, coerce, or mislead a prospective student into accepting an enrollment;

(8) represent that a school or program has sponsorship, credentials, approval, characteristics, credit transferability, uses, benefits, or qualities that it does not have;

(9) discredit another school or its programs by false or misleading representation of facts;

(10) solicit enrollments in a program that has not been approved by the Commission;

(11) solicit students for a school through an employment agency; or

(12) violate any legal requirement or prohibition contained in the Act or this chapter.

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

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## Subchapter E. School Director and Administrative Staff

### 40 TAC §§807.61–807.65

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

#### §807.61. School Director Requirements.

(a) Each school shall designate one person as the school director.

(b) A person may not concurrently serve as a school director for more than one school.

#### §807.62. School Director Qualifications and Duties.

(a) A school director of a small school shall have administrative or management experience. A school director of a small school shall be of good reputation and is not required to attend a Commission-sponsored workshop prior to initial approval by the Commission.

(b) A school director of other than a small school shall be of good reputation and have a total of five years of administrative or management experience. An equivalent duration of higher education, college or university, may be substituted for each year of experience.

(c) The school shall obtain Commission approval for the school director before employment of the school director.

(d) A school director shall attend a Commission-sponsored workshop and demonstrate a proficiency of the knowledge required to operate a school before final Commission approval may be granted. The Commission may require a school director to attend additional workshops scheduled by the Commission in order to maintain skills and continue as an approved school director.

(e) The school director is responsible for the courses of instruction, organization of classes, designation of a liaison for Commission compliance visits, maintenance of the school facilities and proper administrative records, and all other matters related to the administration of the school, as determined by the Commission.

(f) The school director shall sign and agree to the terms of the Director's Statement.

(g) The Commission may require the school director to attend additional training to continue approved director status if a school has more than one substantiated complaint from students during a one-year period. If the school has repeat violations from a previous year under the same director, the Commission may revoke the approval of the school director.

(h) The school director shall:

(1) ensure that all facilities, including housing endorsed by the school, comply with local, city, county, municipal, state, and federal regulations such as, but not limited to, fire, building, and sanitation codes; and

(2) inspect facilities, including housing, before endorsement.

(i) The Commission shall grandfather the director of a school from meeting the requirements contained in this section, providing that the school has submitted the application for that school director to the Commission prior to the effective date of this section, and the application results in approval by the Commission.

#### §807.63. Acting School Director.

(a) The Commission may allow a school to designate an acting school director for a period not to exceed 90 days or as otherwise approved by the Commission, who is:

(1) a currently approved school director at another location with the same owner to facilitate the approval process at a new location;

(2) a new school director pending approval by the Commission; or

(3) required by an emergency as determined by the Commission.

(b) The school shall provide written notice to the Commission, delivered by the end of the first day following the appointment of the acting school director.

#### §807.64. Director of Education Requirements.

(a) A school may have a director of education.

(b) If the school employs a director of education, the director shall meet the same qualifications as an instructor and, in addition, shall have:

(1) one year of employment as a postsecondary instructor;

(2) one year of employment as a supervisor; and

(3) a bachelor's degree, appropriate for the skills required, as determined by the Commission.

#### §807.65. Director of Degree Programs Requirements.

(a) A school with a degree program shall have a director of the degree programs as required by the Coordinating Board.

(b) A director of degree programs shall be of good reputation and have:

(1) a master's degree with three years of work-related or administrative experience within the ten years immediately preceding employment by the school; or

(2) a bachelor's degree with five years of work-related or administrative experience within the ten years immediately preceding employment by the school.

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

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## Subchapter F. Instructors

### 40 TAC §§807.81–807.84

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

#### §807.81. Instructor Qualifications.

(a) The instructor shall be of good reputation and shall not be a current student in the same or similar program, as determined by the Commission, in which the instructor teaches.

(b) Instructors shall possess and affirm on forms provided by the Commission one of the following qualifications that applies to the subject area to be taught.

(1) A master's degree or higher shall suffice if it:

(A) is in a technical field and includes satisfactory completion of six semester credit hours in the subject to be taught;

(B) is in a technical field and includes, in the subject area to be taught, satisfactory completion of three semester credit hours and one year of practical experience within the ten years immediately preceding employment by the school;

(C) is in a non-technical field and includes satisfactory completion of three semester credit hours in the subject area to be taught; or

(D) is in a non-technical field and includes one year of practical experience in the subject to be taught within the ten years immediately preceding employment by the school.

(2) A bachelor's degree shall suffice if it:

(A) is in a non-technical field and includes, in the subject area to be taught, satisfactory completion of three semester credit hours and one year of related practical experience within the ten years immediately preceding employment by the school;

(B) is in a non-technical field and includes, in the subject area to be taught, satisfactory completion of six semester credit hours and one year of related practical experience within the ten years immediately preceding employment by the school;

(C) includes nine semester hours or 12 quarter hours related to the subject area to be taught; or

(D) includes two years of practical experience related to the subject to be taught within the ten years immediately preceding employment by the school.

(3) An associate's degree shall suffice if it:

(A) includes, in the subject area to be taught, completion of nine semester hours or 12 quarter hours and a minimum of two years of practical experience within the ten years immediately preceding employment by the school; or

(B) includes a minimum of three years of practical experience related to the subject area to be taught within the ten years immediately preceding employment by the school.

(4) A secondary education shall suffice in the subject area to be taught if it is accompanied by:

(A) a certificate of completion from a recognized postsecondary school for at least a 900 clock-hour program and a minimum of four years experience within the ten years immediately preceding employment by the school; or

(B) proof of satisfactory completion of relevant subjects from a recognized postsecondary school and a minimum of five years experience within the ten years immediately preceding employment by the school.

(c) In addition to the other applicable requirements for instructors, including the good reputation requirement, the following qualifications apply to the specific instructors listed in this subsection.

(1) The Commission requires that a court reporting instructor of only machine shorthand theory and speedbuilding shall have:

(A) an associate's degree or higher and certificate of completion of machine shorthand theory requirements in an accredited court reporting program;

(B) an associate's degree in court reporting from any state-recognized school;

(C) a Registered Professional Reporter or Certified Shorthand Reporter certification from any state; or

(D) a certificate of completion of a court reporting program from a state-certified school.

(2) The Commission requires that a court procedures and technology instructor shall have:

(A) a Registered Professional Reporter or Certified Shorthand Reporter certification; and

(B) one year of court reporting experience.

(3) The Commission requires that a modeling instructor shall have, at a minimum:

(A) a secondary education and certificate of completion from a modeling program of at least 45 clock hours from a state recognized school and at least five verifiable paid modeling jobs completed within the past five years; or

(B) a secondary education and at least ten verifiable paid modeling jobs completed within the past five years.

(4) The Commission requires that a truck driving instructor shall have, at a minimum:

(A) a secondary education;

(B) certified proof of successful completion of 40 clock hours in safety education and driver training as required by this chapter; and

(C) three years of full-time tractor trailer driving experience within the ten years immediately preceding employment by the school.

(5) The Commission requires that a bartending instructor shall be certified by the Texas Alcoholic Beverage Commission as a bartending instructor.

(d) The director shall ensure that an instructor applicant demonstrates sufficient language and mathematical proficiency to teach the subject for which the instructor is applying to teach.

(e) The Commission shall grandfather schools from meeting the instructor requirements contained in this section for a particular instructor provided that the school has submitted the application for approval of the instructor to the Commission prior to the effective date of this section and the application results in approval by the Commission.

(f) For those instructors who return to the school prior to one full year of absence, and who will be teaching the same subjects as previously approved, the school shall document the leave and reinstatement dates in the instructor's personnel file. When an instructor begins teaching new subjects or the absence was more than one year, the school shall submit a new application to the Commission.

§807.82. Temporary Instructors.

(a) The Commission may allow a school to use a previously unapproved instructor to teach temporarily for a reasonable amount of time in the case of an emergency, as determined by the Commission.

(b) In such circumstances, the school shall provide written notice to the Commission delivered no later than the first day the temporary instructor begins teaching. The notice shall include:

- (1) the subject to be taught;
- (2) the name of the approved instructor;
- (3) the name of the temporary instructor; and
- (4) the reason for the temporary instructor.

(c) Failure to properly notify the Commission shall result in penalties for the use of an unapproved instructor.

(d) The temporary instructor shall have practical experience or education in the subject area to be taught, and shall not have been previously disapproved to teach the subject.

(e) There shall be no more than one temporary instructor per grading period in an individual subject, unless specifically approved in advance by the Commission.

(f) Failure to comply with this section shall result in penalties, up to and including, a full refund to all students attending such classes.

§807.83. Instructor Application.

(a) The school shall file an application for approval of an instructor on forms provided by the Commission in accordance with the following criteria and ensure that the instructor is of good reputation.

(1) The application shall be postmarked within five calendar days of employment as an instructor subject to the conditions outlined in this subchapter. A school may employ an instructor pending approval by the Commission.

(2) Depending upon the qualifications indicated on the application, the application shall include one or more of the following:

(A) a legible copy of the postsecondary certificate or degree, or a transcript indicating appropriate coursework completed, as applicable;

(B) proof of a current occupational license; and

(C) proof of secondary education.

(b) A school with degree programs shall ensure that instructors are of good reputation and meet all the qualifications required by the Coordinating Board.

(c) The Commission may consider current approvals of instructors by other Texas State agencies responsible for approval and regulation of the program, when submitted with the Commission's instructor application.

(d) The Commission may require a school director to submit and receive approvals for instructor applications in advance of employing the instructors for a period of one year if the school has had three instructor applications finally disapproved within the previous two years.

§807.84. School Responsibilities Regarding Instructors.

(a) The school shall ensure that an appropriate number of instructors, as determined by the Commission, have proper licensure or certificates required for the stated occupation's objective. The holder of the license or certificate shall actively participate in program development and revisions.

(b) The school shall ensure continuity of instruction through reasonable retention of instructors to provide students with a quality education.

(c) The school shall implement, maintain, and update annually a written plan for staff development, which includes, at a minimum, continuing education, staff meetings, attendance at trade and professional conferences, and observation of, or participation in, on-the-job activities.

(d) The school director or director of education shall formally evaluate each instructor in writing at least annually, subject to review by the Commission.

(e) The school director or director of education shall ensure that students are allowed the opportunity to formally evaluate each instructor in writing at least annually and incorporate said evaluation in the instructor's overall evaluation. These student evaluations are subject to review by the Commission.

(f) The school shall provide in-service training within the first three months of teaching to those instructors hired lacking teaching experience. Topics shall include competency-based training, instructional methods, adult learning styles, and student learning and skills assessment.

(g) The school shall provide and document in-service training that provides updates on skills, knowledge, and technology required by business and industry for those instructors who have taught for two years, but have not gained relevant work experience during the two-year period.

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. Courses of Instruction

**40 TAC §§807.91-807.104**

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce

Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.91. Definitions Relating to Courses of Instruction.

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

(1) Externship—Practical, program-related, off-campus training under direct or indirect instructor supervision, with a pre-planned outline of experiences and competencies.

(2) Laboratory experience—A specific experience of observation, experimentation, practice, study, technical investigation, analysis, and practical application of theory or verbal instruction involving hands-on supervised study in a selected vocation or subject.

(3) Lecture—A presentation of theories, concepts, procedures, or information about a particular subject.

(4) New program—A program:

(A) not previously offered;

(B) previously offered and then discontinued;

(C) with a revised objective such that the program provides preparation for different jobs than those for which the program was originally approved (examples: legal secretary to paralegal; dental technician to medical technician; computer operator to computer programmer); or

(D) with a 25% or more change within a 12-month period to the total number of hours, content, or lessons (examples: from 1,000 clock hours to 750; 20 lessons to 30; 600 clock hours to 900, 60 semester credit hours to 80).

(5) New seminar—A seminar:

(A) not previously offered;

(B) previously offered and then discontinued;

(C) with a revised objective; or

(D) with a 25% or more change in a 12-month period to the total number of hours of the approved seminar .

(6) Revised program or seminar—Revisions include changes in admission requirements, title, subject title, objective description (but not the detailed objective), subject clock or credit hours, or subject hours of lecture, laboratory, or externship. Scheduling and price changes are catalog changes, not revisions.

§807.92. General Information for Programs.

(a) A school submitting applications for approval of seminars shall use abbreviated forms provided by the Commission.

(b) No subject or program shall be approved by the Commission unless the school demonstrates that the program's quality, content, and length reasonably and adequately impart the job skills and knowledge necessary for the student to obtain employment in the stated occupation.

(c) A school may not solicit students, otherwise advertise, or conduct classes for a program prior to the Commission's approval of the program. Any such activity by the school, prior to the Commis-

sion's approval of the program, shall constitute a misrepresentation by the school and shall entitle each student in the program to a full refund of all tuition and fees paid by the student and release from all obligations.

(d) The school shall establish and maintain a formal advisory committee of at least five members, unless the Commission approves a lesser number of persons in advance, for each type of program in excess of 200 clock hours in length. At least annually, the committee shall evaluate the curriculum, instructional materials and media, equipment, and facilities to ensure they meet the needs of the job market. The school shall have written documentation of the evaluation available for review by the Commission.

(e) If the applicant requests approval to measure programs in credit hours, the following conversion table shall be used.

(1) One academic quarter credit hour equals a minimum of:

(A) 10 clock hours of classroom lecture;

(B) 20 clock hours of laboratory experience; or

(C) 30 clock hours of externship.

(2) One academic semester credit hour is equal to a minimum of:

(A) 15 clock hours of classroom lecture;

(B) 30 clock hours of laboratory experience; or

(C) 45 clock hours of externship.

(3) The school shall calculate lecture, laboratory, and externship credit hour conversions individually for each subject, rounding down to the nearest half credit hour. The school shall add the total for the credit hours for lecture, laboratory, and externship to determine the total credit hours for a subject.

§807.93. Additional Program Applications.

(a) A school applying for approval of an additional program, after receiving an original certificate of approval, shall submit a complete application that includes:

(1) the appropriate fee;

(2) a completed application for program approval on forms provided by the Commission; and

(3) any other revisions or evidence as requested by the Commission.

(b) The Commission may require an abbreviated program application if:

(1) the school has the exact program approved at another location;

(2) the program objective changes;

(3) the program length changes 25% or more; or

(4) the school's completion and employment rates are exemplary, as determined by the Commission.

(c) The Commission may deny an application for approval of an additional program if the school is not in full compliance with the Act or this chapter.

§807.94. Stated Occupation.

(a) The school shall ensure that each program prepares the student for the stated occupation.

(b) The school shall demonstrate that a student who successfully completes the program is more likely to be employed in the stated occupation than an individual who does not complete the program.

(c) The school shall identify a demonstrable occupational demand for the stated occupation. The Commission may consider the following in evaluating the school's statement of occupational demand:

(1) publications of established relevant occupational associations;

(2) targeted occupation lists of boards, if approved by the Commission, or other local or state entities;

(3) references to advertisements in media for employment;

(4) occupation employment rate of students;

(5) percentage of graduating students who have previously completed the same or substantially similar program and who have obtained employment in the same or substantially similar stated occupation for which they have been trained;

(6) relative supply and demand for the stated occupation; and

(7) reports or publications relating to the specific occupational demand.

§807.95. Curriculum Content.

(a) The school shall:

(1) provide competency-based programs;

(2) assess skills using primarily performance-based methods;

(3) use instructional media, methods, and materials appropriate for the program content and students' knowledge and abilities;

(4) offer programs in a logical sequence of knowledge and skills; and

(5) provide an externship or a simulation of the workplace for the program, as deemed appropriate by the Commission.

(b) Each subject in the program shall teach the practical skills and knowledge required for employment in the stated occupation. The proportion of lecture, laboratory, and externship hours for each subject and for the program shall be reasonable for the skills and knowledge to be learned for the stated occupation.

(c) The Commission may use or validate existing skill standards or competencies, or develop statewide skill standards with the assistance of industry or schools.

§807.96. Curriculum Length.

(a) Each subject submitted for approval shall identify the clock or credit hours allocated to that subject. A subject or program that exceeds a length reasonable to prepare the student for the stated occupation shall not be approved.

(b) The Commission may establish minimum and maximum program lengths for stated occupations consistent with the intent of the Act.

§807.97. Program Title.

(a) Each program submitted for approval shall be identified by a title.

(b) The title shall clearly identify the stated occupation and shall be a title commonly used by business or industry.

(c) The Commission shall not approve false, misleading, or deceptive program titles.

§807.98. Equipment.

(a) Equipment required for instruction shall be comparable to that commonly found in the stated occupation.

(b) The school shall remove equipment not in working order from the instructional area, mark it as out-of-order, or properly identify it as awaiting repair.

(c) The school shall provide equipment of sufficient quality and quantity to meet the maximum use requirements of the current students, as demanded by the activity patterns of the training program.

§807.99. Facilities.

(a) In determining adequate space for lecture and laboratory experiences, the Commission shall consider that the amount of lecture and laboratory space meets the use requirements of the maximum number of current students in class with appropriate seating facilities and/or workstations, as needed by the activity patterns of the program.

(b) Enrollment shall not exceed the design characteristics of the available workstations.

§807.100. Admission Requirements Relating to Programs.

(a) The school shall submit, for approval by the Commission, its admission requirements for each program with justification for the requirements.

(b) The school shall ensure that the student demonstrates to the school sufficient proficiency in the language of instruction to successfully complete the training program.

§807.101. School Responsibilities Regarding Programs.

(a) As a condition of program approval or renewal, the school shall identify any portion of instruction that is self-paced.

(b) To maintain program approval, the school shall demonstrate the following:

(1) a reasonable student retention rate for each program; and

(2) a minimum employment rate for program graduates in jobs related to the stated occupation.

(c) When a school is approved to offer a program, the school shall maintain sufficient instructors to teach all subjects for completing the program during the length of time stipulated in the school catalog, regardless of the size of the class.

(d) The school shall schedule classes so that students will be able to complete the program during the length of time stipulated in the school catalog.

(e) The school shall ensure that students receive the lecture and laboratory experience hours with sufficient instructors and scheduling. An instructor may not be simultaneously supervising a laboratory experience and a lecture even if they are in the same room.

(f) A school shall provide course outlines to students at the beginning of each subject which lists students' performance objectives, references and resources, and a general content outline for the subject.

(g) A school shall have and use lesson plans for all subjects.



(h) A school may not use subjects from one or more approved programs to create a new program and award a certificate of completion without prior approval.

(i) The student-to-instructor ratio shall be sufficient for students to learn, practice, and demonstrate the necessary knowledge and skills. These ratios may be varied at the discretion of the Commission to conform to conditions in an individual school. The following student-instructor ratios may be acceptable for single subject classes:

- (1) business lecture or laboratory—30 to one;
- (2) technical, vocational, or allied health lecture —30 to one;
- (3) technical lab (examples: computer programming, data processing, electronics)—20 to one;
- (4) vocational lab (examples: auto mechanics, air conditioning and refrigeration, drafting)—20 to one; and
- (5) intensive language instruction (beginning)—15 to one; (intermediate to advanced)—20 to one.

§807.102. Program Revisions.

(a) The school shall submit a revised program application for any proposed changes in the program that shall be reflected in the school catalog's program information.

(b) The school shall receive approval of proposed program revisions in writing from the Commission before implementing the revisions.

(c) The school shall work closely with employers in its job market to ensure that the program meets employers' needs.

§807.103. Program Requirements for Degree Granting Schools.

(a) The quality, content, and sequence of each subject or program shall be appropriate for the purpose of the school and shall be such that the school may reasonably and adequately achieve the stated objectives of the subject or program by providing graduates of these programs with marketable skills.

(b) Prior to graduation students shall demonstrate the attainment of advanced skills as appropriate to the degree.

(c) At least 95% of the subjects required for each degree shall be offered in organized classes.

(d) A school may contract with another school for the instruction of general education or applied foundation courses if the Coordinating Board has approved that contract.

§807.104. Penalties Relating to Courses of Instruction.

(a) If an approved program is discontinued for any reason, the Commission shall be notified within 72 hours of discontinuance and furnished with the names and addresses of any students who were prevented from completion of the program due to discontinuance. Should the school fail to make arrangements satisfactory to the students and the Commission for the completion of the program, the full amount of all tuition and fees paid by the students are then due and refundable. Any program discontinued will be removed from the list of approved programs.

(b) The Commission may suspend enrollments in a particular program at any time the Commission finds cause. For purposes of this subsection, cause includes, but is not limited to:

- (1) inadequate instruction;
- (2) unapproved or inadequate curriculum;

(3) inadequate equipment; or

(4) inadequate facilities.

(c) If a school begins teaching a program or revised program that has not been approved by the Commission, the Commission may require the school to refund to the enrolled students all or a portion of the tuition fees.

(d) If upon review and consideration of an original, renewal, or revised application for program approval, the Commission determines that the applicant fails to meet the requirements in the Act or this chapter, the Commission shall notify the school, setting forth in writing the reasons for the denial. This may include summaries of peer evaluations from both educators and employers offering similar programs.

(e) The Commission may revoke approval of a school's program at any time the Commission finds cause. For purposes of this subsection, cause includes, but is not limited to:

(1) any statement contained in the application for the program approval which is untrue;

(2) the school's failure to maintain the instructors, facilities, equipment, or programs, or program outcomes on the basis of which approval was issued;

(3) advertising made on behalf of the school which is false, misleading, or deceptive, including those that use the word "associate" to describe a degree other than those approved by the Coordinating Board;

(4) programs without clearly stated limited transferability if there are no articulation agreements with other postsecondary institutions in the same geographic area;

(5) programs for which financial aid is advertised but is not available;

(6) repeated violations by the school that negatively impact the quality of a particular program; or

(7) violations by the school of any applicable provision of the Act or this chapter.

(f) A school whose program approval is denied or revoked shall have the right to appeal. The Commission will conduct hearings in accordance with Commission policies and procedures applicable to the appeal.

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. Veterans Approval for Proprietary Schools

40 TAC §807.101

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

The repeal is proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed repeal affects the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.101. *Accredited and Nonaccredited Programs.*

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 H. Application Fees and Other Charges

### 40 TAC §§807.111-807.113

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.111. *Fee Schedule.*

The Commission shall collect fees according to the following schedule.

- (1) The initial fee for a certificate of approval for a small school is \$1,001.
- (2) The initial fee for any other school is \$3,000.
- (3) In the event of a change in ownership of the school, the new owner shall pay the same fee as that charged for an initial fee for a school.
- (4) The initial registration fee for a representative is \$90.
- (5) The annual renewal fee for a representative is \$45.
- (6) The fee for a change of name of the school or owner is \$150.
- (7) The fee for a change of address of a school is \$270.

(8) The fee for a change in the name or address of a representative or a change of the name or address of a school that causes the reissuance of the notice of permitted representative is \$15.

(9) The application fees for a course of instruction that is an additional program is \$225.

(10) The application fee for a course of instruction that is a seminar program is \$35.

(11) The application fee for a school director, administrative staff member, or instructor is \$20.

(12) The fee for an inspection of classroom facilities that are separate from the main campus is \$375.

(13) The fee for an investigation of a complaint against a school is \$400, if assessed.

§807.112. *Renewal Fees.*

(a) For small schools, if a certificate of approval is issued for more than one year, the renewal fee is \$1,001, which may be paid with \$501 the first year and \$250 on the anniversary date of the certificate for each subsequent year.

(b) For all other schools, the renewal fee is based on the gross amount minus refunds of annual student tuition and fees. The renewal fee is the greater of:

(1) 0.31% of the school's gross tuition and fees, excluding refunds as provided by the Act; or

(2) \$500.

(c) For all schools, the Commission shall assess a penalty of 10% of the renewal fee, not less than \$200 or more than \$1,000, if the school fails to file a complete application for renewal at least 30 days before the expiration date of the certificate of approval.

§807.113. *Installment Payments.*

(a) With the exception of the renewal installment schedule for small schools, a school may elect to pay any single fee in excess of \$1,000 by quarterly installment. A service charge of 10% of the fee shall be added, and the total divided into equal quarterly installment payments. The first payment shall be due on the date the fee is due. The successive payments shall be due in 90-day increments.

(b) Failure to pay any installment by the due date may result in one or more of the following:

(1) a penalty being assessed in the amount of 50% of the total amount of the fee;

(2) full payment of the penalty and outstanding balance due within 30 days; or

(3) suspension of participation in the installment payment plan for the next renewal period.

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

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## Subchapter E. Minimum Standards for Operation of Texas Proprietary Schools

### 40 TAC §§807.121–807.131

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

The repeals are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed repeals affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.121. *General Information.*

§807.122. *Definitions.*

§807.123. *Exemptions.*

§807.124. *Representatives.*

§807.125. *Approvals.*

§ 807.126. *Applications from Small Businesses.*

§807.127. *Minimum Standards for Operation of Proprietary Schools.*

§807.128. *Application Fees and Other Charges.*

§807.129. *Minimum Standards for Operation of Proprietary Schools Which Grant Degrees.*

§807.130. *Truck Driver Training.*

§807.131. *Tuition Protection Fund.*

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. Advertising

### 40 TAC §§807.121–807.126

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.121. *General Information for Advertising.*

(a) A school shall not make deceptive statements in attempting to enroll students.

(b) The Commission may require a school to furnish proof to the Commission of any of its advertising claims, when requested.

§807.122. *Advertisement Method.*

(a) A school may advertise for prospective students under "instruction," "education," "training," or a similarly titled classification.

(b) A school shall not be advertised under any "help wanted," "employment," or similar classification.

(c) No school advertisements shall use the word "wanted," "help wanted," or "trainee," either in the headline or the body of the advertisement, nor shall any advertisement indicate, in any manner, that the school has or knows of employment of any nature available to prospective students; only "placement assistance," if offered, may be advertised.

(d) A degree granting school shall not use terms to describe the significance of the approval that specify or connote greater approval. Terms that schools may not use to connote greater approval by the Commission include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended."

(e) Any advertisement that includes a reference to awarding of credit hours shall include the statement, "limited transferability." Where a school has an arrangement with a college or university to accept transfer hours, such information may be advertised, but any limitations shall be included in the advertisement.

§807.123. *Advertisement Content.*

(a) Advertisement content shall include, and clearly indicate, the full and correct name of the school and its address, including city, as they appear on the certificate of approval.

(b) Advertisements shall not include:

(1) statements that the school or its programs are accredited unless the accreditation is that of an agency recognized by the United States Department of Education;

(2) statements that the school or its courses of instruction have been approved unless the approval can be substantiated by an appropriate certificate of approval issued by an agency of the state or federal government; or

(3) representation of the school as an employment agency under the same name, or a confusingly similar name, or at the same location of the school.

(c) A school holding a franchise to offer specialized programs or subjects not available to other schools shall not advertise such programs in such a manner as to diminish the value and scope of programs offered by other schools not holding such a franchise. Advertising of special subjects or programs offered under a franchise shall be limited to the subject or programs offered.

(d) A school shall not use endorsements, commendations, or recommendations by students in favor of a school except with the consent of the student and without any offer of financial or other material compensation. Endorsements shall bear the legal or professional name of the student.

(e) A school shall not use a photograph, cut, engraving, or illustration in advertising in such a manner as to convey a false impression of size, importance, or location of the school, equipment, or facilities associated with the school.

(f) Every advertisement must clearly indicate that training is being offered, and shall not, either by actual statement, omission, or intimation, imply that prospective employees are being sought.

§807.124. Financial Incentives.

(a) Advertisements shall not:

(1) state that students shall be guaranteed employment while enrolled in the school;

(2) state that employment shall be guaranteed for students after graduation; or

(3) misrepresent opportunities for employment upon completion of any program.

(b) Advertisements shall not contain dollar amounts as representative or indicative of the earning potential of graduates. This provision shall not be construed as prohibiting the school from providing earning potential to the student individually on the student's receipt of enrollment policies or other such Commission-approved document.

(c) Advertisements for student tuition loans shall:

(1) contain the language "student tuition loans available";  
and

(2) appear in type no larger than the font used for the name of the school and in similar color and style.

(d) Advertising of student tuition loans as described in this section does not preclude disclosure of the school's eligibility under the various state and federal loan programs.

§807.125. Catalog.

(a) The catalog shall include the following:

(1) table of contents or index;

(2) name and complete street address of the school;

(3) volume number, date of publication, and effective dates;

(4) history of any accreditations or approvals, including statement of approval and regulation by the Commission;

(5) description of space, facilities, and equipment;

(6) list of all trustees, directors, officers of the corporation, and owners;

(7) list of management staff and faculty, including education relating to the areas of instruction;

(8) tuition, fees, other charges, and applicable scholarship terms;

(9) school calendar;

(10) school hours of operation and class schedule, including the amount of time allocated for breaks and mealtimes;

(11) policies regarding enrollment, previous education credit, cancellation and refund, progress, attendance, leave of absence, and conduct;

(12) veterans administration refund policy, if applicable;

(13) description of courses of instruction;

(14) description of each subject;

(15) description of the grading policy, including requirements for graduation;

(16) description of placement assistance, if available;

(17) statement of policies regarding grievances; and

(18) a statement signed by the owner or director indicating that all of the information contained in the catalog is true and correct.

(b) Any subjects defined as self-paced shall be noted as such in the catalog.

§807.126. Advertisement Monitoring.

(a) The Commission may order corrective action to counteract the effect of improper advertising, including:

(1) retraction by the school of such advertising claims published in the same manner as the claims themselves; and

(2) cancellation of telephone numbers without an automatic forwarding message.

(b) The Commission may require schools to submit all advertisements to the Commission for preapproval at least 30 days before proposed submission of the advertisements to the advertising medium.

(c) Nothing in these guidelines shall prohibit release of information to students as required by a state or federal agency.

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

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## Subchapter J. Admission

### 40 TAC §§807.141-807.147

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.141. General Information for Admission.

(a) The Commission may approve specific admission requirements for seminars and small schools.

(b) Small schools with programs of 40 clock hours or less, individual subject offerings, and seminars are not required to grant credit for previous education and training.

(c) The school shall make appropriate adjustments to the program length and price based upon credit granted for previous education and training, where warranted.

(d) For a school having specific term-beginning dates, a school may not start students after the third day of classes during

any given term, except in those cases where appropriate credit for previous education and training has been given according to the Act and this chapter.

§807.142. Admission Requirements.

(a) The school shall require for admission into its programs proof of one of the following:

- (1) secondary education;
- (2) successful completion or the equivalent of one full-time academic semester (12 academic semester hours) or academic quarter (18 academic quarter hours) at an accredited college, university, or other postsecondary school; or
- (3) for certificate programs only, proven ability-to-benefit by obtaining a satisfactory score on the approved entrance test.

(b) Entrance test requirements shall be in accordance with the following provisions.

(1) Any entrance test shall be a nationally recognized standardized test or a nonstandardized test developed by the appropriate industry and approved by the Commission. A nonstandardized test shall be validated by a qualified third party, such as an expert in tests and measurements, for both appropriateness and the specific score level required for admission into the program. The name of the test and its publisher, any time limitations, a minimum acceptable score, and an explanation of score meanings, as referenced in the test material, shall be provided to the student with a copy of the test, if the test is not already on file with the Commission.

(2) If multiple opportunities are allowed for retaking the same entrance test, such students shall wait a minimum of five calendar days prior to retaking the test. A student may take a second entrance test on the same day provided a substantially different test is administered. This shall be stated in the admissions policy published in the school catalog.

(3) A representative is not allowed to administer the test, nor is anyone allowed to assist the student in answering the questions.

(4) If the entrance test reveals the student to be ineligible as an ability-to-benefit student, the student may be enrolled as a remedial student. The school shall have an evaluation procedure approved by the Commission to determine remedial needs and to determine when the required level of remediation has been reached. The school shall also have a remediation plan for such students consisting of subjects approved by the Commission as a part of the program. The students may be charged for the remedial portion of the program on an hourly pro rata basis, but the student is not obligated for the tuition and fees of the program until the entrance requirements are met.

(c) Evidence shall be maintained in each student's file to show the admissions requirements have been met. A full refund of all monies paid and a full release from all obligations shall be due, as determined by the Commission, to any student for whom the school cannot establish that the admission requirements were met.

§807.143. Receipt of Enrollment Policies.

(a) Seminars, individual subjects, and small schools with programs of 40 clock hours or less, shall use a form provided by the Commission to verify the student's receipt of the information required in this section.

(b) Unless otherwise required in this chapter, prior to enrollment the school shall furnish the following to each prospective student:

(1) a school catalog and program outline, unless the student enrolls in a seminar;

(2) a schedule of tuition, fees, and other charges;

(3) the cancellation and refund policy;

(4) the attendance, progress, and grievance policies;

(5) the rules of operation and conduct;

(6) if available, the average starting salary per pay period and annually for the prospective student's stated occupation, and information regarding the number of job openings in the program objective field in a specified area within the last 12 months, including the name of the information source;

(7) the regulations pertaining to incomplete grades;

(8) written and verbal information regarding loans and grants and their differences, if the school participates in a loan or grant program;

(9) the requirements, if any, for any state or national licensing, certifications, or registrations;

(10) the exam passage rates for programs that prepare students for state licensing, certification, or registration exams; and

(11) the job placement and employment data for the stated occupation as required in this chapter.

(c) Any school that refers to the awarding of credit hours shall explain to each student during the enrollment process that transferability of such hours may be limited. Each student shall sign a statement indicating such an explanation has been provided.

(d) Should a school have an articulation agreement with an accredited college or university, or other postsecondary school, such information shall be provided to the student, including any known agreement limitations. Such schools shall also provide a list of known Texas postsecondary schools that accept any or all of the credit hours so earned.

(e) Students shall acknowledge receipt of each piece of information or documentation as set forth in this section by initialing each page and providing a complete signature at the end of the receipt of the enrollment policy form.

(f) A copy of the receipt of the enrollment policies form shall be given to the student and a copy maintained as a part of the student's files.

§807.144. Enrollment Agreement.

(a) A school does not need an enrollment agreement to enroll a student in a seminar.

(b) For correspondence schools, the enrollment agreement shall specify the amount of time allotted to the student to complete the program.

(c) A school shall submit an enrollment agreement to the Commission for approval.

(d) A school shall use only an approved enrollment agreement to enroll students.

(e) The executed enrollment agreement shall include, but is not limited to, the following:

(1) full and correct name and location of the school;

(2) program title, tuition, fees, reasonable estimate cost of books and supplies, any other expenses, total cost of the program,

items subject to cost change, method of payment and payment schedule, disclosure statement if interest is charged on more than three payments, and detachable buyer's right to cancel if enrollment is procured off campus;

(3) date training is to begin and program length;

(4) name, address, and signature of the student;

(5) statement by the school that the student will received a copy of the school enrollment agreement and catalog at the time of signing by the student;

(6) cancellation and refund policy; and

(7) a Federal Trade Commission statement for holder in due course, unless no loans, grants, or installment payments are involved.

(f) The school shall provide a notice of cancellation, attached to the enrollment agreement, for any student enrolled off the school premises. The notice shall:

(1) be in duplicate;

(2) be easily detachable;

(3) be printed in boldface type, with a minimum font of 10 point;

(4) contain the date of the enrollment agreement, name and address of school, the date on which the statutory 72-hour cancellation privilege will expire, and any other provisions as determined by the Commission;

(5) be printed in the same language as used in the enrollment agreement; and

(6) be in such a form that can be used by the student to notify the school of the student's desire to cancel by dating, signing, and mailing or otherwise delivering the form to the school's address shown.

(g) A copy of the enrollment agreement form shall be given to the student and a copy maintained as a part of the student's file.

(h) The Commission may permit a school to submit an abbreviated enrollment agreement for students enrolled on a reimbursement contract basis.

#### §807.145. Conduct Policy.

The school shall submit for approval a copy of the rules and regulations pertaining to conduct, which shall include statements regarding:

(1) conditions for dismissal; and

(2) conditions for reenrollment of those students dismissed for violating the conduct policy.

#### §807.146. Tuition and Fees.

(a) A school shall disclose to potential students all tuition, fees, and other charges, and state such information in the school's application for a certificate of approval.

(b) A school shall provide to the Commission:

(1) a description of the methods of payment that are available to enrolling students;

(2) the names and addresses of lending institutions used by the school for student tuition loans; and

(3) the true annual percentage rate and any other fees or charges associated with student tuition loans.

(c) A school shall refund or forfeit any tuition, fees, or other charges not previously disclosed to the Commission.

(d) A school may offer scholarships providing the terms of scholarships are disclosed to the Commission.

(e) The school shall maintain, in a permanent format that is acceptable and readily accessible to the Commission, a record of any funds received from, or on behalf of, the student. A school shall clearly identify the payor, the type of funding, and the reason for the charges. These records shall be posted and kept current.

(f) A school shall issue written receipts of any charges or payments to the student and maintain such records for review by the Commission. Each separately charged item shall have on file a student-signed receipt.

#### §807.147. Admission Requirements for Degree Granting Schools.

(a) Students who transfer from other postsecondary schools shall complete at least 20 academic semester hours or 30 academic quarter hours in residency at the school that will grant the degree. This does not apply to transfers within the same school system.

(b) A school shall allow students attending at the time a school becomes a degree granting school to earn a degree, providing the student:

(1) meets all the prerequisites for acceptance into the degree program; and

(2) satisfactorily completes all courses or equivalent courses of the degree program.

(c) Former students shall meet all the prerequisites for acceptance into the degree program and shall satisfactorily complete all courses or equivalent courses in the approved degree program to qualify for a degree.

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 K. Progress Standards

### 40 TAC §§807.161-807.164

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

#### §807.161. General Requirements for Progress Standards.

(a) The Commission may approve specific progress standards for self-paced, competency-based programs.

(b) Seminars, because of their nature and duration, are not required to have progress standards.

(c) The progress evaluation records shall be of the type and nature to reflect whether the student is making satisfactory progress to the point of being able to complete all subject matter within the allotted time provided in the course curriculum.

(d) The school shall submit its policies pertaining to incomplete grades to the Commission for approval and publish those policies in the school's catalog. The policies shall address the possibility of the subjects being discontinued when the student returns and clarify options available to that student pursuant to the Act.

§807.162. Progress Requirements for Residence Schools.

(a) For programs of 40 clock hours or less, the school is only required to give a final exam at the end of the program to determine whether the student has sufficient knowledge to warrant a certificate of completion, in lieu of a progress evaluation.

(b) For programs of 41 to 200 clock hours, the school shall record a student's grades at the midpoint and end of each progress evaluation period. A student not making satisfactory progress at the midpoint shall be placed on academic probation for the remainder of the progress evaluation period. If the student does not achieve satisfactory progress by the end of the probationary period, the student's enrollment shall be terminated.

(c) For schools approved on a clock hour basis and offering programs in excess of 200 hours, the school shall evaluate progress at least every eight weeks. A school approved on a credit hour basis shall evaluate progress at the midpoint and end-of-term for academic semester or academic quarter or at least every eight weeks. For programs in excess of 200 clock hours, the following shall apply.

(1) The school shall place a student making unsatisfactory progress for the program at the end of a progress evaluation period on academic probation for the next progress evaluation period. If the student on academic probation achieves satisfactory progress for the subsequent progress evaluation period, but does not achieve the required grades to meet overall satisfactory progress for the program, the student may be continued on academic probation for one more progress evaluation period.

(2) If a student on academic probation fails to achieve satisfactory progress for the first probationary progress evaluation period, the student's enrollment shall be terminated.

(3) The enrollment of a student who fails to achieve overall satisfactory progress for the program at the end of two successive probationary progress evaluation periods shall be terminated.

(d) When a student is placed on academic probation, the school shall counsel the student prior to the student returning to class. The date, action taken, and terms of probation shall be clearly indicated in the student's permanent file.

(e) The school may allow a student whose enrollment was terminated for unsatisfactory progress to reenroll after a minimum of one progress evaluation period. Such reenrollment does not circumvent the approved refund policy.

(f) The school shall place a student who returns after their enrollment was terminated for unsatisfactory progress on academic probation for the next grading period. The school shall advise the student of this action and document the student's file accordingly. If the student does not demonstrate satisfactory progress at the end of this probationary period, that student's enrollment shall be terminated.

§807.163. Progress Requirements for Correspondence Schools.

(a) Correspondence schools shall evaluate progress as the school receives each lesson assignment. The school shall maintain the record of progress on forms approved by the Commission. Forms shall include:

- (1) the date course materials are mailed to the student;
- (2) the date the lesson assignment is received from the student;
- (3) the grade on a per-lesson basis;
- (4) the instructor's name;
- (5) the date graded assignments are returned to the student; and
- (6) the final grade for the program with completion date indicated.

(b) If at the end of the time period specified in the enrollment agreement, the student has not completed the program, the student's enrollment shall be terminated.

§807.164. Progress Requirements for Degree Granting Schools.

For a school offering degree programs, the progress standards shall include the following:

(1) a student progress evaluation every academic semester, academic quarter, or at least every eight weeks in block-time programs;

(2) a minimum grade point average for graduation from all degree programs of 2.0 based on a 4.0 scale, and that a student achieve a passing grade in all required subjects;

(3) a probationary period of one academic semester, academic quarter, or approved grading period following the end of the academic semester, academic quarter, or approved grading period in which the student's grades become unsatisfactory; and

(4) provisions for termination at the end of not more than two consecutive probationary periods if the student's cumulative grade point average does not improve to the level required for graduation.

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## Subchapter L. Attendance Standards

### 40 TAC §§807.171-807.175

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.171. General Requirements for Attendance.

(a) Seminar programs that begin and end during one day are not required to maintain an attendance policy.

(b) The Commission may approve specific attendance requirements for self-paced, competency-based programs.

(c) No provision in this subchapter shall require a school to terminate the enrollment of a student for lack of attendance at a point at which a refund would not be due.

(d) A school shall charge for a full day of absence when the student fails to attend all of the scheduled classes on that day. The school shall charge for a partial day of absence for any period of absence during the day.

(e) A school shall not consider school holidays, such as summer vacation and Christmas holidays, etc., as days of absence.

§807.172. Attendance Requirements for Degree Granting Schools.  
For a school offering degree programs, the attendance standards shall include the following:

(1) provisions for termination or probation during the next academic quarter, academic semester, or approved term when a student is absent for more than 20% of the scheduled clock hours during an academic quarter, academic semester, or approved term;

(2) provisions for termination when a student is absent for more than 20% of the scheduled clock hours during the probationary academic quarter, academic semester, or approved term; and

(3) provisions for termination prior to the last quarter, when a student is absent in excess of 10 consecutive school days or 20% of the total clock hours in the course, whichever occurs first.

§807.173. Termination of Enrollment.

(a) A school shall terminate the enrollment of a student who accumulates the lesser of the following amounts of absences:

(1) more than 10 consecutive school days;

(2) more than 20% of the total clock hours in a program of more than 200 clock hours;

(3) more than 25% of the total clock hours, if the program or individual subject is 41 to 200 clock hours in length;

(4) more than 25% of the total clock hours for seminars, individual subjects, or programs of 40 clock hours or less; or

(5) any number of days if the student fails to return as scheduled from an approved leave of absence

(b) Students whose enrollments are terminated for violation of the attendance policy may not reenroll before the start of the next progress evaluation period. This provision does not circumvent the approved refund policy.

§807.174. Make Up Work.

(a) No more than 5.0% of the total clock hours for a program may be made up.

(b) The school shall submit make up work policies to the Commission for approval.

(c) Make up work shall:

(1) be supervised by an instructor approved for the subject being made up;

(2) require the student to demonstrate substantially the same level of knowledge or competence expected of a student who attended the scheduled class session;

(3) be completed within two weeks of the end of the grading period during which the absence occurred;

(4) be documented by the school as being completed, recording the date, time, duration of the make up session, and the name of the supervising instructor; and

(5) be signed and dated by the student to acknowledge the make up session.

§807.175. Leaves of Absence.

(a) Seminars and small schools with programs of 40 clock hours or less shall not grant leaves of absence.

(b) A school director may grant a leave of absence after determining that good cause is shown. A leave of absence may not exceed the lesser of 30 school days or 60 calendar days.

(c) A school shall grant a student only one leave of absence per 12-month calendar period.

(d) School attendance records shall clearly define the dates of the leave of absence. A written statement as to why the leave of absence was granted, signed by both the student and the school director indicating approval, shall be placed in the student's permanent file.

(e) In addition to the requirements concerning leaves of absence in this subchapter, a school offering degree programs that schedule their courses on an academic quarter or academic semester basis may include in their attendance policies provisions for summer leaves of absence. These leaves of absence shall not exceed the lesser of 120 days or the interval between the end of the spring academic quarter or academic semester and the start of the fall academic quarter or academic semester.

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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J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

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## Subchapter M. Cancellation and Refund Policy

### 40 TAC §§807.191-807.194

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.191. Right to Cancel After Tour.



(a) Correspondence, combination correspondence-residence, and seminars are not required to provide the student a tour.

(b) Any potential student who has not been provided the opportunity to tour the school facilities and inspect the equipment before signing an enrollment contract has an additional three days, excluding Saturdays, Sundays, and legal holidays, following a tour and inspection to cancel enrollment and request a full refund of any money paid to the school and release from all obligations. The student shall sign and date an acknowledgement form certifying the completion of the tour.

§807.192. Consummation of Refund.

(a) A school shall document refunds by written record indicating the date of the refund transaction, the name of the student receiving the refund, the total amount refunded, and the specific reason for the refund. Proof of consummation shall be on file within 120 days of the effective date of termination and shall include:

- (1) copies of both sides of the cancelled check;
- (2) printed proof of completed transaction of electronic funds transfer or other similar electronic means; or
- (3) documentation of an awarded credit to a credit card or other similar account.

(b) To ensure a school's good faith effort to timely consummate a refund owed directly to a student, the student's file shall contain evidence of the following proof of a certified mailing of the refund to the:

- (1) student's last known address;
- (2) student's permanent address, if different from the student's last known address; or
- (3) address of the student's parent or legal guardian, if different from the student's last known and permanent addresses.

(c) If after making a good faith effort to timely consummate a refund, the school is unable to consummate the refund, the school shall forward to the Commission the appropriate refund amount and any pertinent student information to assist the Commission in locating the student.

§807.193. Refund Requirements for Residence Schools.

(a) Students are entitled to a full refund for classes attended if the school does not provide a class with:

- (1) an approved instructor;
- (2) an instructor for whom an application has been properly submitted to the Commission; or
- (3) a temporary instructor for whom the school submitted notice to the Commission.

(b) If a class has no instructor for more than one class period, students are entitled to a full refund for each such class attended.

(c) The length of a program, for purposes of calculating refunds owed, is the shortest scheduled time period in which the program may be completed by continuous attendance of a full-time student.

(d) A school shall calculate refunds for students based upon scheduled hours of classes through the last date of attendance. A school shall not count leaves of absence, suspensions, school holidays, days when classes are not offered, and summer vacations for purposes of calculating a student's refund.

(e) For all schools other than correspondence, combination correspondence-residence, and seminars, a student may cancel enrollment, request a full refund, and request a release from any obligations to the school within three days, excluding Saturdays, Sundays and legal holidays following:

(1) the first day of the student's scheduled classes if the student is not provided an opportunity to tour the school facilities, which includes inspection of equipment, before signing an enrollment contract; or

(2) the day the tour of the school facilities, including inspection of the equipment, is completed, when provided before the first day of the student's scheduled classes.

§807.194. Penalties Relating to Refunds.

(a) A penalty shall be paid on any refund not consummated in a timely manner as required by the Act. The penalty assessment shall begin on the first day following the expiration of the statutorily defined refund period and end on the day preceding the date the refund is consummated.

(b) Penalties assessed on late refunds for grants shall be paid to the tuition protection fund if the amount is \$15 or less. Any other penalty assessed on a school's late payment of student refunds shall be disbursed in the following order of priority:

(1) to the student's account at a lending institution for the balance of principal and interest on the student loan;

(2) to the student for tuition and fees paid directly by the student; and

(3) to the tuition protection fund for any remaining balance of assessed penalty.

(c) If the Commission determines that the method used by the school to calculate refunds is in error or the school does not routinely pay refunds within the time required by the Act, the school shall submit an audited report conducted by an accountant of the refunds due former students that includes any penalty due as specified in the Act. An audit opinion letter shall accompany a schedule of student refunds due, which discloses the following information for the four years prior to the date of the Commission's request:

(1) student information, including name, address, and social security number;

(2) pertinent dates, including last date of attendance and date of termination; and

(3) refund information, including amount of refund with principal, penalty, and any balance due separately stated, payee, and date and check number of payment if payment has been made.

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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J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

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Subchapter N. Records

#### 40 TAC §§807.211–807.214

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

##### §807.211. General Information for Records.

(a) A school shall permanently maintain a master student registration list indicating the following:

- (1) date of applicable entry;
- (2) name of student;
- (3) address of student including city, state, and zip code;
- (4) telephone number;
- (5) social security number;
- (6) date of birth; and
- (7) name of program.

(b) A school shall maintain current records and necessary data for each student required to be on the master student registration list to show compliance with the Act and this chapter. These records shall be:

- (1) maintained on-site; and
- (2) made available to the Commission for inspection.

(c) If applicable, the school shall maintain and ensure that copies of the accreditation authorization and letter of eligibility from the United States Department of Education are available for Commission review.

(d) Degree granting schools shall maintain a copy of the certificate of authorization from the Coordinating Board for each authorized degree program.

(e) The Commission may conduct unannounced compliance inspections.

(f) A school shall maintain complete records of all advertising, sales, and enrollment materials used by or on behalf of the school for a five-year period. Materials maintained shall include, but not be limited to, direct mail pieces, brochures, printed literature, films, leaflets, handbills, fliers, video and audio tapes disseminated through the broadcast media, materials disseminated through the print media or Internet, and sales and recruitment manuals used to instruct sales personnel.

##### §807.212. Student Records.

(a) A school shall permanently maintain student transcripts of academic records. A school shall provide such transcripts to students and prospective employers at a reasonable charge if the student has fulfilled the financial obligation to the school and is neither in default nor owes a refund to any federal or state student financial aid program.

(b) A school shall retain financial records in accordance with federal retention requirements.

(c) A school shall retain all student records for at least a five-year period and these records shall include:

(1) a written record of previous education and training on a form provided by the Commission; and

(2) official transcripts from all previous postsecondary schools attended by the student.

##### §807.213. Attendance Record Keeping.

(a) A school offering seminars or other programs where students do not change instructors during the school day, are not required to maintain a separate master record of attendance.

(b) A school shall maintain a master record of attendance on each student that clearly indicates the number of scheduled hours each day and the hours of absence.

(c) Each instructor shall maintain roll books. The roll books shall indicate a positive record of each student's attendance. Entries in the roll books shall be made in ink or other permanent medium and shall not be changed in a manner that precludes reading the original entry.

##### §807.214. Employment Records.

(a) A school offering programs approved for an occupational objective shall complete the labor market information survey on forms provided by the Commission and submit them on or before the date provided in the survey packet as requested by the Commission.

(b) A school shall report program completion, job placement, and employment data on an annual basis in each program approved for an occupational objective.

(1) The school shall provide the data in a form acceptable to the Commission.

(2) Verifiable documentation shall be made available for review to support data reported. The documentation shall include the names of graduates and the names, addresses, and telephone numbers of their employers.

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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J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

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#### Subchapter O. Complaints

##### 40 TAC §§807.221, §807.222

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

##### §807.221. School Policy Regarding Complaints.

The school shall:

(1) submit a written grievance procedure designed to resolve disputes between current and former students and the school for Commission approval;

(2) provide a copy of the grievance procedure to each student and maintain proof of such delivery;

(3) maintain records regarding grievance filings and resolutions; and

(4) diligently work to resolve all complaints at the local school level.

§807.222. *Complaints and Investigations.*

(a) The Commission may investigate a complaint about a school and may determine the extent of investigation needed by considering various factors, such as:

- (1) the seriousness of the alleged violation;
- (2) the source of the complaint;
- (3) the school's history of compliance and complaints;
- (4) the timeliness of the complaint; and
- (5) any other reasonable matter deemed appropriate.

(b) The Commission may require documentation or other evidence of the violation before initiating a complaint investigation.

(c) The investigation fee authorized by the Act is based on a per site visit. The school director shall be notified that an on-site visit was conducted when the investigation results in assessment of a fee.

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

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J. Randel (Jerry) Hill

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## Subchapter P. Truck Driver Training Programs

### 40 TAC §§807.231-807.235

The new rules are proposed under Texas Labor Code, Title 4, §§302.002 and 302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §§302.002 and 302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

#### §807.231. *General Information Relating to Truck Driver Training.*

A school providing truck driver training shall ensure that the truck driver instructors:

(1) complete an approved 40 clock hour truck driver instructor development course; and

(2) provide behind-the-wheel instruction that meets the Texas Department of Transportation's minimum standards for drivers.

#### §807.232. *Truck Driver Instructor Development Course.*

(a) A school shall apply to the Commission for approval to provide a truck driver instructor development course.

(b) The instructor development course shall consist of 40 clock hours, which includes at least the following topics.

(1) Five hours shall cover techniques of instruction including: qualities of a competent instructor, the learning process, methods of teaching, development of efficient teaching habits, demonstration teaching, the use of instruction material and training aids, course preparation, lesson plans, testing and evaluation, and the duration and frequency of lessons.

(2) Two hours shall cover personality factors affecting the driver and pedestrian including: natural abilities; senses; mind and nerves; bones and muscle; knowledge of vehicle, road, traffic, and self; attitudes and emotions; reaction time; and reactions to alcohol, carbon monoxide, over-the-counter drugs, prescription drugs, illegal drugs, heart ailments, epilepsy, diabetes, insanity, exhaustion, tension, and monotony.

(3) Six hours shall cover state laws as located in the Texas Motor Vehicle Law book relating to the operation of motor vehicles including: driver's license, vehicle registration, certificate of title, operation of vehicles, uniform act, miscellaneous offenses, and safety responsibility.

(4) Eight hours shall cover driving procedures including: handling-city, rural, night, mountain, and freeway driving; fog, rain, sandstorms, and other hazardous weather conditions; road hazards and recovery procedures for slick roads; blowout hazards and running off the road; traffic signs, markings, and signals; use of rearview mirrors; vehicle braking and stopping distances; following distances; right-of-way, when and how to yield it; vehicle acceleration and deceleration; yielding right-of-way to emergency vehicles; driver signals; proper passing procedures; procedures and problems for passing on two and three-lane roadways; and super-size motorized equipment.

(5) Three hours shall cover physical forces affecting the motor vehicle in motion including: forces of gravity; friction; acceleration, mass, and force; inertia and centrifugal force; kinetic energy and momentum; kinetic energy and braking; and horsepower and acceleration.

(6) Two hours shall cover highway characteristics including: primary, secondary, expressway, freeway, farm or ranch road, two-way two-lane, two-way three-lane, two-way multilane, two-way multilane divided, one-way multilane, parking, traffic controls. Traffic control topics consisting of following:

(A) sign topics include shape, color, location and importance;

(B) traffic marking topics include center and lane lines, no passing zone, transition markings, turn lane marking, stop lines, crosswalk lines, etc.; and

(C) signals topics include classification, location, type, timing.

(7) Two hours shall cover automobile systems and maintenance including: electrical system-generator, alternator, battery, lighting, and electric-powered equipment; cooling system-lubrication and fuel systems; power train-engine, transmission, and differential; brake system-wheels and tires, caster, camber, toe-in, balance, inflation, tire condition, and care; exhaust system; instruments and

gauges; compartment adjustments—seat, ventilation, mirrors, headrests, seat belts, and shoulder harness; starting the engine and warm-up procedures; safety devices—door locks, headrests; and miscellaneous features—windshield wipers, heater, and defroster.

(8) Two hours shall cover behind-the-wheel elementary lessons with demonstration in an appropriate vehicle and practice to be performed in the presence of the instructor including: starting; steering; stopping; shifting gears; backing; turning—right and left; and parking and starting on grade.

(9) Six hours shall cover behind-the-wheel driving safety lessons with demonstration in an appropriate vehicle and practice to be performed in the presence of the instructor including: developing good seeing habits; speed control; safe following; lane driving and lane changing; intersections and right-of-way; proper signaling; correct turn procedures; detecting of and handling problems—vehicle, cycle, pedestrian; freeway driving—ramp use, entering, exiting, lane use, emergency stopping; parking procedures; entering traffic from parked position; and night driving.

(10) Two hours shall cover school and instructor approval requirements including the following: school approval requirements, instructor approval requirements, classroom and automotive equipment requirements, required student records, contract requirements, and department of instructors.

(11) Two hours shall cover specialized training regarding the following: students with physical, mental, or emotional handicaps; illiterate students; non-English-speaking students; and habitual violators and problem drivers.

§807.233. Behind-the-Wheel Instruction.

A school providing behind-the-wheel instruction shall ensure that the instruction includes:

(1) actual driving practice while the motor vehicle is in motion;

(2) no more than four persons, excluding the instructor, occupying any motor vehicle during the behind-the-wheel instruction;

(3) notice in all contracts and advertisements of behind-the-wheel instruction being conducted with groups of students, if applicable; and

(4) credit toward satisfying minimum standards for behind-the-wheel instruction for only actual time spent behind the wheel in vehicle operation.

§807.234. Motor Vehicle Insurance.

A school providing truck driver training shall ensure that:

(1) a current list of vehicles used in truck driver training is filed with the Commission on a form provided by the Commission;

(2) an insurance certificate accompanies each motor vehicle used in training and is filed with the Commission on or before the date the school files an original or renewal application for approval of the program with the Commission;

(3) an insuring company or carrier issues an insurance certificate on a form furnished by the Commission directly to the Commission, which states the insurance company or carrier has issued a policy or policies of insurance, and the amounts of insurance for each vehicle listed on the list of vehicles used in truck driver training;

(4) a written notice is provided to the Commission by registered or certified mail at least 10 days prior to the expiration date of insurance coverage of a listed vehicle; and

(5) a copy of the written notice of cancellation of insurance on any listed vehicle is provided to the Commission by registered or certified mail immediately upon receipt of notice by the school.

§807.235. Prohibited Activities Regarding Truck Driver Training.

(a) A school, a trainer of truck driver instructors, or a truck driver instructor shall not:

(1) allow an instructor to give instruction or allow a student to secure instruction in the classroom or in a motor vehicle if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, or other such impairment;

(2) permit a student to operate a motor vehicle without a valid driver's license or instruction permit in the student's possession during behind-the-wheel instruction;

(3) permit more than a ratio of four students per vehicle and three vehicles per instructor on truck driving ranges;

(4) permit more than four students per vehicle per instructor during street instruction for truck driver training; or

(5) advertise or otherwise state or imply that a driver's license or permit is guaranteed or assured to any student or individual who may take or complete any instruction or course of instruction, enroll, or otherwise receive instruction in any truck driver training school.

(b) The Commission may suspend, revoke, or refuse to renew approval of a truck driver instructor or a trainer of truck driver instructors, upon determining that the applicant or instructor has been:

(1) convicted under the laws of this state, another state, or the United States of any felony; an offense of criminally negligent homicide committed as a result of the person's operation of a motor vehicle; an offense involving driving while intoxicated or under the influence; or an offense involving tampering with a governmental record.

(2) found incompetent or is incompetent to:

(A) safely operate a motor vehicle; or

(B) properly conduct classroom or behind-the-wheel instruction.

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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J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

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## Subchapter Q. Closed Schools

### 40 TAC §807.251, §807.252

The new rules are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of

the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools.

The proposed new rules affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.251. School Closures.

(a) The Commission may declare a school to be closed when:

(1) written notification is received by the Commission from the school owner stating the school will close;

(2) Commission staff determines that the school facility has been vacated without prior notification of a change of address given to the Commission;

(3) an owner with multiple school locations transfers all students from one school location to another school location;

(4) the school dismisses all students, contrary to the school's class schedule as printed in the school catalog; or

(5) the school fails to maintain the faculty, facilities, equipment, or programs on the basis for which approval was issued.

(b) After the Commission determines that a school will close or has closed, the Commission will attempt to notify students concerning their options to accept a teach-out program or to receive a proportional tuition refund based on available funds. Notification to students may include constructive notice in news media, student meetings, or mailings to students.

§807.252. Tuition Protection Fund.

(a) Each school shall make a payment to the tuition protection fund at the time the school renewal fee is paid if the accrued balance of the tuition protection fund is less than \$200,000. The accrued balance is the remaining balance of the tuition protection fund less the sum of the amount of unpaid student refunds and teach-out claims not yet disbursed from the tuition protection fund. The amount in the tuition protection fund, as provided in the Act, is the accrued balance as described herein.

(b) Disbursements shall be made from the tuition protection fund for student refunds and reimbursable teach-out expenses incurred during each 12-month period ending August 31, and shall be:

(1) made first for student refunds on a proportional basis;

(2) disbursed for reimbursable teach-out expenses based upon remaining funds; and

(3) calculated after anticipated bond funds and other funding sources have been determined.

(c) Each teach-out program requires approval of the Commission to determine whether the program is available, reasonable, and comparable with the program of the closed school. The teach-out program is subject to the following conditions:

(1) Transfers of students from a closed school to another school under the same ownership shall not constitute a teach-out program.

(2) In order to be eligible for a teach-out program, students shall submit a signed statement of acceptance to the teach-out school by the deadline as established by the Commission.

(3) The teach-out school shall give credit for all comparable training received at the closed school, as determined by the Commission.

(d) Following the graduation or termination of the students from the teach-out school, the teach-out school shall determine actual expenses and submit a claim for reimbursement to the Commission on or before the date provided in the application packet. The teach-out school shall:

(1) not claim expenses for facilities, equipment, utilities, or other items which were owned, rented, used, or otherwise obligated by the school prior to the Commission's approval of the teach-out program, even though such items may be used for the teach-out program;

(2) be limited to expenses for tuition and fees that are non-recoverable from all financial resources, including grants and loans; and

(3) ensure that the sum of the tuition and fees paid to the student's account at the closed school and the teach-out school is the lesser amount the student would have been charged for the complete program at the closed school or the teach-out school.

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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J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

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**TITLE 43. TRANSPORTATION**

**Part I. Texas Department of Transportation**

**Chapter 7. Bridge Division**

The Texas Department of Transportation proposes the repeal of §§7.41, 7.61, and 7.71, concerning railroad crossings.

**EXPLANATION OF PROPOSED REPEALS**

Title 43 of the Texas Administrative Code contains rules concerning railroad grade crossings under both Chapter 7, Bridge Division, and Chapter 25, Traffic Operations. The Bridge Division of the Texas Department of Transportation was merged into another division in a 1993 reorganization of the department. The railroad function of that division was transferred into the Traffic Operations Division. Repeal of these sections is necessary because the subject matter of these sections more appropriately falls within Chapter 25.

Sections 7.41, 7.61, and 7.71 will be re-enacted as new §§25.74-25.76 to incorporate the repealed language and consolidate department rules on railway crossings in one chapter.

**FISCAL NOTE**

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

David T. Newbern, P.E., Director, Traffic Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeals.

#### PUBLIC BENEFIT

Mr. Newbern has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing or administering the repeals will be to consolidate in one chapter existing department rules on railroad crossings. There will be no effect on small businesses.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed repeals may be submitted to David T. Newbern, P.E., Traffic Operations Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on June 23, 1998.

### Subchapter D. Railroad Underpasses

#### 43 TAC §7.41

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

#### STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §2001.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

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

§7.41. *Maintenance of Railroad Underpasses.*

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

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TRD-9807662

Bob Jackson

Acting General Counsel

Texas Department of Transportation

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



### Subchapter E. Railroad Spur Tracks

#### 43 TAC §7.61

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

#### STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §2001.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

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

§7.61. *Spur Tracks Crossing Existing Highways.*

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 May 11, 1998.

TRD-9807663

Bob Jackson

Acting General Counsel

Texas Department of Transportation

Earliest possible date of adoption: June 21, 1998

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



### Subchapter F. Railroad Grade Crossings

#### 43 TAC §7.71

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

#### STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §2001.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

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

§7.71. *Construction and Maintenance of Highway-Railway Grade Crossings.*

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 May 11, 1998.

TRD-9807664

Bob Jackson

Acting General Counsel

Texas Department of Transportation

Earliest possible date of adoption: June 21, 1998

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



### Chapter 25. Traffic Operations

#### Subchapter E. Railroad [Grade] Crossings

#### 43 TAC §§25.70-25.72, 25.74-25.76

The Texas Department of Transportation proposes amendments to §§25.70-25.72, and new §§25.74-25.76, concerning railroad crossings.

#### EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTIONS

Title 43 of the Texas Administrative Code contains rules concerning railroad crossings under both Chapter 7, Bridge Division, and Chapter 25, Traffic Operations. The Bridge Division of the Texas Department of Transportation was merged into another division in a 1993 reorganization of the department. The railroad function of that division was transferred into the Traffic

Operations Division. Proposed adoption of the new sections are necessary to replace the provisions of §§7.41, 7.61, and 7.71, concerning railroad crossings, which are being contemporaneously proposed for repeal. The subject matter of the repealed sections more appropriately falls within Chapter 25. Sections 25.70-25.72 are being amended to make minor and non-substantive corrections

Amended §25.70 revises the existing purpose and scope of this subchapter to allow for incorporation of new §§25.74-25.76 concerning maintenance of railroad underpasses, spur track crossings, and the crossing and maintenance of highway-railway crossings. Previously, this subchapter dealt only with warning signs and signals at railroad crossings.

Amended §25.71 changes the reference from the Interstate Commerce Commission to the United States Department of Transportation. This change is proposed to reflect the current organization of the United States Department of Transportation. Also added are definitions for railroad overpasses and underpasses. The definitions have been numbered in accordance with Texas Register requirements.

Amended §25.72 changes the term "accident" to "crash" to reflect current use of that term among transportation planners and professionals.

New §25.74 outlines the responsibility of the railroad companies and the state as they relate to maintenance and damage costs.

New §25.75 clarifies that an interstate highway includes the frontage roads where technically feasible. This change is to clarify that any spur track crossing an interstate highway through an initial separation of grades will also include consideration of the frontage roads.

New §25.76 clarifies that a railroad is responsible for maintaining a highway-railway crossing from end to end of the railroad ties, as opposed to the existing language which states "between the rails and in the proximity of the same". This change reflects current practice between the department and railroad companies.

#### FISCAL NOTE

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

David T. Newbern, P.E., Director, Traffic Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and new sections.

#### PUBLIC BENEFIT

Mr. Newbern has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing or administering the amendments and new sections will be to consolidate in one chapter existing department rules on railroad crossings. There will be no effect on small businesses.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments and new sections may be submitted to David T. Newbern, P.E., Traffic

Operations Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on June 23, 1998.

#### STATUTORY AUTHORITY

The amendments and new sections are proposed under Transportation Code, §2001.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

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

#### §25.70. Purpose and Scope.

The sections under this subchapter [undesignated head ] describe the policies and procedures governing the department's projects and statutory responsibilities [concerning warning signs and signals] at railroad [grade] crossings.

#### §25.71. Definitions.

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

(1) Active rail line - Any railroad tracks that are classified by the United States Department of Transportation [~~Interstate Commerce Commission~~] to carry freight or passenger trains, and are currently being operated and maintained by a railroad company or railroad carrier.

(2) Active warning device - A bell, flashing light, gate, wigwag, or other automatically activated warning device.

(3) Applicant - A person applying to the department for a permit issued under §25.72 of this title (relating to Dismantling Warning Signals at Railroad Grade Crossings).

(4) Crossbuck - A standard railroad/highway crossing sign design as Number R 15-1, and described in the Manual of Uniform Traffic Control Devices (MUTCD), issued by the United States Department of Transportation, Federal Highway Administration.

(5) Department - The Texas Department of Transportation.

(6) Director - The director of the department's Traffic Operations Division.

(7) District - One of the 25 geographical areas, managed by a district engineer, in which the department conducts its primary work activities.

(8) Grade crossing - The intersection of a railroad and a public roadway at grade.

(9) Local jurisdiction - A city or county government responsible for the building and maintenance of public roadways.

(10) Nonsignalized crossing - A grade crossing not protected by active warning devices.

(11) On-system - A public roadway designated as part of the state highway system.

(12) Off-system - A public roadway not designated as part of the state highway system.

(13) Person - An individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(14) Public roadway - A roadway built and maintained with public funds.

(15) Railroad company - A business operating and maintaining rail transportation of freight and passengers.

(16) Railroad Overpass - A grade separated structure where a roadway crosses over a railroad track or tracks.

(17) Railroad Underpass - A grade separated structure where a roadway crosses under a railroad track or tracks.

(18) Retroreflectorized material - Material that reflects light so that the paths of the reflected light rays are parallel to those of the incident rays.

(19) Salvage value - Any monetary value that may be derived from signal equipment being retired or removed or any material necessary for its operation, including but not limited to the following:

(A) the depreciated value of reusable electrical equipment, such as signal controllers, relays, rectifiers, batteries, etc.;

(B) signal equipment, such as signal heads, lenses, signal hoods and backgrounds, light bulbs, crossbuck signs, gate arm mechanisms, gate arms, lights, counterweights, etc.;

(C) track circuit equipment, such as termination shunts, capacitors, chokes, tuned joint couplers, insulated joints, etc.; and/or

(D) the scrap value of all of the above, including all material or aluminum components, such as signal masts or cantilevers, gate mechanisms, counterweights, signal cabins or signal cases.

(20) Warning device - An active warning device, crossbuck, or other traffic control sign, the purpose of which is to alert motorists of a grade crossing.

(21) Warning signal - A traffic control device that is activated by the approach or presence of a train, including a flashing light signal, automatic gate, or similar device that warns motorists of the approach or presence of a train.

§25.72. *Dismantling Warning Signals at Railroad Grade Crossings.*

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

(c) Conditional approval.

(1) (No Change.)

(2) The district engineer will consider the following factors in determining if removal of the warning signal would adversely affect public safety:

(A)-(E) (No Change.)

(F) train-involved and non-train-involved ~~crash~~ [accident] history at the grade crossing.

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

(f) Appeal process. An applicant may appeal the denial of a permit or the assessment of salvage value to the director. An applicant may appeal an adverse decision of the director by filing a petition for an administrative hearing pursuant to §§1.21-1.61 [ §§1.21-1.63] of this title (relating to Contested Case Procedure).

(g) (No Change.)

(h) Exempt railroads. The provisions of this section shall not apply to Class I or Class II railroads as defined by United States

Department of Transportation [Interstate Commerce Commission] rules and regulations.

§25.74. *Maintenance of Railroad Underpasses.*

(a) The department assumes the maintenance of railroad underpass substructure units, consisting of the piers, abutments and wingwalls but excluding any existing timber substructure for approach spans. Except as provided in subsection (b) of this section, the railroad companies have the maintenance responsibility for the underpass superstructure, including the beams, shoes, deck, waterproofing, and track structure.

(b) In the event of damage to underpass superstructure, beams and/or deck, by highway traffic, the state will assume the cost of repairs. In such cases it will be necessary for the railroad representative and the department's district engineer to agree on the extent of repairs. Upon notification by the railroad company, an agreement will be prepared for execution and a job set up based on the estimated cost of repairs. This work will be performed by railroad forces or contract as may be agreed upon by the railroad representative and the district engineer of the department. Work of an extreme emergency nature may be undertaken by the railroad company upon approval of the district engineer of the department prior to execution of a formal state-railroad agreement to cover the proposed repairs. However, no work will be paid for by the state which is undertaken by the railroad company prior to issuance of a work order by the district engineer of the department.

(c) These provisions for maintenance of underpass substructure units and assumption of costs for repair of damage to superstructure spans caused by highway traffic, as noted in subsection (b) of this section, apply only to underpass structures constructed or reconstructed after October 28, 1960.

§25.75. *Spur Tracks Crossing Existing Highways.*

(a) Grade crossing of any highway or road by a railroad spur track is discouraged. On interstate highways and other major routes a crossing will be allowed only with initial separation of grades. The total cost of constructing and maintaining such a grade separation will be borne by others.

(b) On other than interstate highway facilities (including frontage roads when technically feasible), a spur track grade crossing may be allowed if, in the opinion of the department, the anticipated volumes of train and vehicular traffic and other pertinent factors indicate that the crossing will not be unduly hazardous to the traveling public. If a crossing is allowed, all costs of crossing pavement, highway adjustment and warning protection will be borne by others. Also, conditions may be specified whereby a change in traffic or train conditions or volumes will require a future separation of grades, all at no expense to the state.

§25.76. *Crossing and Maintenance of Highway-Railway Grade Crossings.*

(a) The department, in the expansion, construction, reconstruction, and maintenance of the State Highway System, finds it necessary from time to time to cross the tracks of a railroad at grade or to improve existing highway-railway grade crossings.

(b) The railway companies will furnish to the department, free of cost, the necessary right-of-way, easement, or license for such grade crossings. In recognition of these rights, the department will pay, from available revenues, the cost of construction and reconstruction of all highways and farm-to-market roads at their grade crossings with existing railroads. The obligation of maintenance is to remain with the railway company on that portion from end to end of the railroad ties. On new farm-to-market road projects the clearing



of the right-of-way, including utility line adjustments, cattle guard adjustments, etc., is the responsibility of the county involved.

(c) On existing highway-railway grade crossings, the department will pay, from available funds, for renewing the crossing pavement to provide a satisfactory riding surface for highway traffic. Asphalt or asphaltic concrete crossings are generally not acceptable. As a minimum standard, full depth timber pavement extending to the ends of railroad ties for the full crown width of the highway will be used. Other more durable materials will be used if mutually agreed to by the railroad company and the department.

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

Filed with the Office of the Secretary of State, on May 11, 1998.

TRD-9807665

Bob Jackson

Acting General Counsel

Texas Department of Transportation

Earliest possible date of adoption: June 21, 1998

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

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# WITHDRAWN RULES

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An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

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**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**Part I. Texas Department of Human Services**

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

**Subchapter U. Inspections, Surveys, and Visits**  
**40 TAC §19.2009**

The Texas Department of Human Services has withdrawn from consideration for permanent adoption the proposed amendment to §19.2009, which appeared in the April 17, 1998, issue of the *Texas Register* (23 TexReg 3810).

Filed with the Office of the Secretary of State on May 7, 1998.

TRD-9807457

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: May 7, 1998

For further information, please call: (512) 438-3765



**Chapter 94. Nurse Aides**

**40 TAC §94.11**

The Texas Department of Human Services has withdrawn from consideration for permanent adoption the proposed amendment to §94.11, which appeared in the April 17, 1998, issue of the *Texas Register* (23 TexReg 3811).

Filed with the Office of the Secretary of State on May 7, 1998.

TRD-9807463

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: May 7, 1998

For further information, please call: (512) 438-3765



# ADOPTED RULES

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An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

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## TITLE 1. ADMINISTRATION

### Part XII. Advisory Commission on State Emergency Communications

#### Chapter 251. Regional Plans - Standards

##### 1 TAC §251.7

The Advisory Commission on State Emergency Communications (ACSEC) adopts an amendment to §251.7, concerning the inclusion of third-party software applications into the 9-1-1 integrated workstation environment through expanded guidelines and provisions, with changes to the proposed text as published in the March 13, 1998, issue of the *Texas Register* (23 TexReg 2643).

The rule is adopted in order to provide guidelines for allowing third-party applications which will enable increased functionality of the 9-1-1 workstation to more expeditiously handle emergency calls and the subsequent responses. This is important as technological changes are occurring, as well as the increasing volume of callers who cannot accurately identify their location (e.g. cellular callers).

The following comments were received in favor of the amendment:

The Fayette County, County Judge's Office, supports the proposed changes stating that the rule provides the means for securing the essential 9-1-1 call-taking features while continuing to allow 9-1-1 services to advance along with new technology. He further states that any consideration of integrating such enhancements with the 9-1-1 system be thoroughly reviewed, documented, and tested before deployment.

The Fayette County, 9-1-1 Addressing Office, supports the proposed changes adding that 9-1-1 call-taking equipment plays a very important role and that the equipment should be closely monitored in order to maintain its integrity. He further adds that any additional services above and beyond essential 9-1-1 services should be properly reviewed and meticulously tested prior to integration with any 9-1-1 equipment.

The Capital Area Planning Council supports the proposed changes stating that it is in the best interest of the state and local government, both financially and operationally, to allow the integration of certain public safety supported software programs into the systems. The Council reported that in cooperation with the ACSEC, a successful test of this technology was completed by integrating seven different software programs into an operational 9-1-1 system using the integrated workstation.

The test proved that the systems are robust enough to support the multi-functions without interference in the day-to-day operation of 9-1-1.

The South East Texas Regional Planning Commission supports the proposed changes stating that the advantage behind integrated workstation is improving efficiency and accuracy of 9-1-1 call handling by integrating numerous emergency service duties and call handling functions into a single keyboard and display screen. Elimination of duplicate equipment would significantly reduce the amount of overcrowding already facing many answering sites.

LifeSafety Solutions, Inc., supports the proposed changes stating that it is in the business of expanding and personalizing 9-1-1 call information. The company's product, 9-1-1 Plus, operates in a Microsoft environment through a private intranet which provides for ease of integration. In order for a 9-1-1 Center to receive the expanded information, LifeSafety Solutions provides all hardware, software and telecommunications network at no cost to the governmental entity.

The agency agrees that provisions will keep abreast with changing technology and provide enhancement of 9-1-1 systems for more accurate location information. Upon review of the comments, the Commission also made minor non-substantive clarifications to include statements specifying that the rule applies to 9-1-1 Emergency Communication Districts only if they are receiving equalization surcharge funds from the ACSEC; that provides for a minimum testing period of one week prior to the cut-over of the newly integrated systems; that the introduction of third-party software should not lead to the degradation of equipment or services subsequent to the installation of the ancillary software, and that Commission consideration of related funding issues is a separate matter.

The amendment is adopted under Texas Health and Safety Code, Chapter 771, §§771.051, 771.056, and 771.0057, which authorizes the ACSEC to develop and amend a regional plan for the establishment and operation of 9-1-1 services throughout a 9-1-1 region that meets the standards established by the Commission according to procedures determined by the Commission.

##### §251.7. *Guidelines For Implementing Integrated Services.*

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

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

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

(6) (No change.)

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

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

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

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

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

(1) Integrated Services.

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

- (i) Automatic Number Identification;
- (ii) Automatic Location Identification;
- (iii) Expanded and/or Supplemental Location Information;

- (iv) Call Recording and Playback ;
- (v) Telecommunication Devices for the Deaf (TDD/TTY);
- (vi) Paging;
- (vii) Texas Law Enforcement Teletype Services (TLETS);
- (viii) Computer Aided Dispatch Gateway;
- (ix) Graphical/Mapping Displaying of Location and;
- (x) Call Handling Protocols.

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

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

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

(ii) Baseline memory usage of the operating system should maintain the "80/20" performance rule, thereby demonstrating that 80% of the total memory is available to the operating system applications, while 20% of the total memory remains unused. A minimum testing period of one week prior to the cut over of the newly integrated system is required.

(iii) Documented "Live" testing in a PSAP shall also be completed by the IWS Vendor with cooperation and coordination by the COG or District, demonstrating the successful integration of the authorized third-party applications. Test scenarios should include documentation of the operating system requirements, detailed functionality results as each application is integrated and evaluated independently, and load testing results of all systems operating on the IWS workstation, as well as a standardized set of basic call-taking functions. The installation and use of third-party software should not lead to the degradation of equipment or services subsequent to the installation of the ancillary software.

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

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

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

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

(3) (No change.)

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

This agency hereby certifies that the 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 May 11, 1998.

TRD-9807641

James D. Goerke  
Executive Director

Advisory Commission on State Emergency Communications

Effective date: May 31, 1998

Proposal publication date: March 13, 1998

For further information, please call: (512) 305-6933



## TITLE 16. ECONOMIC REGULATION

### Part I. Railroad Commission of Texas

#### Chapter 3. Oil and Gas Division

#### Conservation Rules and Regulations

##### 16 TAC §3.30

The Railroad Commission of Texas (RRC) adopts new §3.30, relating to a Memorandum of Understanding (MOU) between the Texas Natural Resource Conservation Commission (TNRCC) and the RRC regarding jurisdiction over oilfield wastes. The section is adopted with changes to the proposed text published in the December 26, 1997, issue of the *Texas Register* (22 TexReg 12647).

The MOU refines and clarifies the division of jurisdiction between the TNRCC and the RRC with regard to wastes generated in connection with oil and gas exploration, development, and production activities. The original MOU between the agencies regarding the division of jurisdiction over wastes generated in connection with oil and gas exploration, development, and production took effect on January 1, 1982. The MOU was revised effective December 1, 1987, to reflect legislative clarification of the RRC's jurisdiction over oil and gas wastes and the Texas Water Commission's (predecessor to TNRCC) jurisdiction over industrial and hazardous waste. The 1987 version of the MOU was adopted by reference at §3.8(i) (relating to water protection). This adoption-by-reference is being repealed in a separate rulemaking. The MOU is being set forth in new §3.30 in order to provide for wider distribution of the text of the MOU.

Since the MOU was last updated in December 1987, the agencies have gained experience in applying the terms of the MOU and their underlying statutory authority. In addition, since 1987, the Texas Water Commission, the Texas Air Control Board, and portions of the Texas Department of Health have been combined to form the TNRCC. The agencies have determined that further refinement and revision of the MOU is necessary to reflect experience gained in application of the

1987 MOU and to reflect jurisdiction of the newly created TNRCC over industrial and municipal wastes.

This new §3.30 is being adopted contemporaneously with TNRCC's new 30 Texas Administrative Code §7.117, which is a duplicate version of this MOU. The response to comments in this preamble was developed jointly by RRC and TNRCC.

One commenter expressed its agreement with the definition of "natural gas or natural gas liquids processing plant" in subsection (b)(1)(E) and requested that a definition of "pressure maintenance plant or repressurizing plant" equivalent to that contained in §3.98 of this title (relating to management of hazardous oil and gas waste) be included in new §3.30 for purposes of clarification. The agencies have included the requested clarifying definition in subsection (b)(1)(E).

One commenter recommended that the first sentence of subsection (b)(2)(A) be revised to include a clarifying statement regarding the RRC's jurisdiction over wastes from crude oil and natural gas pipelines. For purposes of clarification, the agencies have repeated language found elsewhere in the MOU regarding the RRC's jurisdiction over wastes from crude oil and natural gas pipelines in the first sentence of subsection (b)(2)(A).

One commenter recommended that a new sentence be added to subsection (d)(2) which provides that the term "oil and gas waste" includes non-hazardous waste generated from oil and gas exploration, development, and production operations. The commenter felt that this language would further clarify that the RRC's jurisdiction extends to wastes from crude oil and natural gas pipeline operations. The agencies generally agree that additional language could be added to this provision for purposes of clarification. However, the agencies do not agree that the language recommended by the commenter would accomplish this goal as it could create the impression that the RRC does not have jurisdiction over *hazardous* wastes generated from natural gas and crude oil pipelines. Therefore, the agencies have added a sentence to subsection (d)(2) which clarifies that the term oil and gas waste includes wastes associated with transportation of crude oil and natural gas by pipeline. Similar language is found elsewhere in the MOU. It should be noted, however, that RRC rules do not authorize injection of hazardous oil and gas waste into Class II injection wells.

One commenter recommended that the language found in proposed subsection (e)(1)(D) regarding jurisdiction over wastes generated at warehouses, pipeyards, or equipment storage facilities also be included in subsection (e)(6) to clarify that the provisions of subsection (e)(1)(D) also apply to a warehouse used to serve a pipeline company's operations. The agencies agree that the proposed MOU should be clarified to reflect the fact that the provisions of subsection (e)(1)(D) are broadly applicable to the various types of activities regulated by the RRC. To avoid creating the impression that subsection (e)(1)(D) applies only to wells or pipelines (for example, it could also apply to a gas plant), the agencies have moved the provisions of proposed subsection (e)(1)(B)-(F) to subsection (e)(11) and renumbered proposed subsection (e)(11) as subsection (e)(12). The agencies have also added a sentence that clarifies that the term "oil and gas exploration, development, and production" includes transportation of crude oil and natural gas by pipeline.

One commenter noted that subsection (e)(6)(A) could be interpreted to extend RRC jurisdiction into the area of natural gas distribution and that TNRCC should continue to have jurisdic-

tion over wastes generated at natural gas distribution systems. The commenter expressed the opinion that extending RRC jurisdiction over these facilities will limit opportunities for recycling because of the need to keep wastes regulated by the RRC segregated from wastes regulated by TNRCC. The agencies disagree with this commenter. Under Texas Natural Resources Code, §91.101, the RRC has jurisdiction over transportation of natural gas prior to use as a fuel. The agencies have always interpreted RRC jurisdiction to extend to gas distribution systems inside city gates. The agencies are unclear as to why this commenter perceives that this jurisdictional scheme minimizes opportunities for recycling or efficient waste management. For example, the commenter specifically mentioned used oil and used oil filters as a class of waste that would be difficult to manage if the RRC were to have jurisdiction over wastes from gas distribution systems. However, specific provision has been made in TNRCC rules for recycling of used oil filters under RRC jurisdiction. Under 30 Texas Administrative Code §330.1189, such filters can be sent to a TNRCC-registered facility, provided they are packaged in accordance with TNRCC rules. Nothing in either RRC or TNRCC rules prohibits combining used oil or used oil filters regulated by the RRC with those regulated by TNRCC. More generally, the MOU itself removes barriers to management of wastes that are chemically and physically similar to those regulated by one agency (TNRCC or RRC) at a facility permitted or otherwise authorized to accept such wastes by the other agency (RRC or TNRCC). No change was made to the rule in response to these comments.

Based upon further discussions with this commenter, the agencies learned that this commenter operates facilities where both oil and gas wastes under RRC jurisdiction, and industrial wastes under TNRCC jurisdiction, are generated and combined for management. This commenter was concerned that the MOU would preclude such combination of RRC-regulated and TNRCC-regulated wastes. Under the MOU, this commenter could combine RRC-regulated and TNRCC-regulated wastes and manage or dispose of the combined waste at a facility permitted by TNRCC if the facility's permit authorizes receipt and management or disposal of that particular type of waste and any authorization required from the RRC required under subsection (f)(3) is obtained.

One commenter expressed concern that the MOU proposed to give TNRCC jurisdiction over wastes from facilities where a company trains its own employees. This commenter recommended that the RRC have jurisdiction over such facilities. The agencies disagree with this comment. First, this commenter may have a misconception about the status quo. Under current agency interpretation, the TNRCC has jurisdiction over wastes from facilities where oilfield workers are trained. The agencies do not perceive a reason to change the status quo. Where wastes used at training facilities are chemically and physically similar to RRC-regulated wastes, the MOU provides a simple mechanism for obtaining approval to dispose of the wastes at RRC-regulated facilities. This waste disposal option should address most of the issues associated with TNRCC regulation of these facilities. No change has been made in response to this comment.

One commenter recommended that the term "commercial service company facility" be revised by changing "exploration, development, OR production of oil or gas or geothermal resources" to "exploration, development, AND production of oil or gas or geothermal resources" to be consistent with §§3.8 and

3.98 (relating to water protection and standards for management of hazardous oil and gas waste). The agencies disagree. The agencies understand this commenter to be referring to the definition of oil and gas waste found in §§3.8 and 3.98. In that definition, the conjunction "and" is appropriate because the definition lists various types of waste that are all considered oil and gas waste. Substitution of the conjunction "and" for "or" in the definition of commercial service company facility would require that the company manage wastes from all three activities to be a commercial service company facility. Management of wastes associated with any one of the listed activities—exploration, development, or production—is sufficient to make a facility a commercial service company facility if other criteria in the definition are met. No change was made to the rule in response to this comment.

One commenter recommended that subsection (e)(3)(A) be revised to provide that stormwater from bulk storage facilities handling both crude oil and refined product not fall under TNRCC jurisdiction if the refined product is stored only for use at the facility. The agencies agree and have revised subsection (e)(3)(A) in accordance with this commenter's recommendation.

Subsection (f)(3)(D) of the proposed MOU has been revised by the agencies to clarify that domestic septage collected in portable toilets can be treated at a facility permitted by TNRCC to accept such waste, not simply any facility permitted by TNRCC for disposal, incineration, or land application for beneficial use of sewage sludge or wastewater treatment sludge.

One commenter requested that subsection (f)(3)(E) be more broadly worded to encompass all wastes that fall under the RRC definition of inert waste. Based on further conversations with this commenter, the agencies learned that the commenter was concerned that the provisions of subsection (f)(3)(E) might be construed as narrowing or limiting the broad language of subsection (f)(3)(A) and (B). The agencies did not intend subsection (f)(3)(E) to limit or otherwise narrow subsection (f)(3)(A) and (B). The agencies have further determined that subsection (f)(3)(E) is unnecessary in light of subsection (f)(3)(B). Therefore, subsection (f)(3)(E) has been deleted and subsections (f)(3)(F) through (I) relettered accordingly.

Several minor, non-substantive changes have also been made. In subsections (b)(1)(B), (b)(1)(C), and (b)(1)(D), references to Texas Health and Safety Code, §361.003(a) have been corrected to read Texas Health and Safety Code, §361.003(34) and a reference in subsection (c)(1) to Texas Health and Safety Code, §361.003 has been changed to Texas Health and Safety Code, §361.003(12). The agencies have also deleted subsection (d)(3)(C) and (D) and replaced them with a parenthetical reference to the Texas Department of Health's jurisdiction over naturally occurring radioactive material (NORM) in subsection (d)(3). Subsection (d)(3)(C) and (D) were non-substantive and dealt with regulations of the Texas Department of Health, an agency that is not a party to this MOU.

The following groups or associations commented on proposed new §3.30: Texas Oil and Gas Association.

New §3.30 is adopted under Texas Water Code, §26.131, which gives the RRC jurisdiction over pollution of surface or subsurface waters from oil and gas exploration, development, and production activities; Texas Water Code, §§27.001-27.105, which authorize the RRC to adopt and enforce rules relating to injection wells; Texas Water Code, §§29.001-29.053, which authorize the RRC to regulate oil and gas waste haulers;



Texas Natural Resources Code, §81.052, which authorizes the RRC to adopt all necessary rules for governing persons and their operations under the jurisdiction of the RRC under §81.051; Texas Natural Resources Code, §85.042(b), which authorizes the RRC to adopt and enforce rules for the prevention of actual waste of oil or operations in the field dangerous to life or property; Texas Natural Resources Code, §85.201, which authorizes the RRC to make and enforce rules for the conservation of oil and gas and prevention of waste of oil and gas; Texas Natural Resources Code, §85.202, which authorizes the RRC to adopt rules to prevent waste of oil and gas in producing operations; Texas Natural Resources Code, §91.101, which authorizes the RRC to adopt rules relating to the various oilfield operations, including the discharge, storage, handling, transportation, reclamation, or disposal of oil and gas waste; and Texas Natural Resources Code §91.602, which authorizes the RRC to adopt and enforce rules relating to the generation, transportation, treatment, storage, and disposal of oil and gas hazardous waste.

The Texas Water Code, §26.131, §§27.001-27.105, and §§29.001-29.053; and Texas Natural Resources Code, §§81.052, 85.042(b), 85.201, 85.202, 91.101, and 91.602 are affected by new §3.30.

§3.30. *Memorandum of Understanding Between the Railroad Commission of Texas (RRC) and the Texas Natural Resource Conservation Commission (TNRCC).*

(a) Need for agreement.

(1) Section 10 of House Bill 1407, 67th Legislature, 1981, which appeared as a footnote to the Texas Solid Waste Disposal Act, Texas Civil Statutes, art. 4477-7, provides as follows: On or before January 1, 1982, the Texas Department of Water Resources, the Texas Department of Health, and the Railroad Commission of Texas shall execute a memorandum of understanding that specifies in detail these agencies' interpretation of the division of jurisdiction among the agencies over waste materials that result from or are related to activities associated with the exploration for and the development, production, and refining of oil or gas. The agencies shall amend the memorandum of understanding at any time that the agencies find it to be necessary.

(2) The original Memorandum of Understanding (MOU) between the agencies became effective January 1, 1982. The MOU was revised effective December 1, 1987, to reflect legislative clarification of the Railroad Commission's jurisdiction over oil and gas wastes and the Texas Water Commission's (successor to the Texas Department of Water Resources) jurisdiction over industrial and hazardous wastes.

(3) The agencies have determined that the revised MOU that became effective on December 1, 1987, should again be revised to further clarify jurisdictional boundaries and to reflect legislative changes in agency responsibility and the combination of the Texas Water Commission, the Texas Air Control Board, and portions of the Texas Department of Health to form the Texas Natural Resource Conservation Commission.

(b) General agency jurisdictions.

(1) Texas Natural Resource Conservation Commission (TNRCC).

(A) The TNRCC has jurisdiction over solid waste under Chapter 361 of the Texas Health and Safety Code, §§361.001-361.754. The TNRCC's jurisdiction encompasses both hazardous and nonhazardous, industrial and municipal, solid wastes.

(B) Under Texas Health and Safety Code, §361.003(34), solid waste under the jurisdiction of the TNRCC is defined to include "garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities."

(C) Solid waste is further defined in Texas Health and Safety Code, §361.003(34), to exclude "material which results from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas pursuant to Section 91.101, Natural Resources Code...."

(D) In addition, Texas Health and Safety Code, §361.003(34), defines the term solid waste to include the following until the United States Environmental Protection Agency (EPA) delegates its authority under the Resource Conservation and Recovery Act, 42 United States Code (U.S.C.) §6901, et seq., (RCRA) to the RRC: "waste, substance or material that results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the administrator of the EPA...."

(E) After delegation of RCRA authority to the Railroad Commission of Texas (RRC), the definition of solid waste (which defines TNRCC's jurisdiction) will not include hazardous wastes generated at natural gas or natural gas liquids processing plants, or reservoir pressure maintenance or repressurizing plants. The term natural gas or natural gas liquids processing plant refers to a plant the primary function of which is the extraction of natural gas liquids from field gas or fractionation of natural gas liquids. The term does not include a separately located natural gas treating plant for which the primary function is the removal of carbon dioxide, hydrogen sulfide, or other impurities from the natural gas stream. A separator, dehydration unit, heater treater, sweetening unit, compressor, or similar equipment is considered a part of a natural gas or natural gas liquids processing plant only if it is located at a plant the primary function of which is the extraction of natural gas liquids from field gas or fractionation of natural gas liquids. Further, a pressure maintenance or repressurizing plant is a plant for processing natural gas for reinjection (for reservoir pressure maintenance or repressurization) in a natural gas recycling project. A compressor station along a natural gas pipeline system or a pump station along a crude oil pipeline system is not a pressure maintenance or repressurizing plant.

(2) Railroad Commission of Texas (RRC).

(A) Generally, under Texas Natural Resources Code, Title 3, and Texas Water Code, Chapter 26, wastes (both hazardous and nonhazardous) resulting from activities associated with the exploration, development, or production of oil or gas or geothermal resources, including transportation of crude oil or natural gas by pipeline, and other activities regulated by the RRC are under the jurisdiction of the RRC. These wastes are termed "oil and gas wastes." In compliance with Texas Health and Safety Code, §361.025 (concerning exempt activities), a list of activities that generate wastes that are subject to the jurisdiction of the RRC is found at §3.8(a)(30) of this title (relating to water protection) and at 30 Texas Administrative Code §335.1 (concerning definitions), which contains a definition of "activities associated with the exploration, development, and production of oil or gas or geothermal resources." This MOU provides

further guidance regarding the agencies' interpretation of these rules and statutes.

(B) Notwithstanding subparagraph (A) of this paragraph, hazardous wastes generated at natural gas or natural gas liquids processing plants or reservoir pressure maintenance or repressurizing plants are subject to the jurisdiction of the TNRCC until the RRC is authorized by EPA to administer RCRA. When the RRC is authorized by EPA to administer RCRA, jurisdiction over such hazardous wastes will transfer from the TNRCC to the RRC.

(c) Definition of hazardous waste.

(1) Under the Texas Health and Safety Code, §361.003(12), a "hazardous waste" subject to the jurisdiction of the TNRCC is defined as "solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §6901, et seq.)." Similarly, under Texas Natural Resources Code, §91.601(1), "oil and gas hazardous waste" subject to the jurisdiction of the RRC is defined as an "oil and gas waste that is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901, et seq.)."

(2) Federal regulations adopted under authority of the federal Solid Waste Disposal Act, as amended by RCRA, exempt from regulation as hazardous waste certain oil and gas wastes. Under 40 Code of Federal Regulations (CFR) §261.4(b)(5), "drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy" are described as wastes that are exempt from federal hazardous waste regulations.

(3) A partial list of wastes associated with oil, gas, and geothermal exploration, development, and production that are considered exempt from hazardous waste regulation under RCRA can be found in EPA's "Regulatory Determination for Oil and Gas and Geothermal Exploration, Development and Production Wastes," 53 FedReg 25,446 (July 6, 1988). A further explanation of the exemption can be found in the "Clarification of the Regulatory Determination for Wastes from the Exploration, Development and Production of Crude Oil, Natural Gas and Geothermal Energy," 58 FedReg 15,284 (March 22, 1993). The exemption codified at 40 CFR §261.4(b)(5) and discussed in the Regulatory Determination has been, and may continue to be, clarified in subsequent guidance issued by the EPA.

(d) Jurisdiction over specific disposal activities.

(1) Discharges under Texas Water Code, Chapter 26. Under the Texas Water Code, Chapter 26, the TNRCC has jurisdiction over discharges of waste into or adjacent to water in the state, other than discharges regulated by the RRC. The RRC regulates discharges of waste from activities associated with the exploration, development, or production of oil, gas, or geothermal resources, including transportation of crude oil and natural gas by pipeline, and from solution brine mining activities (except solution mining activities conducted for the purpose of creating caverns in naturally-occurring salt formations for the storage of wastes regulated by the TNRCC) under Texas Natural Resources Code, Title 3, and Texas Water Code, Chapter 26. Discharges of waste regulated by the RRC into water in the state shall not cause a violation of the water quality standards. While water quality standards are established by the TNRCC, the RRC has the responsibility for enforcing any violations of such standards. Texas Water Code, Chapter 26, does not require

that discharges regulated by the RRC comply with regulations of the TNRCC that are not water quality standards. Because of the complexity of 30 Texas Administrative Code §307.6 (concerning toxic materials), the staffs of the TNRCC and the RRC will consult from time to time regarding application and interpretation of the Texas Surface Water Quality Standards.

(2) Disposal wells under Texas Water Code, Chapter 27. Jurisdiction over wastes disposed by injection is divided between the RRC and the TNRCC as set forth in Texas Water Code, Chapter 27 (the Injection Well Act). The RRC has jurisdiction under Texas Water Code, Chapter 27, over injection wells used to dispose of oil and gas waste. Texas Water Code, Chapter 27, defines "oil and gas waste" to mean "waste arising out of or incidental to drilling for or producing of oil, gas, or geothermal resources, waste arising out of or incidental to the underground storage of hydrocarbons other than storage in artificial tanks or containers, or waste arising out of or incidental to the operation of gasoline plants, natural gas processing plants, or pressure maintenance or repressurizing plants. The term includes but is not limited to salt water, brine, sludge, drilling mud, and other liquid or semi-liquid waste material." The term "waste arising out of or incidental to drilling for or producing of oil, gas, or geothermal resources" includes waste associated with transportation of crude oil or natural gas by pipeline pursuant to Texas Natural Resources Code, §91.101. The TNRCC has jurisdiction over injection wells used to dispose of other types of waste.

(3) Disposal of naturally occurring radioactive material (NORM). (The term "disposal" does not include receipt, possession, use, processing, transfer, transport, storage, or commercial distribution of radioactive materials, including NORM. These activities are under the jurisdiction of the Texas Department of Health per Texas Health and Safety Code, §401.011(a)).

(A) Under Texas Health and Safety Code, §401.415, the RRC has jurisdiction over the disposal of NORM that constitutes, is contained in, or has contaminated oil and gas waste. This waste material is called "oil and gas NORM waste." Oil and gas NORM waste may be generated in connection with the exploration, development, or production of oil or gas. Oil and gas NORM waste may also be generated in connection with geothermal resource exploration, development, or production activities or solution brine mining activities.

(B) Under Texas Health and Safety Code, §401.412, the TNRCC has jurisdiction over the disposal of NORM which is not oil and gas NORM waste.

(e) Jurisdiction over waste from specific oil and gas activities.

(1) Drilling, operation, and plugging of wells associated with the exploration, development, or production of oil, gas, or geothermal resources. Wells associated with the exploration, development, or production of oil, gas, or geothermal resources include exploratory wells, cathodic protection holes, core holes, oil wells, gas wells, geothermal resource wells, fluid injection wells used for secondary or enhanced recovery of oil or gas, oil and gas waste disposal wells, and injection water source wells. Several types of waste materials can be generated during the drilling, operation, and plugging of these wells. These waste materials include drilling fluids (including water-based and oil-based fluids), cuttings, produced water, produced sand, waste hydrocarbons (including used oil), fracturing fluids, spent acid, workover fluids, treating chemicals (including scale inhibitors, emulsion breakers, paraffin inhibitors, and surfactants), waste cement, filters (including used oil filters), domestic sewage (including water-borne human waste and waste from activities such as bathing and food

preparation), and trash (including inert waste, barrels, dope cans, oily rags, mud sacks, and garbage). Generally, these wastes, whether disposed of by discharge, landfill, land farm, evaporation, or injection, are subject to the jurisdiction of the RRC.

(2) Field treatment of produced fluids. Oil, gas, and water produced from oil, gas, or geothermal resource wells may be treated in the field in facilities such as separators, skimmers, heater treaters, dehydrators, and sweetening units. Waste materials that result from the field treatment of oil and gas include waste hydrocarbons (including used oil), produced water, hydrogen sulfide scavengers, dehydration wastes, treating and cleaning chemicals, filters (including used oil filters), asbestos insulation, domestic sewage, and trash are subject to the jurisdiction of the RRC.

(3) Storage of oil.

(A) Tank bottoms, storm water runoff, and other wastes from the storage of crude oil (whether foreign or domestic) before it enters the refinery are under the jurisdiction of the RRC. In addition, waste resulting from storage of crude oil at refineries is subject to the jurisdiction of the TNRCC. Further, stormwater runoff from terminal facilities where both refined products intended for use offsite and crude oil are stored in aboveground tanks is under the jurisdiction of the TNRCC. Stormwater runoff from a terminal facility where crude oil is stored prior to refining and at which refined products are stored solely for use at the facility is under the jurisdiction of the RRC.

(B) Wastes generated from storage tanks which are part of the refinery and wastes resulting from the wholesale and retail marketing of refined products are subject to the jurisdiction of the TNRCC.

(4) Underground hydrocarbon storage. The disposal of wastes, including saltwater, resulting from the construction, creation, operation, maintenance, closure, or abandonment of an "underground hydrocarbon storage facility" is subject to the jurisdiction of the RRC, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" have the meanings set out in Texas Natural Resources Code, §91.201.

(5) Underground natural gas storage. The disposal of wastes resulting from the construction, operation, or abandonment of an "underground natural gas storage facility" is subject to the jurisdiction of the RRC, provided that the terms "natural gas" and "storage facility" have the meanings set out in Texas Natural Resources Code, §91.173.

(6) Transportation of crude oil or natural gas.

(A) Crude oil and natural gas are transported by railcars, tank trucks, barges, tankers, and pipelines. The RRC has jurisdiction over waste from the transportation of crude oil by pipeline, regardless of the crude oil source (foreign or domestic) prior to arrival at a refinery. The RRC also has jurisdiction over waste from the transportation by pipeline of natural gas, including natural gas liquids, prior to the use of the natural gas in any manufacturing process or as a residential or industrial fuel. The transportation wastes subject to the jurisdiction of the RRC include wastes from pipeline compressor or pressure stations and wastes from pipeline hydrostatic pressure tests and other pipeline operations. These wastes include waste hydrocarbons (including used oil), treating and cleaning chemicals, filters (including used oil filters), scraper trap sludge, trash, domestic sewage, wastes contaminated with polychlorinated biphenyls (PCBs) (including transformers, capacitors, ballasts, and soils), soils contaminated with mercury from leaking mercury meters, asbestos insulation, transite pipe, and hydrostatic test waters.

(B) The TNRCC has jurisdiction over waste from transportation of refined products by pipeline.

(C) The TNRCC also has jurisdiction over wastes associated with transportation of crude oil and natural gas, including natural gas liquids, by railcar, tank truck, barge, or tanker.

(7) Reclamation plants.

(A) The RRC has jurisdiction over wastes from reclamation plants that process wastes from activities associated with the exploration, development, or production of oil, gas, or geothermal resources, such as lease tank bottoms. Waste management activities of reclamation plants for other wastes are subject to the jurisdiction of the TNRCC.

(B) In addition to waste management jurisdiction, the RRC has jurisdiction over the conservation and prevention of waste of crude oil and therefore must approve all movements of crude oil-containing materials to reclamation plants. The applicable statute and regulations consist primarily of reporting requirements for accounting purposes.

(8) Refining of oil.

(A) The management of wastes resulting from oil refining operations, including spent caustics, spent catalysts, still bottoms or tars, and API separator sludges, is subject to the jurisdiction of the TNRCC. The processing of light ends from the distillation and cracking of crude oil or crude oil products is considered to be a refining operation. The term "refining" does not include the processing of natural gas or natural gas liquids.

(B) The RRC has jurisdiction over refining activities for the conservation and the prevention of waste of crude oil. The RRC requires that all crude oil streams into or out of a refinery be reported for accounting purposes. In addition, the RRC requires that materials recycled and used as a fuel, such as still bottoms or waste crude oil, be reported.

(9) Natural gas or natural gas liquids processing plants (including gas fractionation facilities) and pressure maintenance or repressurizing plants. Wastes resulting from activities associated with these facilities include produced water, cooling tower water, sulfur bead, sulfides, spent caustics, sweetening agents, spent catalyst, waste hydrocarbons (including used oil), asbestos insulation, wastes contaminated with PCBs (including transformers, capacitors, ballasts, and soils), treating and cleaning chemicals, filters, trash, domestic sewage, and dehydration materials. These wastes are subject to the jurisdiction of the RRC under Texas Natural Resources Code, §91.101. Disposal of waste from activities associated with natural gas or natural gas liquids processing plants (including gas fractionation facilities), and pressure maintenance or repressurizing plants by injection is subject to the jurisdiction of the RRC under Texas Water Code, Chapter 27. Notwithstanding any contrary provision of this paragraph, until delegation of authority under RCRA to the RRC, the TNRCC shall have jurisdiction over wastes resulting from these activities that are not exempt from federal hazardous waste regulation under RCRA and that are considered hazardous under applicable federal rules.

(10) Manufacturing processes.

(A) Wastes that result from the use of natural gas, natural gas liquids, or products refined from crude oil in any manufacturing process, such as the production of petrochemicals or plastics, or from the manufacture of carbon black, are industrial wastes subject to the jurisdiction of the TNRCC. The term "manufacturing process" does not include the processing (including fractionation) of

natural gas or natural gas liquids at natural gas or natural gas liquids processing plants.

(B) The RRC has jurisdiction under Texas Natural Resources Code, Chapter 87, to regulate the use of natural gas in the production of carbon black.

(11) Commercial service company facilities and training facilities.

(A) The TNRCC has jurisdiction over wastes generated at facilities, other than actual exploration, development, or production sites (field sites), where oil and gas industry workers are trained. In addition, the TNRCC has jurisdiction over wastes generated at facilities where materials, processes, and equipment associated with oil and gas industry operations are researched, developed, designed, and manufactured. However, wastes generated from tests of materials, processes, and equipment at field sites are under the jurisdiction of the RRC.

(B) The TNRCC also has jurisdiction over waste generated at commercial service company facilities operated by persons providing equipment, materials, or services (such as drilling and work over rig rental and tank rental; equipment repair; drilling fluid supply; and acidizing, fracturing, and cementing services) to the oil and gas industry. These wastes include the following wastes when they are generated at commercial service company facilities: empty sacks, containers, and drums; drum, tank, and truck rinsate; sandblast media; painting wastes; spent solvents; spilled chemicals; waste motor oil; and unused fracturing and acidizing fluids.

(C) The term "commercial service company facility" does not include a station facility such as a warehouse, pipeyard, or equipment storage facility belonging to an oil and gas operator and used solely for the support of that operator's own activities associated with the exploration, development, or production of oil or gas or geothermal resources, including the transportation of crude oil or natural gas by pipeline.

(D) Notwithstanding subparagraphs (A)-(C) of this paragraph, the RRC has jurisdiction over disposal of oil and gas wastes, such as waste drilling fluids and NORM-contaminated pipe scale, that are managed at commercial service company facilities.

(E) The RRC also has jurisdiction over wastes such as vacuum truck rinsate and tank rinsate generated at facilities operated by oil and gas waste haulers permitted by the RRC pursuant to §3.8(f) of this title (relating to water protection).

(12) Spill response. Contaminated soil and other wastes that result from a spill must be managed in accordance with the governing statutes and regulations adopted by the agency responsible for the activity that resulted in the spill. Coordination of issues of spill notification, prevention, and response shall be addressed in the State of Texas Oil and Hazardous Substance Spill Contingency Plan and may be addressed further in a separate Memorandum of Understanding among these agencies and other appropriate state agencies.

(f) Interagency activities.

(1) Recycling and pollution prevention.

(A) The TNRCC and the RRC encourage generators to eliminate pollution at the source and recycle whenever possible to avoid disposal of solid wastes. Questions regarding source reduction and recycling may be directed to the TNRCC Office of Pollution Prevention & Recycling (OPPR)/Clean Texas 2000, telephone number (800) 64-TEXAS, or to the Waste Minimization Program at the RRC.

The TNRCC reserves the right to require generators to explore source reduction and recycling alternatives prior to authorizing disposal of any waste under the jurisdiction of the RRC at a facility regulated by the TNRCC; similarly, the RRC reserves the right to require generators to explore source reduction and recycling alternatives prior to authorizing disposal of any waste under the jurisdiction of the TNRCC at a facility regulated by the RRC.

(B) The TNRCC OPPR and the RRC Waste Minimization Program will meet at least two times each year to maintain a working relationship to enhance the efforts to share information and use resources more efficiently. The TNRCC OPPR will make the proper TNRCC personnel aware of the services offered by the RRC Waste Minimization Program, share information with the RRC Waste Minimization Program to maximize services to oil and gas operators, and advise oil and gas operators of RRC Waste Minimization Program services. The RRC Waste Minimization Program will make the proper RRC personnel aware of the services offered by the TNRCC OPPR, share information with the TNRCC OPPR to maximize services to industrial operators, and advise industrial operators of the TNRCC OPPR services.

(2) Treatment of wastes under RRC jurisdiction at facilities registered by TNRCC's Petroleum Storage Tank Division.

(A) Soils contaminated with constituents that are physically and chemically similar to those normally found in soils at leaking underground petroleum storage tanks from generators under the jurisdiction of the RRC are eligible for treatment at TNRCC regulated soil treatment facilities once alternatives for recycling and source reduction have been explored. For the purpose of this provision, soils containing petroleum substance(s) as defined in 30 Texas Administrative Code §334.481 (concerning definitions) are considered to be similar, but drilling muds, acids, or other chemicals used in oil and gas activities are not considered similar. Generators under the jurisdiction of the RRC must meet the same requirements as generators under the jurisdiction of the TNRCC when sending their petroleum contaminated soils to soil treatment facilities under TNRCC jurisdiction. Those requirements are in 30 Texas Administrative Code §334.496 (concerning shipping procedures applicable to generators of petroleum-substance waste), except subsection (c) which is not applicable, and 30 Texas Administrative Code §334.497 (concerning recordkeeping and reporting procedures applicable to generators). RRC generators with questions on these requirements should call the TNRCC Petroleum Storage Tank (PST) Division, Responsible Party Investigations Section, telephone number (512) 239-2200.

(B) Generators under RRC jurisdiction should also be aware that TNRCC regulated soil treatment facilities are required by 30 Texas Administrative Code §334.499 (concerning shipping requirements applicable to owners or operators of storage, treatment, or disposal facilities) to maintain documentation on the soil sampling and analytical methods, chain-of-custody, and all analytical results for the soil received at the facility and transported off-site or reused on-site.

(C) The RRC must specifically authorize management of contaminated soils under its jurisdiction at facilities registered by the PST Division of the TNRCC. The RRC may grant such authorizations by rule, or on an individual basis through permits or other written authorizations.

(D) All waste materials, including those that have been treated, that are subject to the jurisdiction of the RRC and are managed at facilities registered by the PST Division of the TNRCC will remain subject to the jurisdiction of the RRC. Such materials

will be subject to RRC regulations regarding final reuse, recycling, or disposal.

(E) TNRCC waste codes and registration numbers are not required for management of wastes under the jurisdiction of the RRC at facilities registered by the PST Division of the TNRCC.

(3) Disposal of wastes under RRC jurisdiction at facilities permitted by the TNRCC.

(A) As provided in this paragraph, waste materials subject to the jurisdiction of the RRC may be managed at solid waste facilities under the jurisdiction of the TNRCC once alternatives for recycling and source reduction have been explored. The RRC must specifically authorize management of wastes under its jurisdiction at facilities regulated by the TNRCC. The RRC may grant such authorizations by rule, or on an individual basis through permits or other written authorizations. In addition, except as provided in subparagraph (B) of this paragraph, the concurrence of the TNRCC is required to manage waste under the jurisdiction of the RRC at a facility regulated by the TNRCC. The TNRCC's concurrence may be subject to specified conditions.

(B) A facility under the jurisdiction of the TNRCC may accept, without further individual concurrence, waste under the jurisdiction of the RRC if that facility is permitted or otherwise authorized to accept that particular type of waste. The phrase "that type of waste" does not specifically refer to waste under the jurisdiction of the RRC, but rather to the waste's physical and chemical characteristics.

(C) In all other instances, individual written concurrences from the TNRCC shall be required to manage wastes under the jurisdiction of the RRC at TNRCC regulated facilities. (This is required only if the TNRCC regulated facility receiving the waste does not have approval to accept the waste included in its permit or other authorization provided by the TNRCC.) To obtain an individual concurrence, the waste generator must provide to the TNRCC sufficient information to allow the concurrence determination to be made, including the identity of the proposed waste management facility, the process generating the waste, the quantity of waste, and the physical and chemical nature of the waste involved (using process knowledge and/or laboratory analysis as defined in 30 Texas Administrative Code, Chapter 335, Subchapter R (concerning waste classification)). In obtaining TNRCC approval, generators may use their existing knowledge about the process or materials entering it to characterize their wastes. Material Safety Data Sheets, manufacturer's literature, and other documentation generated in conjunction with a particular process may be used. Process knowledge must be documented and submitted with the request for approval.

(D) Notwithstanding subparagraphs (A)-(C) of this paragraph, waste sludge subject to the jurisdiction of the RRC, other than domestic septage that is not mixed with other waste materials, may not be applied to the land at a facility permitted by the TNRCC for the beneficial use of sewage sludge or water treatment sludge. Domestic septage collected from portable toilets at facilities subject to RRC jurisdiction that is not mixed with other waste materials may be managed at a facility permitted by the TNRCC for disposal, incineration, or land application for beneficial use of such domestic septage waste without specific authorization from the TNRCC.

(E) Additional guidance regarding requirements for, and restrictions on, management of particular types of wastes regulated by the RRC at facilities registered or permitted by the TNRCC may be issued in the future.

(F) TNRCC waste codes and registration numbers are not required for management of wastes under the jurisdiction of the RRC at facilities under the jurisdiction of the TNRCC. If a receiving facility nevertheless requests or requires a TNRCC waste code for waste under the jurisdiction of the RRC, a code consisting of the following may be provided:

(i) the sequence number "RRCT";

(ii) the appropriate form code, as specified in 30 Texas Administrative Code Chapter 335, Subchapter R, Appendix 3 (concerning form codes); and

(iii) the waste classification code "H" if the waste is a hazardous oil and gas waste, or "R" if the waste is a nonhazardous oil and gas waste.

(G) If a facility requests or requires a TNRCC waste generator registration number for wastes under the jurisdiction of the RRC, the registration number "XXXRC" may be provided.

(H) Wastes that are under the jurisdiction of the RRC need not be reported to the TNRCC's Industrial and Hazardous Waste Division.

(4) Management of nonhazardous wastes under TNRCC jurisdiction at facilities regulated by the RRC.

(A) Once alternatives for recycling and source reduction have been explored, and with prior authorization from the RRC, the following nonhazardous wastes subject to the jurisdiction of the TNRCC may be disposed of, other than by injection into a Class II well, at a facility regulated by the RRC; bioremediated at a facility regulated by the RRC (prior to reuse, recycling, or disposal); or reclaimed at a crude oil reclamation facility regulated by the RRC: nonhazardous wastes that are chemically and physically similar to oil and gas wastes, but excluding soils, media, debris, sorbent pads, and other clean-up materials that are contaminated with refined petroleum products.

(B) To obtain an individual authorization from the RRC, the waste generator must provide the following information, in writing, to the RRC: the identity of the proposed waste management facility, the quantity of waste involved, a hazardous waste determination that addresses the process generating the waste and the physical and chemical nature of the waste, and any other information that the RRC may require. As appropriate, the RRC shall reevaluate any authorization issued pursuant to this paragraph.

(C) Once alternatives for recycling and source reduction have been explored, and subject to the RRC's individual authorization, the following wastes under the jurisdiction of the TNRCC are authorized without further TNRCC approval to be disposed of at a facility regulated by the RRC, bioremediated at a facility regulated by the RRC, or reclaimed at a crude oil reclamation facility regulated by the RRC: nonhazardous bottoms from tanks used only for crude oil storage; unused and/or reconditioned drilling and completion/workover wastes from commercial service company facilities; used and/or unused drilling and completion/workover wastes generated at facilities where workers in the oil and gas exploration, development, and production industry are trained; used and/or unused drilling and completion/workover wastes generated at facilities where materials, processes, and equipment associated with oil and gas exploration, development, and production operations are researched, developed, designed, and manufactured; unless other provisions are made in the underground injection well permit used and/or unused drilling and completion wastes (but not workover wastes) generated in connection with the drilling and completion of Class I, III, and

V injection wells; wastes (such as contaminated soils, media, debris, sorbent pads, and other cleanup materials) associated with spills of crude oil and natural gas liquids if such wastes are under the jurisdiction of the TNRCC; and sludges from washout pits at commercial service company facilities.

(D) In a public health, public safety, or environmental emergency, the RRC and the TNRCC may consider allowing injection of wastes under the jurisdiction of the TNRCC into Class II injection wells permitted by the RRC.

(E) Pursuant to Texas Water Code, §27.0511(g), TNRCC concurrence is required for injection of TNRCC-regulated waste in connection with a secondary or tertiary recovery project.

(F) Additional guidance regarding requirements for, and restrictions on, management of particular types of wastes covered under this MOU may be issued in the future.

(5) Drilling in landfills. The TNRCC will notify the Environmental Services Section of the Oil and Gas Division of the RRC and the landfill owner at the time a drilling application is submitted if an operator proposes to drill a well through a landfill regulated by the TNRCC. The RRC and the TNRCC will cooperate and coordinate with one another in advising the appropriate parties of measures necessary to reduce the potential for the landfill contents to cause groundwater contamination as a result of landfill disturbance associated with drilling operations.

(6) Coordination of enforcement actions and cooperative sharing of enforcement information.

(A) In the event that a generator or transporter disposes, without proper authorization, of wastes regulated by the TNRCC at a facility permitted by the RRC, the TNRCC is responsible for enforcement actions against the generator or transporter, and the RRC is responsible for enforcement actions against the disposal facility. In the event that a generator or transporter disposes, without proper authorization, of wastes regulated by the RRC at a facility permitted by the TNRCC, the RRC is responsible for enforcement actions against the generator or transporter, and the TNRCC is responsible for enforcement actions against the disposal facility.

(B) The TNRCC and the RRC agree to cooperate with one another by sharing enforcement information. Employees of either agency who discover, in the course of their official duties, information that indicates a violation of a statute, regulation, order, or permit pertaining to wastes under the jurisdiction of the other agency, are encouraged to notify the other agency. In addition, to facilitate enforcement actions, each agency is encouraged to share information in its possession with the other agency if requested by the other agency to do so.

(g) Definitions. Words shall have meaning as defined in the rules of each agency. Words not so defined shall have their regular meaning as used as a term of art in industry practice.

(h) Disputes. The staff of the RRC and the TNRCC shall meet as necessary to attempt to resolve any disputes regarding interpretation of this MOU and disputes regarding definitions and terms of art. If a staff-level meeting fails to resolve the dispute, the dispute will be elevated to the senior management of both agencies for resolution.

(i) Effective date. This Memorandum of Understanding, as of its effective date, shall supersede the prior Memorandum of Understanding among the agencies, dated December 1, 1987.

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 May 11, 1998.

TRD-9807661

Mary Ross McDonald

Deputy General Counsel

Railroad Commission of Texas

Effective date: May 31, 1998

Proposal publication date: December 26, 1997

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



## Part III. Texas Alcoholic Beverage Commission

### Chapter 31. Administration

#### Administrative Functions of the Commission

##### 16 TAC §31.5

The Texas Alcoholic Beverage Commission adopts an amendment to §31.5, governing the schedule of charges to be imposed for providing copies of public information. The amendments are adopted without changes to the proposed text as published in the February 27, 1998, issue of the *Texas Register* (23 TexReg 1778).

The amendments are adopted to bring the commission's practice into conformity with the guidelines of the Texas General Services Commission and the requirements of Texas Government Code, §552.262 and 1 TAC §§111.63-111.70

No public comment was received regarding these amendments.

This amendment is adopted pursuant to the authority granted by §5.31 of the Alcoholic Beverage Code.

Cross reference: §5.31, Alcoholic Beverage Code.

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

Filed with the Office of the Secretary of State on May 4, 1998.

TRD-9807255

Doyle Bailey

Administrator

Texas Alcoholic Beverage Commission

Effective date: May 24, 1998

Proposal publication date: February 27, 1998

For further information, please call: (512) 206-3204



## TITLE 22. EXAMINING BOARDS

### Part XXIII. Texas Real Estate Commission

#### Chapter 535. Provisions of the Real Estate License Act

## Subchapter G. Mandatory Continuing Education

### 22 TAC §535.71

The Texas Real Estate Commission (TREC) adopts an amendment to §535.71, concerning approval of mandatory continuing education (MCE) providers, courses and instructors, without changes to the proposed text as published in the March 13, 1998, issue of the *Texas Register* (23 TexReg 2693).

The amendment replaces the term "salesman" with "salesperson" to comply with House Bill 814, 75th Legislature (1997), which requires TREC to use the term "salesperson" in all its rules and documents no later than January 1, 1999.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

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 May 7, 1998.

TRD-9807438

Mark A. Moseley

General Counsel

Texas Real Estate Commission

Effective date: May 27, 1998

Proposal publication date: March 13, 1998

For further information, please call: (512) 465-3900



## Subchapter H. Recovery Fund

### 22 TAC §535.81

The Texas Real Estate Commission (TREC) adopts an amendment to §535.81, concerning fees paid by real estate licensees for the real estate recovery fund, without changes to the proposed text as published in the March 13, 1998, issue of the *Texas Register* (23 TexReg 2694).

The amendment replaces the term "salesman" with "salesperson" to comply with House Bill 814, 75th Legislature (1997), which requires TREC to use the term "salesperson" in all its rules and documents no later than January 1, 1999. The amendment also replaces the gender specific term "he" with "a person" for consistency.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

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

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Mark A. Moseley

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Texas Real Estate Commission

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For further information, please call: (512) 465-3900



## Subchapter I. Licenses

### 22 TAC §§535.92, 535.93, 535.95

*(Editor's note: In the proposed version §535.92 as published March 13, 1998 (23 TexReg 2694), subsections (a)-(d) were incorrectly shown as "(No Change)" due to an error by the Texas Register. However, the amended text for subsection (d) was also published correctly. It is adopted here without change to the proposal as filed by the agency. The text is being published for clarification.)*

The Texas Real Estate Commission (TREC) adopts amendments to §§535.92, 535.93 and 535.95, concerning license renewals for real estate licensees, without changes to the proposed text as published in the March 13, 1998, issue of the *Texas Register* (23 TexReg 2694).

The amendments replace the term "salesman" with "salesperson" to comply with House Bill 814, 75th Legislature (1997), which requires TREC to use the term "salesperson" in all its rules and documents no later than January 1, 1999. The amendments also replace the gender specific term "his" with terms which are not gender specific for consistency.

No comments were received regarding the proposed amendments.

The amendments are adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

*§535.92. Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements.*

(a)-(c) (No change.)

(d) An inactive broker or inactive salesperson may renew a license by complying with the renewal procedures established by the commission. An inactive licensee shall furnish a residence address at the time the licensee becomes inactive and report all subsequent address changes.

(e) (No change.)

(f) Each licensee shall, as a condition of maintaining a license, pay the renewal fee no later than the day the current license expires. A licensee who fails timely to pay a renewal fee must apply for and receive a new active license in order to act as a real estate broker or salesperson. If the application is filed within one year after the expiration of an existing license, the commission may issue the new license prior to completing the investigation of any complaint pending against the applicant or of any matter revealed by the application without waiving the right to initiate an action to suspend or revoke the license after notice and hearing in accordance with the Act, §17.

(g) The commission shall advise each licensee of the time period for filing a renewal application and paying the renewal fee by mailing an appropriate notice to the licensee's last known business address, or if the licensee is an inactive salesperson, to the licensee's last known residence address. The notice shall be mailed at least three months before expiration of the current license. If the licensee

is subject to mandatory continuing education (MCE) requirements, the notice must also contain the number of MCE hours for which the licensee has been given credit and the number of additional MCE hours required for renewal of the license. The commission shall have no obligation to so notify an inactive salesperson who has failed to furnish the commission with the salesperson's residence address or a corporation, limited liability company or partnership that has failed to designate an officer, manager or partner who meets the requirements of the Real Estate License Act (the Act). The commission may not renew a license issued to a corporation, limited liability company or partnership unless the corporation, limited liability company or partnership has designated an officer, manager or partner who meets the requirements of the Act, including satisfaction of MCE requirements. No person may act as designated officer, manager or partner if the person has failed to meet MCE requirements. For the purpose of this section, MCE requirements for the designated officer, manager or partner must be satisfied during the term of any individual broker license held by the officer, manager or partner. A designated partner who is not licensed individually as a broker on September 1, 1991, shall be considered to have been licensed as a broker on that date and must complete MCE required for a two-year license expiring on August 31, 1993, and for every two years thereafter in order to renew the license of the partnership. The commission shall assign a number to an unlicensed designated partner to use in lieu of an individual license number when completing MCE forms required by the commission. If the individual real estate broker license of a designated partner expires, the partnership may only renew its license if the designated partner has satisfied MCE requirements that would have been imposed if the license of the designated partner had not expired.

(h)-(k) (No change.)

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 May 7, 1998.

TRD-9807437

Mark A. Moseley

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 465-3900

## Subchapter J. Fees

### 22 TAC §535.101

The Texas Real Estate Commission (TREC) adopts an amendment to §535.101, concerning fees paid by real estate licensees and applicants, without changes to the proposed text as published in the March 13, 1998, issue of the *Texas Register* (23 TexReg 2695).

The amendment replaces the term "salesman" with "salesperson" to comply with House Bill 814, 75th Legislature (1997), which requires TREC to use the term "salesperson" in all its rules and documents no later than January 1, 1999.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commis-

sion to make and enforce all rules and regulations necessary for the performance of its duties.

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

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Mark A. Moseley

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Texas Real Estate Commission

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For further information, please call: (512) 465-3900

## Subchapter K. Place of Business

### 22 TAC §§535.111-535.113

The Texas Real Estate Commission (TREC) adopts amendments to §§535.111-535.113, concerning a real estate broker's place of business. The amendments to §§535.111 and 535.113 are adopted without changes to the proposed text as published in the March 13, 1998, issue of the *Texas Register* (23 TexReg 2696).

The amendment to §535.112 is adopted with one change; an additional term "salesmen" was replaced by "salespersons."

The amendments are necessary for TREC to comply with House Bill 814, 75th Legislature (1997), which requires TREC to use the term "salesperson" in all its rules and documents no later than January 1, 1999. The amendments also replace the gender specific term "his" with terms which are not gender specific for consistency.

No comments were received regarding the proposed amendments.

The amendments are adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

§535.112. *Branch Office.*

(a) A branch office license is required when the public would reasonably construe that the broker has an office at a location other than the location of the broker's main office address.

(b) A branch office license must be applied for and obtained if a broker maintains more than one place of business. Even though an office is used only by salespersons, it remains the broker's office as the broker is responsible for all business activities conducted from it.

(c) (No change.)

(d) A licensed broker may have as many offices and use as many assumed business names as the broker desires, provided branch office licenses are obtained and the assumed names are filed with the commission.

(e) (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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Texas Real Estate Commission

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For further information, please call: (512) 465-3900



## Subchapter L. Termination of Salesperson's Association with Sponsoring Broker

### 22 TAC §§535.121-535.123

The Texas Real Estate Commission (TREC) adopts amendments to §535.121, concerning inactive salesperson license, §535.122, concerning reactivation of salesperson's license, and §535.123, concerning inactive broker license, without changes to the proposed text as published in the March 13, 1998, issue of the *Texas Register* (23 TexReg 2696).

The amendments replace the term "salesman" with "salesperson" to comply with House Bill 814, 75th Legislature (1997), which requires TREC to use the term "salesperson" in all its rules and documents no later than January 1, 1999.

No comments were received regarding the proposals.

The amendments are adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

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

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Mark A. Moseley

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Texas Real Estate Commission

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For further information, please call: (512) 465-3900



## Subchapter M. Nonresidents

### 22 TAC §§535.131, §535.133

The Texas Real Estate Commission (TREC) adopts amendments to §535.131, concerning the splitting of fees by real estate licensees with nonresidents, and §535.133, concerning the consent to service filed by a nonresident licensee, without changes to the proposed text as published in the March 13, 1998, issue of the *Texas Register* (23 TexReg 2697).

The amendments replace the term "salesman" with "salesperson" to comply with House Bill 814, 75th Legislature (1997), which requires TREC to use the term "salesperson" in all its rules and documents no later than January 1, 1999. For consistency, the amendment to §535.131 also replaces the gender specific term "he" with a term which is not gender specific.

No comments were received regarding the proposed amendments.

The amendments are adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

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

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Mark A. Moseley

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Texas Real Estate Commission

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For further information, please call: (512) 465-3900



## Subchapter N. Suspension and Revocation of License

### 22 TAC §§535.141, 535.143, 535.144, 535.146, 535.150, 535.154-535.160

The Texas Real Estate Commission (TREC) adopts amendments to §535.141, concerning initiation of investigations, §535.143, concerning fraudulent procurement of a license, §535.144, concerning a licensee acting as a principal, §535.146, concerning failure properly to account for or remit money, §535.150, concerning acting in a dual capacity, §535.154, concerning misleading advertising, §535.155, concerning association with an unlicensed person, §535.156, concerning dishonesty, bad faith or untrustworthiness, §535.157, concerning negligence or incompetence, §535.158, concerning violations of The Real Estate License Act, §535.159, concerning failure properly to deposit escrow monies and §535.160, concerning failure properly to disburse escrow monies, without changes to the proposed text as published in the March 13, 1998, issue of the *Texas Register* (23 TexReg 2698).

The amendments replace the term "salesman" with "salesperson" to comply with House Bill 814, 75th Legislature (1997), which requires TREC to use the term "salesperson" in all its rules and documents no later than January 1, 1999. The amendments also replace gender specific terms such as "his" with terms which are not gender specific for consistency or revise the sections so as not to use terms limited to a single gender.

No comments were received regarding the proposed amendments.

The amendments are adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

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-9807433

Mark A. Moseley  
General Counsel  
Texas Real Estate Commission  
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For further information, please call: (512) 465-3900



## Subchapter S. Residential Rental Locators

### 22 TAC §535.300

The Texas Real Estate Commission (TREC) adopts an amendment to §535.300, concerning advertising guidelines for residential rental locators, without changes to the proposed text as published in the March 13, 1998, issue of the *Texas Register* (23 TexReg 2700).

The amendment replaces the term "salesman" with "salesperson" to comply with House Bill 814, 75th Legislature (1997), which requires TREC to use the term "salesperson" in all its rules and documents no later than January 1, 1999.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

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-9807432

Mark A. Moseley  
General Counsel  
Texas Real Estate Commission  
Effective date: May 27, 1998  
Proposal publication date: March 13, 1998

For further information, please call: (512) 465-3900



## TITLE 30. ENVIRONMENTAL QUALITY

### Part I. Texas Natural Resource Conservation Commission

#### Chapter 7. Memoranda of Understanding

##### 30 TAC §7.117

The Texas Natural Resource Conservation Commission (TNRCC) adopts new §7.117, concerning a Memorandum of Understanding (MOU) between the TNRCC and the Railroad Commission of Texas (RRC). Section 7.117 is adopted with changes to the proposed text as published in the December 26, 1997 issue of the *Texas Register* (22 TexReg 12674).

**EXPLANATION OF ADOPTED RULES.** The adopted MOU update redefines and clarifies jurisdiction between the TNRCC and the RRC with regard to oil, gas, and related wastes. The oil, gas, and related waste MOU was last updated in December 1987. Since that time, several statutory changes in jurisdiction

and agency reorganizations have taken place that required the MOU to be updated. The MOU was also updated to resolve several past operational interface concerns between the agencies in regulating oil and gas wastes.

Section 335.28(3) is concurrently being deleted by amendment because the updated MOU is now adopted by reference in 30 TAC Chapter 7. The full text of the MOU is adopted within RRC rule 16 Texas Administrative Code §3.30.

Section §7.117 has been further amended to state where to go within the commission to obtain a copy of the MOU adopted by reference if it cannot be obtained from the internet.

**FINAL REGULATORY IMPACT ANALYSIS.** The commission has reviewed the 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 rulemaking is not a major environmental rule because it does not contain any requirements on the regulated community; it merely contains understandings between state agencies on their joint jurisdiction and on areas of cooperation.

**TAKINGS IMPACT ASSESSMENT.** The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to propose for adoption by reference an update to the Memorandum of Understanding (MOU) between the TNRCC and the RRC with regard to oil, gas, and related wastes, and delete the old version of the MOU in §335.28(3). The new §7.117 substantially advances the stated purpose by adopting by reference the updated MOU redefining and clarifying the jurisdiction between the TNRCC and the RRC with regard to oil, gas, and related wastes. The rule has no effect on private real property because it does not incorporate any substantive provisions impacting private real property.

**COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW.** The commission has reviewed the adopted rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adopted rule is not subject to the CMP.

**HEARING AND COMMENTERS.** A public hearing was not held for this rulemaking. The comment period closed January 30, 1998. No comments were received on §7.117. *The RRC did receive three comment letters on the full text of the MOU that was proposed to be adopted in their rules.* The commenters were: Enron Gas Pipeline Group, the Texas Oil and Gas Association, and TU Services. These comments were jointly evaluated by the agencies and the responses to them are discussed in the RRC adoption preamble for 16 TAC §3.30.

**STATUTORY AUTHORITY.** The amendment is adopted under the Texas Water Code, §5.104, and Texas Health and Safety Code, §361.016 and §401.069, which require the TNRCC to adopt by rule any MOU or a revision to an MOU. The amendment is also adopted under the Texas Water Code, §§5.103, 5.105, 26.011, and 27.019, which provide the commission with authority to adopt any rules necessary to carry out its pow-

ers, duties, and policies and to protect water quality in the state; and the Texas Solid Waste Disposal Act, Texas Health and Safety Code, §§361.011, 361.015, 361.017, 361.024, and 401.412, which provide the commission with authority to regulate industrial solid wastes, municipal hazardous and nonhazardous wastes, and disposal of radioactive substances, and to adopt and promulgate rules consistent with the general intent and purposes of the Act. The amendment is also adopted under the Texas Natural Resources Code, §91.101 and §91.602, which provide the RRC with the authority to adopt rules regulating nonhazardous and hazardous oil and gas wastes.

§7.117. *Memorandum of Understanding between the Railroad Commission of Texas and the Texas Natural Resource Conservation Commission.*

The Memorandum of Understanding between the Railroad Commission of Texas and the Texas Natural Resource Conservation Commission, concerning cooperation and the division of jurisdiction between the agencies regarding wastes that result from, or are related to, activities associated with the exploration, development, and production of oil, gas, or geothermal resources, and the refining of oil, is adopted by reference as adopted in Texas Railroad Commission rule 16 TAC §3.30 (concerning Memorandum of Understanding between the Railroad Commission of Texas and the Texas Natural Resource Conservation Commission). If a copy of this document cannot be obtained from the internet, a copy can be requested from the Texas Natural Resource Conservation Commission, Chief Clerk's Office, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300.

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 May 11, 1998.

TRD-9807656

Kevin McCalla

Director Legal Division

Texas Natural Resource Conservation Commission

Effective date: May 31, 1998

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



## Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

### Subchapter A. Industrial Solid Waste and Municipal Hazardous Waste in General

#### 30 TAC §335.28

The Texas Natural Resource Conservation Commission (TNRCC) adopts an amendment to §335.28, concerning Adoption of Memoranda of Understanding (MOU) by Reference. Section 335.28 is adopted with changes to the proposed text as published in the December 26, 1997 issue, of the *Texas Register* (22 TexReg 12682).

EXPLANATION OF ADOPTED RULES. Section 335.28(3) is deleted by amendment, as the updated MOU is concurrently being adopted by reference in 30 TAC Chapter 7. The full text of the updated MOU is adopted within RRC rule 16 Texas Administrative Code §3.30.

The adopted MOU update redefines and clarifies jurisdiction between the TNRCC and the Railroad Commission of Texas (RRC) with regard to oil, gas, and related wastes. The oil, gas, and related waste MOU was last updated in December 1987. Since that time, several statutory changes in jurisdiction and agency reorganizations have taken place that required the MOU to be updated. The MOU was also updated to resolve several past operational interface concerns between the agencies in regulating oil and gas wastes.

Section 335.28 has been further amended to update where to obtain a copy of remaining MOUs adopted by reference within that section.

FINAL REGULATORY IMPACT ANALYSIS. The commission has reviewed the 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 rulemaking is not a major environmental rule because it does not contain any requirements on the regulated community; it merely contains understandings between state agencies on their joint jurisdiction and on areas of cooperation.

TAKINGS IMPACT ASSESSMENT. The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to propose for adoption by reference an update to the MOU between the TNRCC and the RRC with regard to oil, gas, and related wastes, and delete the old version of the MOU in §335.28(3). The amended §335.28 substantially advances the stated purpose by deleting the old version of the MOU. The rule has no effect on private real property because it does not incorporate any substantive provisions impacting private real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW. The commission has reviewed the adopted rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adopted rule is not subject to the CMP.

HEARING AND COMMENTERS. A public hearing was not held for this rulemaking. The comment period closed January 30, 1998. No comments were received on §335.28. *The RRC did receive three comment letters on the full text of the MOU that was proposed to be adopted in their rules.* The commenters were: Enron Gas Pipeline Group, the Texas Oil and Gas Association, and TU Services. These comments were jointly evaluated by the agencies and the responses to them are discussed in the RRC adoption preamble for 16 TAC §3.30.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Water Code, §5.104, and Texas Health and Safety Code, §361.016 and §401.069, which require the TNRCC to adopt by rule any MOU or a revision to an MOU. The amendment is also adopted under the Texas Water Code, §§5.103, 5.105, 26.011, and 27.019, which provide the commission with authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and the Texas Solid Waste Disposal Act, Texas Health

and Safety Code, §§361.011, 361.015, 361.017, 361.024, and 401.412, which provide the commission with authority to regulate industrial solid wastes, municipal hazardous and nonhazardous wastes, and disposal of radioactive substances, and to adopt and promulgate rules consistent with the general intent and purposes of the Act. The amendment is adopted under the Texas Natural Resources Code, §91.101 and §91.602, which provide the RRC with the authority to adopt rules regulating nonhazardous and hazardous oil and gas wastes.

§335.28. *Adoption of Memoranda of Understanding by Reference.*  
The following memoranda of understanding between the commission and other state agencies, required to be adopted by rule as set forth in the Texas Water Code, §5.104, are adopted by reference. Copies of these documents are available upon request from the Texas Natural Resource Conservation Commission, Chief Clerk's Office, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300.

(1)-(2) (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 May 11, 1998.

TRD-9807655

Kevin McCalla

Director Legal Division

Texas Natural Resource Conservation Commission

Effective date: May 31, 1998

Proposal publication date: December 26, 1997

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

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part II. Texas Parks and Wildlife Department

#### Chapter 55. Law Enforcement

##### Subchapter L. Marine Safety Enforcement - Training and Certification Standards

###### 31 TAC §§55.801-55.807

The Texas Parks and Wildlife Commission adopts new §§55.801-55.807, concerning training and certification of marine safety enforcement officers, without changes to the proposed text as published in the March 13, 1998, issue of the *Texas Register* (23 TexReg 2726).

The new sections are necessary in order to implement the provisions of House Bill 966, enacted by the 75th Texas Legislature, which established marine safety officer training in this state.

The new sections will function by establishing the certification criteria for persons to become marine safety officers and marine safety officer course instructors.

The department received six comments concerning adoption of the proposed rules. Two commenters opposed the proposed requirement that a Marine Safety Enforcement Instructor be a Marine Safety Enforcement Officer, because the requirement

would prevent persons employed by police academies, but who are not licensed as peace officers, from obtaining instructor certification. The department disagrees with the comments and responds that active-duty peace officers would provide the most proficient and uniform instruction on enforcement of the Texas Water Safety Act, all personnel certified as Marine Safety Enforcement Officers must be active duty peace officers. No changes were made as a result of the comments. Four comments in favor of adoption of the proposed rules were received.

The new sections are adopted under Parks and Wildlife Code, §31.121, which gives the commission authority to adopt rules establishing standards for training and certifying marine safety enforcement officers, creating exemptions from training and certification requirements, and establishing fees to recover administrative costs associated with the certification process.

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

TRD-9807545

Bill Harvey

Regulatory Coordinator

Texas Parks and Wildlife Department

Effective date: May 28, 1998

Proposal publication date: March 13, 1998

For further information, please call: (512) 389-4775

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 15. Medicaid Eligibility

The Texas Department of Human Services (DHS) adopts amendments to §§15.435, 15.460, and 15.475, concerning liquid resources, income exemptions, and deeming of income, in its Medicaid eligibility chapter.

The justification for the amendments is to comply with Public Law 104-204. These amendments mandate the exclusion from income and resources of the Department of Veterans Affairs payments made to or on behalf of certain Vietnam veterans' natural children regardless of their age or marital status, for any disability resulting from spina bifida.

The amendments will function by ensuring that DHS is in compliance with federal law.

##### Subchapter D. Resources

###### 40 TAC §15.435

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds. The amendment is adopted in compliance with federal requirements effective October 1, 1997.

The amendment implements §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

§15.435. *Liquid Resources.*

(a)-(r) (No change.)

(s) Effective October 1, 1997, Public Law 104-204 excludes from resources Department of Veterans Affairs payments made to or on behalf of certain Vietnam veterans' natural children regardless of their age or marital status, for any disability resulting from spina bifida suffered by such children. Interest earned on unspent payments is not excluded.

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 May 7, 1998.

TRD-9807458

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: October 1, 1997

For further information, please call: (512) 438-3765



## Subchapter E. Income

### 40 TAC §§15.460, 15.475

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds. The amendment is adopted in compliance with federal requirements effective October 1, 1997.

The amendments implement §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

§15.460. *Income Exemptions.*

(a) (No change.)

(b) The Texas Department of Human Services exempts income that a client receives from any of the following sources:

(1) - (36) (No change.)

(37) payments from the Department of Veterans Affairs made to or on behalf of certain Vietnam veterans' natural children regardless of their age or marital status, for any disability resulting from spina bifida suffered by such children as required by Public Law 104-204, effective October 1, 1997. Interest earned on unspent payments is not excluded.

§15.475. *Deeming of Income.*

(a) The following requirements apply:

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

(4) The Texas Department of Human Services (DHS) exempts certain types of income that may be received by a client's ineligible spouse, ineligible parent, a parent's ineligible spouse, or any ineligible children living in the household. The following types of income are not deemed to the client:

(A)-(FF) (No change.)

(GG) payments made in the class settlement of the Susan Walker vs. Bayer Corporation lawsuit, as required by Public Law 105-33, effective August 5, 1997.

(HH) payments from the Department of Veterans Affairs made to or on behalf of certain Vietnam veterans' natural children regardless of their age or marital status, for any disability resulting from spina bifida suffered by such children, as required by Public Law 104-204, effective October 1, 1997. Interest earned on unspent payments is not excluded.

(b) - (d) (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 May 7, 1998.

TRD-9807459

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: October 1, 1997

For further information, please call: (512) 438-3765



## Chapter 18. Nursing Facility Administrators

The Texas Department of Human Services (DHS) adopts the repeal of §18.1 and §§18.11-18.14, and new §18.1 and §§18.11-18.14 with changes to the proposed text published in the January 23, 1998, issue of the *Texas Register* (23 TexReg 530).

Justification for the repeals and new sections is that the health and safety of nursing facility residents will be better protected by ensuring the timely and efficient management of complaints and ensuring appropriate sanctions are initiated against an administrator for a finding of substandard quality of care and deficiency citations that are related to an act or failure to act by the administrator.

The new sections will function by complying with Senate Bill 84, which was passed during the 75th Regular Session of the Texas Legislature and which transferred all functions, obligations, rights, contracts, records, and rules of the Texas Board of Nursing Facility Administrators to DHS, effective September 1, 1997. These rule changes alter the complaint procedures by allowing a complainant to be heard, and establish information that should be provided to the complainant and a time frame for the resolution of a complaint. The grounds for sanctioning an administrator have been expanded to include whether a deficiency is related to an act or failure to act by the administrator, and a procedure has been established for the referral of an administrator for a finding of substandard quality of care during an investigation or survey.

The department received the following comments from the Texas Association of Licensed Facility Administrators (TALFA), Texas Association of Residential Care Communities (TARCC), Texas Health Care Association (THCA), and one licensed nursing facility administrator during the comment period:

Comment: §18.11(a) refers to complaints investigated by the department's Credentialing Department. This should be limited to *written* complaints. This would make the complaint more viable.

Response: The proposed rules, as indicated in §18.11(c), require the above. A form must be completed and returned to the department.

Comment: Regarding §18.11(c), we understand the department must honor confidentiality regarding the complaint. However, the nature of the complaint should be revealed to the licensee in writing, prior to the investigation, on a form developed by the department. Add the following language at the end of the paragraph: "The licensee will be informed in writing on a form developed by the department, of the nature of the complaint, prior to the beginning of the investigation." All of the information at §18.11(g) should also be provided to the licensee for whom an investigation takes place. This would be in compliance with §242.312(b) and (f) of the statute that refers to all parties being notified. The proposed provision does not afford an administrator with notice of a complaint. This seems blatantly unfair. Administrator's are entitled to know that a complaint has been filed against them.

Response: The department partly concurs with the comments and has made a change in the proposed language at §18.11(f) which now states: "An investigation of the licensee and complaint allegation shall be conducted by DHS investigative staff to determine compliance with this rule. The investigation shall include contact with the complainant and licensee, who shall each be afforded an opportunity to provide a written response to the complaint allegation." The proposed language at §18.11(g) is being revised to state: "After a complaint is filed against a licensee, the Credentialing Department shall provide the following information to the complainant and licensee: the assigned case number, the projected time requirements for pursuing the complaint, any change in the schedule for pursuing the complaint, and DHS's final disposition of the complaint at the conclusion of the investigation."

Comment: §18.11 (f)-(j) refers to making facility books, records, etc. accessible to DHS upon request. A DHS investigator should show their identification specifying that he/she is an employee of DHS. The licensee should be notified in cases where DHS is utilizing the services of a private investigator, otherwise the administrator might not be forthcoming with certain information and could be looked upon as impeding the investigation. If the department sends out an "under-cover" private investigator, the facility would have no obligation to making records accessible due to confidentiality laws.

Response: The department does not concur and recommends adoption of the language as proposed. If books and records are requested from the administrator, DHS identification will be provided.

Comment: The wording at §18.11(j) states "the licensee must make all facility books, records, and other pertinent documents maintained by or on behalf of a facility" is too vague. Instead, we recommend that the information that can be obtained be limited to only records that pertain to the investigation. We recommend that the information accessed be limited to only records that pertain to the investigation.

Response: The department does not concur and recommends adoption of the language as proposed. The department retains the right to request any and all information it deems necessary in investigating a complaint against an administrator.

Comment: Regarding §18.11(g), the proposed language should be amended to state: "Upon receipt of a complaint, whether referral- instigated or otherwise, the Credentialing Department will notify the licensee that they may submit a written response to the complaint that, if received before the Advisory Commit-

tee's review date, will be considered by the Advisory Committee at the same time as the complaint."

Response: The department does not concur with the comments. The statute mandates, at §242.303(d), that the committee review all complaints against administrators and make recommendations to the department regarding disciplinary actions. The administrator is still afforded all opportunities to due process in accordance with §2001.056 of the Government Code. The proposed language at §18.11(f) is being changed to state: "An investigation of the licensee and complaint allegation shall be conducted by DHS investigative staff to determine compliance with this rule. The investigation shall include contact with the complainant and licensee, who shall each be afforded an opportunity to provide a written response to the complaint allegation."

Comment: Regarding §18.11(j)(1), photocopying, photographing, and recording should be limited to only information that pertains to the investigation.

Response: The department concurs and has made the suggested change at §18.11(j)(1).

Comment: Regarding §18.11(j)(1), appropriate evidence should also be supplied to the licensed nursing home administrator which would include photographs of residents and audio tapes of recordings made to preserve evidence. Under present procedure with DHS, if the facility records any conversations with DHS employees, then a copy has to be given to DHS immediately. If a copy is not supplied to the facility or licensee, then any evidence DHS wishes to present from the recording should not be allowed. Add the following language at the end of the paragraph: "The licensee will be supplied copies of photographs of residents and any audio records of evidence."

Response: The department does not concur and recommends adoption of the language as proposed. Current department procedure is to collect information and evidence that pertains to a complaint investigation. Any evidence collected during the course of an investigation may be available to the administrator or his representative through discovery, if sanctions are imposed against a licensee.

Comment: Regarding §18.11(j)(2), incident/accident reports are tools used by the facility Quality Assurance Committee to aide the committee in directing proper care for residents. These documents should remain protected under any condition.

Response: The department does not concur and recommends adoption of the language as proposed. Facility incident/accident reports are not protected documents.

Comment: Regarding §18.11(l), the licensee should be provided with all complaint information collected by the Department, with the exception of the names of individuals, and notations regarding invalid complaints should be noted in the files. Delete the word "and" at the end of number (3) and add the following language: "(5) invalid complaints will be noted in the information file; and (6) the licensee will be supplied with all documentation in the information file, except names of individuals."

Response: The department does not concur and recommends adoption of the language as proposed. The content of (5) above is addressed in the proposed language at §18.11(l)(3). The department does not agree with (6) above. Current de-

partment procedure is to provide notification of unsubstantiated complaints to a licensee and complainant.

Comment: Regarding §18.11(o), at the completion of the investigation, the facility, company, or licensee should receive copies of all relevant facts and findings obtained during the investigation.

Response: The department does not concur and recommends adoption of the language as proposed. Current department procedure is to provide notification of the final disposition of a complaint to the licensee and complainant, at the conclusion of the department's investigation. Any evidence collected during the course of an investigation may be available through discovery, if sanctions are imposed against a licensee.

Comment: Regarding §18.11(p), a copy of the notice of dismissal should also be placed in the complaint information file. Add the following language at the end of the paragraph: "and a copy placed in the complaint information file."

Response: The department does not concur and recommends adoption of the language as proposed. These comments are addressed at §18.11(l)(3).

Comment: Regarding §18.11(p), if it is determined there is insufficient evidence to support the complaint, then all information should be removed from the licensee file. As it stands at the present time, complaint information remains in the licensee file even if the complaint is invalid. Therefore, DHS can sight how many complaints have been filed in future situations, and not take in consideration that the past complaints were found invalid.

Response: The department does not concur and recommends adoption of the language as proposed. The statute, at §242.312(e)(3), requires that the board be advised at least quarterly of complaints that have been dismissed. Therefore, records of all complaints and dispositions of complaints are maintained by the department.

Comment: Regarding §18.11(r), criteria needs to be developed by the department on what actions will be proposed under different conditions before these rules are adopted. The criteria will lend consistency to the application of the actions.

Response: The department does not concur and recommends adoption of the language as proposed. Any disciplinary action initiated by the department is based on a combination of unique factors, including the seriousness of the violation and harm or potential harm created to the health and safety of facility residents; the economic harm to property or environment caused by the violation; the efforts of the licensee to correct the violation; and the licensee's history of previous violations. Therefore, it is necessary to evaluate each case on its own merit.

Comment: The rules do not address what adverse actions will result from violations resulting from a complaint investigation. Does the Schedule of Sanctions under §18.13(a) apply to violations resulting from complaint investigations?

Response: The department agrees with the comments and has therefore made a change in the proposed language at §18.11(o) to reflect which adverse actions can result from violations identified during a complaint investigation. Yes, the sanctions listed at §18.13(a) do apply to violations identified during a complaint investigation.

Comment: Regarding §18.12(a)(1)-(4), (b), (c), and (d), this whole section should be removed. "There are many occasions in the nursing facility industry, where a company, which employs the licensee, restricts the licensee from taking action in what may be considered a timely manner. DHS should make a finding as to the extent of authority given the licensee, by ownership, to influence the delivery of care rendered by the facility. In addition, DHS is very inconsistent in their survey process and perception of quality of care given to residents. The current survey process allows for surveyor opinion of care and does not always grade on the actual care given. Furthermore, DHS surveyors normally have never worked in long term care and do not truly understand what training a licensee has or the process of providing resident care in a facility. There are too many occasions where the resident's care and condition is not considered, but instead a surveyor will focus only on documentation. Section 18.12(a) will allow DHS to punish a licensee for many things which are beyond their control. This section appears to suggest that instead of correcting problems in the industry, DHS wants to unjustly punish or remove a licensee because that is simply the easiest route."

Response: The department does not concur with the comments but has made changes to the proposed language. Section 18.12(a)(1)-(4) has been deleted because this portion of the proposed rules addresses issues which are encompassed in the Standards of Conduct for nursing facility administrators. However, the department will retain the language as proposed at §18.12(b),(c) and (d) which will now become §18.12(a),(b) and (c) respectively.

Comment: Regarding §18.12(b), is this section of the rules written to comply with Section 242.313(e) of the statute? The rules only state that the Credentialing Department will receive and evaluate referrals from Long Term Care-Regulatory when survey findings indicate substandard quality of care. Section 242.313(e) of the statute states: "The department shall by rule establish criteria to determine whether deficiencies from a facility's survey warrant action against an administrator. The criteria shall include a determination of whether the survey indicates substandard quality of care related to an act or failure to act by the administrator, and whether a deficiency is related to an act or failure to act by the administrator. If a deficiency on which a disciplinary action against an administrator is initiated or completed is not substantiated, the disciplinary action shall be reversed."

Response: Section 18.12(b) is not written to comply with §242.313(e) of the statute. §18.13(b)(8) and (9) complies with the requirements of §242.313(e) of the statute. The proposed language at §18.13(b)(8) is being revised to state: "a survey indicates substandard quality of care that is related to an act or failure to act by the licensee, which is based on the Standards of Conduct as specified in §18.19 of this title" and §18.13(b)(9) is being revised to state: "the deficiencies cited during a survey are related to an act or failure to act by the licensee which is based on the Standards of Conduct as specified in §18.19 of this title."

Comment: Regarding §18.12, these provisions fail to provide timely notice to an administrator that a referral-instigated complaint has been lodged against him. In fact, no notice is provided to the administrator until after the staff has reviewed the matter and made its recommendations to the Advisory Committee. If he has no notice of the complaint or its contents, he is obviously unable to defend himself. The language should be amended to

read: "Upon receipt of such a referral, the Credentialing Department will issue notice to the licensee which will include the date of the survey, the deficiencies cited by the surveyor; the date the Advisory Committee will review the referral-instigated complaint; and the ability of the licensee to submit a letter responding to the cited deficiencies as provided by §18.11(2). Written notice should be provided to an administrator of a complaint against him before the matter is ever considered by the Advisory Committee.

Response: The department does not concur and recommends adoption of the language as proposed. §18.12 pertains to referral of an administrator to the state licensing authority for a finding of substandard quality of care, as mandated by 42 Code of Federal Regulations.

Comment: Regarding §18.13(b)(7),(8), and (9), these sanctions should not be set forth by DHS or DHS surveyors. Once again, quality of care issues usually fall to surveyor opinion and are not accurate assessments of care given to residents.

Response: The department does not concur with the comments. Section 18.13(b)(7), (8), and (9) refer to the grounds on which DHS can initiate sanctions and are mandated by the statute at Section 242.313.

Comment: Delete the language at §18.13(b)(9)(D); not a reasonable measure of performance.

Response: The department concurs; §18.13(b)(9)(A)-(D) has been deleted. The proposed language at §18.13(b)(8) is being revised to state: "a survey indicates substandard quality of care that is related to an act or failure to act by the licensee, which is based on the Standards of Conduct as specified in §18.19 of this title" and §18.13(b)(9) is being revised to state: "the deficiencies cited during a survey are related to an act or failure to act by the licensee which is based on the Standards of Conduct as specified in §18.19 of this title."

Comment: Regarding §18.13(a)(7), what does "placement of a nursing facility administrator's license on probation" mean?

Response: The department is changing the proposed language at §18.13(a)(7) to state "placement of a licensee on probation" which is required by the statute at §242.313(a). When a licensee is placed on probation, the department allows the licensee to retain the license and defers the imposition of other sanctions until the specific conditions of the probation are met.

Is there any relationship between §18.13(a)(7) and §18.13(d)?

Response: Section 18.13(a)(7) refers to the actual "sanction" imposed against the licensee—placement on probation. Section 18.13(d) is mandated by the statute at §242.313(b)(1)-(3) and refers to the deferment of other sanctions until conditions of the probation are met.

Comment: Regarding §18.13(d)(1)-(3), does this satisfy the probation?

Response: In order to "satisfy" the terms of a probation, a licensee has to meet the specific conditions that are required within established time frames.

Comment: Regarding §18.13(d)(2), what does "limit practice to only specific areas" indicate?

Response: The limit of practice to specific areas means that although the department allows a licensee to retain his license, there may be stipulations placed on the licensee's ability to

practice, such as requiring oversight by a licensed administrator or a certified preceptor.

Comment: Regarding §18.13(g)(2)-(8), we would like clarification that this section applies to suspension of a license for failure to pay child support only.

Response: Section 18.13(g)(1)-(9) applies only to suspension of a license for failure to pay child support.

Comment: Regarding §18.14(c), we question why the department wants the ability to assess an administrative penalty against the individual at the conclusion of the investigation when the licensee has already permanently surrendered his/her license. The criminal system will address situations where there are gross violations. If an administrator has surrendered their license, he/she will no longer be employed as the administrator and it may be difficult to pay a hefty administrative penalty. What happens if the administrator cannot pay the penalty?

Response: The department does not concur and recommends adoption of the language as proposed. There have been occasions when an administrator voluntarily surrenders a license in order to avoid paying an administrative penalty, having a license suspended or revoked. Simply because a license is voluntarily surrendered, that doesn't negate the fact that when licensed and practicing as a nursing facility administrator, the individual violated Health and Safety Code, Chapter 242, Subchapter I or the department's rules adopted under this subchapter. As mandated by the statute at Section 242.316(i), if the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

Comment: Where are the monetary penalties described or quantified? Is this in other sections of rules that have not been published yet?

Response: The department has developed proposed rules to address the assessment of administrative penalties as a sanction, as required by the statute at §242.316. The proposed rules were published as in the February 27, 1998 issue of the *Texas Register* for 30-day comment period.

In §18.1(21) and (24) typos were corrected. In addition, the department changed the telephone number that appears in §18.11(b). Throughout the rules DHS changed "will" and "may" to "shall."

#### **40 TAC §§18.1, 18.11–18.14**

The repeals are adopted under the Texas Health and Safety Code, Chapter 242, Subchapter I, which authorizes the department to license nursing facility administrators.

The repeals implement the Texas Health and Safety Code, Chapter 242.301-242.322.

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 May 8, 1998.

TRD-9807501

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: June 1, 1998

Proposal publication date: January 23, 1998



For further information, please call: (512) 438-3765



#### 40 TAC §§18.1, 18.11-18.14

The new sections are adopted under the Texas Health and Safety Code, Chapter 242, Subchapter I, which authorizes the department to license nursing facility administrators.

The new sections implement the Texas Health and Safety Code, Chapter 242.301-242.322.

##### §18.1. Introduction.

(a) Purpose. The purpose of this chapter is to implement the provisions of Texas Health and Safety Code, Chapter 242, Subchapter I.

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

(1) Abbreviated standard survey - A survey other than a standard survey that gathers information primarily through resident-centered techniques on facility compliance with the requirements for participation. An abbreviated survey may be premised on complaints, a change in ownership, management, director of nursing, or other indicators of specific concern.

(2) Abuse - Any act, failure to act, or incitement to act done willfully, knowingly, or recklessly through words or physical action which causes or could cause mental or physical injury or harm or death to a resident. This includes verbal, sexual, mental/psychological, or physical abuse, including corporal punishment, involuntary seclusion, or any other actions within this definition.

(3) Administrative Law Judge - An attorney duly designated and appointed who conducts hearings under this chapter on behalf of the department.

(4) Administrator - See definition for "nursing facility administrator."

(5) Administrator-in-training (AIT) - An applicant who is currently undergoing an internship under the auspices of a department-approved, certified preceptor or through a department-approved college practicum.

(6) Applicant - A person who applies for licensure under the Texas Health and Safety Code, Chapter 242, Subchapter I.

(7) APA - The Administrative Procedure Act, Chapter 2001 of the Texas Government Code.

(8) Committee - The nine-member Nursing Facility Administrators Advisory Committee.

(9) Complaint - An allegation that a licensed nursing facility administrator has violated one or more provisions of the Texas Health and Safety Code, Chapter 242, Subchapter I, or rules adopted under that chapter.

(10) Completed application - The official nursing facility administrator application forms, fees and all supporting documentation which meet the criteria set out in §18.3 of this title (relating to Application Procedures).

(11) Contested case - A proceeding in accordance with the APA and this chapter, including but not limited to rule enforcement and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the Administrative Law Judge after an opportunity for an adjudicative hearing.

(12) Deficiency - A skilled nursing facility or nursing facility's failure to meet a participation requirement as specified in the Social Security Act.

(13) Department - The Texas Department of Human Services (DHS).

(14) Equivalency - A level of achievement equivalent to completion of an educational or training program equal in force, amount, or value.

(15) Formal hearing - A hearing or proceeding conducted under the provisions of the APA.

(16) Internship - The training period for an Administrator-In-Training gaining supervised practical experience.

(17) License - A nursing facility administrator license or a provisional nursing facility administrator license.

(18) Licensee - A person who is licensed under the Texas Health and Safety Code, Chapter 242, Subchapter I.

(19) Misappropriation of resident property - The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

(20) NAB - National Association of Boards of Examiners for Nursing Home Administrators, Inc.

(21) Neglect - A deprivation of life's necessities of food, water, or shelter, or a failure of an individual to provide services, treatment, or care to a resident which causes or could cause mental or physical injury, or harm or death to the resident.

(22) Nursing facility - An institution or facility that is licensed as a nursing facility by the department under the Texas Health and Safety Code, Chapter 242.

(23) Nursing facility administrator or administrator - A person who engages in the practice of nursing facility administration without regard to whether the person has an ownership interest in the facility or whether the functions and duties are shared with any other person.

(24) Party - Each person, governmental agency, or officer or employee of a governmental agency named by the Administrative Law Judge as having a justifiable interest in the matter being considered, or any person, governmental agency, or officer or employee of a governmental agency meeting the requirements of a party prescribed by applicable law.

(25) Person - An individual, corporation, partnership, or other legal entity.

(26) Practice of nursing facility administration - The performance of the acts of administering, managing, supervising, or being in general administrative charge of a nursing facility.

(27) Practicum - A course of study designed for the preparation of nursing facility administrators that involves supervision by the college of the practical application of previously studied theory in a nursing facility setting.

(28) Preceptor - A licensed nursing facility administrator who meets the criteria in §18.6 of this title (relating to Administrators-in-Training).

(29) Referral - A finding of substandard quality of care in a nursing facility that requires Long Term Care-Regulatory to report an administrator to its licensing authority as mandated by the Code of Federal Regulations.

(30) Substandard Quality of Care - Any deficiency in Resident Behavior and Facility Practices, Quality of Life, or Quality of Care that constitutes: immediate jeopardy to resident health or safety; or, a pattern of widespread actual harm that is not immediate jeopardy; or, a widespread potential for more than minimal harm that is not immediate jeopardy, with no actual harm.

(31) Standard survey - A periodic, resident-centered inspection that gathers information about the quality of service furnished in a facility to determine compliance with the requirements of participation.

(32) Texas Open Meetings Act - The Government Code, Chapter 551, Subchapters A-G.

(33) Texas Open Records Act - The Government Code, Chapter 552, Subchapters A-G.

(34) Year - A calendar year.

#### §18.11. Complaint Procedures.

(a) The Texas Department of Human Services (DHS), Credentialing Department, shall receive and investigate complaint allegations against a licensed nursing facility administrator, including but not limited to, reports of abuse, neglect, misappropriation of a resident's property, and reports of violations of Texas Health and Safety Code, Chapter 242, Subchapter I or DHS's rules adopted under that chapter.

(b) A person wanting to report a complaint against a licensee shall notify the Credentialing Department by calling (512) 231-5815 (for complaints only) or writing the department at the following address: Texas Department of Human Services, Credentialing Department, Mail Code: Y-978, ATTN: Complaint Investigations Section, P.O. Box 149030, Austin, TX 78714-9030.

(c) Upon receipt of a complaint, the Credentialing Department director or designee shall send to the complainant, an official form which the complainant shall be requested to complete and return to DHS. DHS shall provide reasonable assistance to an individual wishing to file a complaint against a licensee.

(d) DHS shall utilize the following form which standardizes information concerning complaints made about a licensee: Figure: 40 TAC 18.11(d)

(e) The Credentialing Department director or designee shall receive and prioritize complaint allegations that are made against a licensee in the following manner:

(1) Priority one investigations are allegations of physical abuse, sexual abuse, neglect, death, serious injury, or immediate jeopardy to resident health or safety. Priority one investigations shall be initiated by the Credentialing Department within 24 hours of receipt or by the next working day.

(2) Priority two investigations are allegations of inadequate resident care that are not life threatening; verbal abuse; or misappropriation of resident property. Priority two investigations shall be initiated within 14 calendar days following receipt of the complaint.

(3) Priority three investigations are allegations of misconduct. Priority three investigations shall be initiated within 30 calendar days following receipt of the complaint.

(f) An investigation of the licensee and complaint allegation shall be conducted by DHS investigative staff to determine compliance with this rule. The investigation shall include contact with the complainant and licensee, who shall each be afforded an opportunity to provide a written response to the complaint allegation.

(g) After a complaint is filed against a licensee, the Credentialing Department shall provide the following information to a complainant and licensee:

- (1) the assigned case number;
- (2) the projected time requirements for pursuing the complaint;
- (3) any change in the schedule for pursuing the complaint; and
- (4) DHS's final disposition of the complaint at the conclusion of the investigation.

(h) If special circumstances exist, DHS shall utilize the services of a private investigator to conduct complaint investigations when DHS determines it would be an efficient and expeditious process. The private investigator shall be obtained by following DHS's usual contracting procedures.

(i) The investigation shall be initiated by no later than 30 calendar days after the date the written complaint is received by DHS.

(j) The licensee shall make all facility books, records, and other pertinent documents maintained by or on behalf of a facility accessible to DHS upon request.

(1) DHS shall photocopy documents, photograph residents, and use any other recording devices to preserve evidence that is pertinent to the investigation.

(2) Examples of records and documents which may be requested or photocopied or otherwise reproduced are medical records, including nursing notes, incident/accident reports, pharmacy records, physician orders, and bookkeeping records.

(3) When copies are requested, the facility shall charge DHS at a rate not to exceed the rate charged by DHS for copies. The administrator shall be responsible for providing copies to DHS staff. If copying requires the records to be removed from the facility, a representative of the facility shall be expected to accompany the records and ensure their order and preservation.

(4) DHS will protect the copies for privacy and confidentiality in accordance with recognized standards of medical records practice, applicable state and federal laws, and DHS policy.

(k) The licensee shall not impede an investigation through the harassment or intimidation of nursing facility employees or residents.

(l) The Credentialing Department director or designee shall keep an information file on each complaint which shall include the following information:

(1) all persons contacted in relation to the complaint, which must include the person who filed the complaint and an explanation for the allegation;

(2) a summary of findings made at each step of the complaint process;

(3) an explanation of the legal basis and reason for a complaint that is dismissed, or substantiated; and

(4) other relevant information.

(m) The Credentialing Department director or designee shall maintain a schedule of the projected time frames for pursuing a complaint that shall be kept in the information file for the complaint. A change in the schedule shall be recorded in the complaint information file and all parties to the complaint must be notified not later than seven calendar days after the date the change is made.

(n) The Credentialing Department director or designee shall notify all parties of the status of the complaint on a quarterly basis until final disposition of the complaint, unless notice would jeopardize an undercover investigation.

(o) After completion of the investigation, the person completing the investigation shall submit the findings to the Credentialing Department director or designee. The complaint investigative report shall state all relevant facts and findings obtained during the investigation. The complaint investigative report, facts, and findings shall be presented to the committee for consideration of adverse licensure action, as specified in §18.13(a) of this title (relating to Schedule of Sanctions).

(p) If the committee determines insufficient evidence exists to support or act upon the complaint, the complaint shall be dismissed. Written notification of the dismissal shall be provided to the complainant and licensee or person against whom the complaint has been filed.

(q) If the committee determines that there are sufficient grounds to support the complaint, the committee shall initiate a recommendation for adverse licensure action or any other action as authorized by law.

(r) The resolution of a complaint shall not exceed 90 days from the date the written complaint is received to the date of the notification letter that informs the licensee of the department's findings and proposed actions. Failure to resolve the complaint within 90 days shall not prevent DHS from proceeding with appropriate sanctions.

(s) The commissioner of the Texas Department of Human Services or designee shall report to the Texas Board of Human Services quarterly on complaints that have been dismissed by DHS.

#### §18.12. Referrals.

(a) The Credentialing Department shall receive and evaluate referrals from Long Term Care-Regulatory when survey findings indicate substandard quality of care.

(b) The Texas Department of Human Services, upon consideration of all factors related to the substandard quality of care finding, shall impose one or more sanctions for a statutory or rule violation as set forth in §18.13(a) of this title (relating to Schedule of Sanctions).

(c) The procedures for notification of adverse licensure are set forth in §18.13(e) of this title (relating to Schedule of Sanctions).

#### §18.13. Schedule of Sanctions.

(a) The Texas Department of Human Services (DHS), upon consideration of all factors related to a violation, shall impose one or more of the following sanctions for statutory or rule violations:

- (1) assessment of an administrative penalty;
- (2) revocation of a license;
- (3) suspension of a license;

(4) denial of an application to renew a license;

(5) issuance of a written reprimand to a licensee;

(6) requirement of a licensee to participate in additional continuing education programs; or

(7) placement of a licensee on probation.

(b) The procedures for notification of adverse licensure actions are set forth in subsection (e) of this section. DHS shall initiate sanctions on any of the following grounds:

(1) the licensee has wilfully or repeatedly violated a provision of this subchapter or a rule adopted under this subchapter;

(2) the licensee has wilfully or repeatedly acted in a manner inconsistent with the health and safety of the residents of a facility of which the licensee is an administrator;

(3) the licensee obtained or attempted to obtain a license through misrepresentation or deceit or by making a material misstatement of fact on a license application;

(4) the licensee's use of alcohol or drugs creates a hazard to the residents of a facility;

(5) a judgment of a court of competent jurisdiction finds that the licensee is mentally incapacitated;

(6) the licensee has been convicted in a court of competent jurisdiction of a misdemeanor or felony involving moral turpitude;

(7) the licensee has been negligent or incompetent in the licensee's duties as a nursing facility administrator;

(8) a survey indicates substandard quality of care that is related to an act or failure to act by the licensee, which is based on the Standards of Conduct, as specified in §18.19 of this title (relating to Standards of Conduct);

(9) the deficiencies cited during a survey are related to an act or failure to act by the licensee which is based on the Standards of Conduct, as specified in §18.19 of this title (relating to Standards of Conduct).

(c) DHS shall consider the following factors before determining a sanction for a statutory or rule violation:

(1) the seriousness of the violation and the harm or potential harm created to the health and safety of facility residents;

(2) the economic harm to property or environment caused by the violation;

(3) the efforts of the licensee to correct the violation; and

(4) the licensee's history of previous violations.

(d) Probation of sanctions. DHS may probate a sanction and require the licensee to:

(1) periodically report on matters that are the basis for the probation;

(2) limit practice to only specific areas; or

(3) obtain continuing education until a satisfactory degree of skill is attained in those areas that are the basis of the probation.

(e) Procedures for adverse licensure action.

(1) If DHS initiates an adverse licensure action, the deputy commissioner of the Office of Program Integrity or designee

shall give the licensee written notice of the reason(s) for the decision to initiate action.

(2) The deputy commissioner of the Office of Program Integrity or designee shall provide written notification of the opportunity to a hearing to the licensee in accordance with the provisions of the Administrative Procedure Act and hearing procedures in Chapter 79, Subchapter Q of this title (relating to Formal Appeals).

(f) Opportunity for a hearing. The licensee is entitled to a hearing in accordance with rules promulgated by the Texas Board of Human Services before a sanction shall be imposed under this section.

(g) Suspension of license for failure to pay child support.

(1) On receipt of a final court or attorney general's order suspending a license due to failure to pay child support, the Credentialing Department director or designee shall immediately determine if DHS has issued a license to the obligator named on the order, and, if a license has been issued:

(A) record the suspension of the license in the department's records;

(B) report the suspension as appropriate; and

(C) demand surrender of the suspended license.

(2) DHS shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. DHS shall provide notice as appropriate to the licensee or to others concerned with the license.

(3) DHS may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232 as added by Acts 1995, 74th Legislature, Chapter 751, §85 and may not review, vacate, or reconsider the terms of an order.

(4) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to DHS.

(5) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal renewal procedures in this chapter; however, the license shall not be renewed until paragraphs (7) and (8) of this subsection are met.

(6) An individual who continues to act as a licensed nursing facility administrator after the issuance of a court or attorney general's order suspending the license is liable for the same civil and criminal penalties provided for engaging in the prohibited activity without a license or while a license is suspended as any license holder.

(7) On receipt of a court or attorney general's order vacating or staying an order suspending a license, the Credentialing Department director or designee shall promptly issue the affected license to the individual if the individual is otherwise qualified for the license.

(8) The individual shall pay a reinstatement fee set out in §18.2 of this title (relating to Fees) prior to issuance of the license under paragraph (7) of this subsection.

(9) A party may appear in person or be represented by counsel or other authorized representative.

#### §18.14. *Violations by an Unlicensed Person.*

(a) An individual shall not act as a nursing facility administrator or represent to others that the individual is a nursing facility

administrator unless licensed under the Texas Health and Safety Code, Chapter 242, Subchapter I.

(b) An unlicensed person who facilitates or coordinates the provision of professional services but does not act as a licensed nursing facility administrator shall not be in violation of Texas Health and Safety Code, Chapter 242, Subchapter I.

(c) If a licensee is under investigation for an alleged statutory or rule violation and allows a license to expire or voluntarily surrenders a license before completion of the investigation, the Texas Department of Human Services (DHS) maintains the authority to issue a written reprimand and/or assess an administrative penalty against the individual at the conclusion of the investigation.

(d) DHS shall file suit in its own name and avail itself of any other action, proceeding, or remedy authorized by law to enjoin a violation of Texas Health and Safety Code, Chapter 242, Subchapter I or rules adopted under that chapter.

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

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Texas Department of Human Services

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For further information, please call: (512) 438-3765



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

The Texas Department of Human Services (DHS) adopts the repeal of §§19.2322 and 19.2324, and new §§19.2322 and 19.2324 without changes to the proposed text published in the March 6, 1998, issue of the *Texas Register* (23 TexReg 2257). The text will not be republished.

Justification of the repeal of current sections and the adoption of new sections having to do with the allocation of medicaid beds is to control the allocation of medicaid beds, decertify unused beds and provide for the reallocation of unused beds.

In addition to chapter 242 of the Health & Safety Code and chapter 32 of the Human Resources Code, the new sections will function by specifically implementing §32.0213 of the Human Resources Code.

To control the number of Medicaid beds allocated to Texas nursing facilities, these rules generally restrict applications for contracting for new Medicaid bed capacity while providing means by which: counties with high bed occupancy rates may be opened for the addition of new beds in order to ensure the availability of Medicaid services to recipients in those areas; small facilities may expand to up to 60 beds for reasons of efficiency; communities with an immediate need for beds may expand bed capacity; beds may be allocated to serve underserved minority communities; beds may be allocated to serve persons who have been released by the Texas Department of Criminal Justice; beds may be allocated to serve those individuals suffering from Alzheimer's disease; and

the needs of private pay patients transferring to Medicaid may be met through the allocation of temporary beds.

To address the large number of beds previously allocated to facilities that remain unoccupied and to ensure greater competition, the rules provide a mechanism for proportionately reducing that unused capacity on an annual basis. This reduction in unused capacity will also prevent facilities with poor records from keeping down occupancy rates in smaller counties.

The rules also provide for the reallocation of beds. To protect Medicaid patients, facilities will be screened to determine their health and safety record when beds are allocated or reallocated and upon the request for various waivers and exceptions in order to ensure that beds are allocated to providers with a history of providing quality care.

The rules are based on the work of a negotiated rulemaking committee composed of representatives of the Texas Health Care Association, Texas Association of Homes and Services for the Aging, Texas Department on Aging, Texas Advocates for Nursing Home Residents, Advocates for Nursing Home Reform, American Association of Retired Persons, Texas Health and Human Services Commission, Arboretum Group, Texas Hospital Association, and the Texas Department of Human Services.

At the conclusion of the negotiated rulemaking process, the committee unanimously agreed to recommend these rules to DHS in a final report which is available to the public. Persons wishing to obtain the report may contact: Julie Mayton, Long Term Care Policy Section, P.O. 149030, Mail Code W-519, Austin, Texas 78714 - 9030.

The department has determined that these rules regarding bed allocations will not affect any real property interests. Accordingly, no takings impact assessment is required under §2007.043 of the Government Code and §2.19 of the Attorney General's Guidelines under the Private Real Property Rights Preservation Act. See (21 TexReg 387,390) (1996).

A public hearing was held on March 17, 1998, at which no one offered comments.

The following comments were received from members of the Texas Association of Residential Care Communities and numerous individuals.

#### 1. Reference - §19.2322 (d)(2) Exemptions

Comment - The legislative mandate dealing with the moratorium on Medicaid Nursing Home Beds is very clear. Punishment was not a part of the directive. A portion of this rule goes beyond the legislative mandate and threatens the financial viability of the nursing home investment. Owners who wish to sell their nursing home property to a qualified operator, for whatever reason, should not have their property devalued.

Recommendation - Place a period after the word suspended, and remove the following language from the paragraph, "...and any sale of either the NFO or the physical plant will not transfer or convey the bed allocation to a buyer. However, the department may make an affirmative finding that good cause exists to waive this requirement to facilitate a change in ownership to protect residents of the facility or for other good cause."

Comment - This provision does not protect the interest of the lender or landlord. The only way to salvage and protect the

capital investment *may be to provide that the NFO sell or transfer its position, probably defaulted, to a third party with the approval of the lender and/or landlord.* The lender and landlord have not been the reason sanctions have been levied, are not in a position legally or practically to interfere with the management of a borrower or tenant until there is default, and, similar to the DHS, are not allowed to pursue remedies until there is a default.

At this point, they must have the flexibility to locate another borrower/tenant/NFO and if this necessitates that the NFO transfer its interest to the new party, then this should be allowed. Allowing the DHS the flexibility to examine this situation could be provided by adding the language identical to that found in paragraph (d), paragraph 2 at the end being "or for other good cause". This is needed *because in a default situation, it is possible that there will not be residents in the facility to protect and the lender/landlord must have the ability to approach the DHS to find a solution and turn around the situation even if it means the NFO transferring its position.*

Response: During the work group's discussions, it became apparent that in certain egregious cases, that a culpable owner and/or operator could benefit from the sale of a facility, in which actual harm or death had occurred. This concept was not acceptable to any member of the work group. If a situation occurs that is so egregious, that the department has to take the most extreme measures of denying or revoking a license, or one in which a contract was terminated and the operator could not get the facility back into compliance, then in those situations the work group determined that it was appropriate to rescind the bed allocation and not allow these "bad actors" to profit from providing a poor quality of care. This was a consensus decision agreed upon by all members of the work group.

Moreover, there is an assumption that lenders/landlords would perform due diligence about the applicant's history before loaning funds. In order to ensure flexibility and for the protection of residents, §19.2322 (d)(2) and §19.2322 (e) both include the opportunity for a waiver.

While taking into account the history of facilities that consistently provide poor quality of care is not necessarily the primary purpose of the bed allocation rules, no criteria for controlling, decertifying or reallocating beds is articulated in the statute, other than that the department should take into consideration the occupancy rate of facilities. Accordingly, the department must carry out this regulatory scheme in the light of the underlying purposes for which it is assigned the authority to regulate nursing facilities and purchase medicaid services. Even a cursory reading of the department's authority in this area, Chapter 242 of the Health & Safety Code and particularly Chapter 32 of the Human Resources Code, discloses the legislature's mandate to protect the health and safety of nursing facility residents and to efficiently purchase medicaid services.

#### 2. Reference - 19.2322 (e) Loss of allocation due to sanctions.

Comment - The language "or for other good cause.", was added at the end of paragraph (d)(2) to give the Department more latitude in dealing with the bed allocation related to the sale of the NFO or the physical plant. The very same situation exists in the above referenced rule. Therefore, the same language should be added at the end of paragraph (e). It is our belief that this was a technical oversight on the part of the stakeholders and TDHS staff.

Recommendation - The entire paragraph should be deleted, but if it remains, then at the end of the paragraph remove the period and add the following language, "...or for other good cause."

Response: The difference in the waiver provisions between the two paragraphs, that ".....or other good cause" is added as an additional ground for waiver in paragraph (d)(2) but not in paragraph (e), was not an oversight. The circumstances and extent of the sanctions in the two paragraphs that trigger the loss of the bed allocation are different, thus giving rise to somewhat different waiver provisions.

### 3. Reference - 19.2322 (e) Loss of allocation due to sanctions

Comment -This rule goes beyond the legislative mandate and threatens the financial viability of the nursing home as an investment. Owners who wish to sell their nursing home property to a qualified operator, for whatever reason, should not have their property devalued.

Being able to contract for Medicaid recipients has provided stability to the nursing facility. This factor has given lenders the comfort level to loan money to develop nursing home projects. This rule will undermine lender's confidence and could destroy the ability of owners/operators to continue to develop new projects, replace old facilities or add on to existing buildings. This rule goes too far and is not needed.

Recommendation - Delete section (e) in its entirety.

Response: During the work group's discussions, it became apparent that in certain egregious cases, that a culpable owner and/or operator could benefit from the sale of a facility, in which actual harm or death had occurred. This concept was not acceptable to any member of the work group. If a situation occurs that is so egregious, that the department has to take the most extreme measures of denying or revoking a license, or one in which a contract was terminated and the operator could not get the facility back into compliance, then in those situations the work group determined that the only action to take was to rescind the bed allocation and not allow these "bad actors" to profit from providing a poor quality of care. This was a consensus decision agreed upon by all members of the work group.

In order to ensure flexibility and for the protection of residents, Sections §19.2333(d)(2) and §19.2322 (e) both include waivers to those requirements.

While taking into account the history of facilities that consistently provide poor quality of care is not necessarily the primary purpose of the bed allocation rules, no criteria for controlling, decertifying or reallocating beds is articulated in the statute, other than that the department should take into consideration the occupancy rate of facilities. Accordingly, the department must carry out this regulatory scheme in the light of the underlying purposes for which it is assigned the authority to regulate nursing facilities and purchase medicaid services. Even a cursory reading of the department's authority in this area, chapter 242 of the Health & Safety Code and particularly chapter 32 of the Human Resources Code, discloses the legislature's mandate to protect the health and safety of nursing facility residents and to efficiently purchase medicaid services.

### 4. Reference - 19.2322 (g)(4)(B)(i)

Comment - In the version of these rules "signed off" on by all stakeholders, the first sentence reads as follows, "(i) Regardless of any sanctions imposed in paragraph (4) of this section. . .".

In the version that is printed in the Texas Register the same sentence reads as follows, "(i) Regardless of any sanctions imposed in subparagraph (A) of this paragraph, " This change is not CRITICAL, but it is far less helpful to the reader and is not entirely logical when reading the entire paragraph as a whole. For whatever reason the change was made, it does not help the rule...it hurts it.

Recommendation - Restore the language that was approved by all stakeholders as follows: "(i) Regardless of any sanctions imposed in paragraph (4) of this section. .."

Response: This is the correct way to reference subparagraph (A) within paragraph (4) in the Texas Register format. The reference is to the policy in subparagraph (A).

### 4. Reference - 19.2324(c)(8)(9). Secondary Selection Process - New Construction

Comment: (8) (9) These provisions deal with 12 months to complete foundation work on new construction and 24 months to complete the project.

These sections state that the DHS allows no extensions for defaults of the 12 month deadline. The DHS should be granted discretion to extend this deadline as it is more important than the 24 month deadline. The reason the DHS needs this discretion is because of delays necessitated by third party financing and permitting. Most lenders will not allow a project to go forward until the Medicaid certification is received from the DHS. Twelve months is typically not enough time to obtain HUD insured financing. Twelve months is typically not enough time to go through the permitting process in cities such as Austin which impose very strict and time consuming requirements prior to issuing a building permit.

Recommendation: Should be amended to provide that "at its sole option, DHS may grant an extension to a potential contractor who anticipates default on the 12 month deadline if the potential contractor submits to DHS written documentation explaining the reasons for the delay in completing foundation work." You can check with DHS staff regarding its history in dealing with HUD insured projects, weather delayed projects, and municipal authorization delays to proceed with projects where 12 months is not realistic in the regulatory and lending environment today. This request is similar to language found in 19.2322(d)(3) where the DHS may grant an extension for extenuating circumstances in the event replacement facilities are not completed within the time frame required.

Comment: In reference to 19.2324(c)(10), if DHS is given discretion to agree that construction delays were caused by third parties, then liquidated damages should not be assessed or should at least be discretionary.

Response: The department disagrees. The twelve (12) and twenty-four (24) month periods for construction deadlines are adequate. The department is not in a position to easily or efficiently determine whether or not delays are caused by third parties.

## Subchapter X. Requirements for Medicaid-Certified Facilities

### 40 TAC §§19.2322, 19.2324

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and

under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

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

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

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Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

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For further information, please call: (512) 438-3765



#### 40 TAC §§19.2322, 19.2324

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections implement the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042.

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

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## Part II. Texas Rehabilitation Commission

### Chapter 104. Informal and Formal Appeals by Applicants/Clients of Decisions by a Rehabilitation Counselor or Agency Official

#### 40 TAC §104.5

The Texas Rehabilitation Commission adopts an amendment to §104.5, concerning formal appeal, with changes to the proposed text as published in the March 13, 1998, issue of the *Texas Register* (23 TexReg 2774).

The section is being adopted to clarify the Texas Rehabilitation Commission's Formal Appeal process.

One comment was received from the Advocacy, Inc. in regards to this proposed amendment. The comment stated that proposed §104.5(c)(2)(A)(iv) would allow an Impartial Hearing

Officer broad discretion that could lead to unilateral changes to procedural rules during a hearing, which if done without the consent of the parties, could prejudice the ability of an appellant to fully present his or her case. It was recommended: that the proposed rule be expanded to include a provision that requires the Impartial Hearing Officer to seek the agreement of both parties when a procedural deviation is needed; that a justification for the deviation to be included in the written record, along with an explanation of how the decision to deviate is in the interest of justice and/or reasonably necessary to expedite the proceedings; and that the rule include references to all of, and solely to, the specific sections and subsection of existing procedural rules of the hearing process to which this rule applies.

In response to this comment, the Texas Rehabilitation Commission is adopting the amendment with changes to incorporate recommended changes.

The amendment is adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

#### §104.5. Formal Appeal.

(a) The formal appeal process commences with the filing of a Petition for Administrative Hearing with the Commissioner's Office for Administrative Hearings. The hearing must be held within 45 days of an individual's request for review, unless informal resolution is achieved prior to the 45th day, or the parties agree to a specific extension of time.

(b) (No change.)

(c) Impartial Hearing Officer.

(1) (No change.)

(2) Powers and Duties.

(A) The IHO shall have the authority and duty to:

(i) (No change.)

(ii) take action to avoid unnecessary delay in the disposition of the proceeding;

(iii) maintain order; and

(iv) permit deviations from the rules and procedures prescribed in subsections (e)-(j) of this section, except subsection (j)(4)(F), in the interest of justice or to expedite the proceedings. If prior to adjournment of a hearing either party disagrees with a ruling or otherwise so requests, the IHO shall include in the written record a justification, and an explanation of how the decision is in the interest of justice and/or reasonably necessary to expedite the proceedings. Actions taken under this subsection shall be limited to procedural matters, and no party shall lose any substantive rights.

(B)-(D) (No change.)

(d)-(k) (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 May 4, 1998.

TRD-9807264

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Texas Rehabilitation Commission  
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**Part XIX. Texas Department of Protective and Regulatory Services**

**Chapter 700. Child Protective Services**

The Texas Department of Protective and Regulatory Services (TDPRS) adopts amendments to §§700.316 and 700.2501, in its Child Protective Services chapter. The amendment to §700.316 is adopted with changes to the proposed text published in the January 16, 1998, issue of the *Texas Register* (23 TexReg 414). The amendment to §700.2501 is adopted without changes to the proposed text and will not be republished.

The justification for the amendments is to take advantage of new federal regulations regarding contracting with for-profit residential treatment centers in order to maximize the resources available using the new less restrictive federal regulations. Federal law has changed to allow Title IV-E payments to for-profit institutions. The rules, as amended, will allow for continuity of care and provide more placements for Levels of Care V and VI, where the need is greatest.

The amendments will function by ensuring adequate resources for children in TDPRS conservatorship.

During the public comment period, TDPRS received five sets of comments from the Brown Schools, one set of comments from the Texas Children's Provider Coalition, and one set of comments from the National Association of Psychiatric Treatment Centers for Children, all in support of the proposal. After the comment period was over, TDPRS received seven additional sets of comments from the Texas Network of Youth Services, Catholic Family Service, Inc., East Texas Open Door, South Plains Children's Shelter, Inc., Sheltering Arms, Juliette Fowler Homes, and Central Texas Youth Services Bureau. Six were opposed to the proposal. South Plains Children's Shelter, Inc. was supportive of the proposal only if it was for Levels of Care V and VI. After careful consideration of all comments, TDPRS is amending §700.316(4)(D) to add, "Children can be admitted to a for-profit licensed residential treatment center at LOC 5 and LOC 6 only. If a child's level of care is subsequently reduced to LOC 4 only, the for-profit provider may continue to care for the child, if doing so is in the child's best interest, until the child's functioning stabilizes and TDPRS can arrange a planned move to an appropriate placement." This amendment will allow for continuity of care, but restrict initial placements to children with Level of Care V and VI needs, which are most appropriate for for-profit residential treatment facilities, where the need is greatest.

**Subchapter C. Eligibility for Child Protective Services**

**40 TAC §700.316**

The amendment is adopted under the Texas Family Code, Title 5, Chapters 261 and 264, which authorizes the department

to provide services to alleviate the effects of child abuse and neglect. In addition, the amendment is adopted under Public Law No. 96-272, Title I, which authorizes the department to administer foster-care and adoption assistance programs provided for under the Social Security Act, Title IV-E.

The amendment is also adopted under the Human Resources Code (HRC), Chapter 40, which describes the services authorized to be provided by the Texas Department of Protective and Regulatory Services; authorizes the department to enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC; grants authority to contract to that department; and establishes the department's rulemaking authority.

The amendment implements the HRC, Chapter 40, which authorizes the department to enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC and which authorizes the department to enter into contracts as necessary to perform any of its powers or duties.

*§700.316. Eligibility Requirements for Title IV-E, MAO, and State-Paid Foster Care Assistance.*

The child must meet all of the following criteria to be eligible for Title IV-E, Medical Assistance Only (MAO), or state-paid foster care assistance.

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

(4) Placement. The child must be receiving care in Texas in a licensed, certified, or verified foster home or a licensed, private, nonprofit child-caring institution approved for TDPRS foster-care assistance, except in the following circumstances.

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

(D) If the child is placed in a licensed residential treatment center, the facility may be for profit. Children can be admitted to a for-profit licensed residential treatment center at LOC 5 and LOC 6 only. If a child's level of care is subsequently reduced to LOC 4 only, the for-profit provider may continue to care for the child, if doing so is in the child's best interest, until the child's functioning stabilizes and TDPRS can arrange a planned move to an appropriate placement.

(5)-(8) (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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TRD-9807290

C. Ed Davis

Deputy Director, Legal Services

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**Subchapter Y. Contracting with Licensed Residential Child-Care Providers**

**40 TAC §700.2501**



The amendment is adopted under the Texas Family Code, Title 5, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect. In addition, the amendment is adopted under Public Law No. 96-272, Title I, which authorizes the department to administer foster-care and adoption assistance programs provided for under the Social Security Act, Title IV-E.

The amendment is also adopted under the Human Resources Code (HRC), Chapter 40, which describes the services authorized to be provided by the Texas Department of Protective and Regulatory Services; authorizes the department to enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC; grants authority to contract to that department; and establishes the department's rulemaking authority.

The amendment implements the HRC, Chapter 40, which authorizes the department to enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC and which authorizes the department to enter into contracts as necessary to perform any of its powers or duties.

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

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## Chapter 725. General Licensing Procedures

### Subchapter P. Alternative Accreditation

#### 40 TAC §§725.1501-725.1508, 725.1515-725.1520

The Texas Department of Protective and Regulatory Services (TDPRS) adopts new §§725.1501-725.1508 and 725.1515-725.1520, in its General Licensing Procedures chapter. New §§725.1502, 725.1505, 725.1506, 725.1508, and 725.1519 are adopted with changes to the proposed text published in the December 19, 1997, issue of the *Texas Register* (22 TexReg 12467). New §§725.1501, 725.1503, 725.1504, 725.1507, 725.1515-725.1518, and 725.1520 are adopted without changes to the proposed text and will not be republished. The new sections are adopted in new Subchapter P, Alternative Accreditation. The purpose of the changes to the proposal is to clarify the rules and to allow flexibility to program applicants and participants.

The justification for the new sections is to create an alternative accreditation program as required by the 75th Legislature. The approved accreditation organizations must publish, promulgate, and require compliance with standards and inspection procedures which meet or exceed the state's minimum requirements for child-care facilities and child-placing agencies.

The new sections will function by ensuring an alternative to licensing as required by the 75th Legislature. Child-care facilities and child-placing agencies who choose to participate in the alternative accreditation program will pay less to TDPRS in fees than they are required to pay under licensing.

During the public comment period, TDPRS received comments from the Texas Association for the Education of Young Children, the Council on Accreditation of Services for Families and Children, Inc., the Texas Association of Christian Child-Care Agencies, Inc., JBM Enterprises Inc., and several individuals. A summary of the comments and TDPRS's responses follow:

Comment regarding the nature and purpose of the Alternative Accreditation Program (§725.1501): The commenter expressed concern about the health and safety of children residing in or served by child-care facilities or child-placing agencies accredited under the Alternative Accreditation Program.

Response: The Legislature mandated the Alternative Accreditation Program. TDPRS will continue to work hard to meet its legislated purpose of protecting the health, safety, and well-being of children residing in child-care facilities both through the licensing program and through its role in the Alternative Accreditation Program.

Comment regarding the nature and purpose of the Alternative Accreditation Program (§725.1501): The commenter stated that the Alternative Accreditation Program degraded the child care industry and felt that a cost comparison analysis should be conducted to justify department resources being spent on the Alternative Accreditation Program.

Response: The Legislature mandated the Alternative Accreditation Program. TDPRS will continue to work hard to meet its legislated purpose of protecting the health, safety, and well-being of children residing in child-care facilities both through the licensing program and through its role in the Alternative Accreditation Program. TDPRS is not contracting with the accreditation organizations and it is not necessary to conduct a cost-analysis study because TDPRS is carrying out a legislative mandate.

Comment regarding the nature and purpose of the Alternative Accreditation Program (§725.1501): Two commenters stated that the public should be made aware through an education campaign about the difference between traditional, voluntary accreditation, and alternative accreditation as defined in this program.

Response: TDPRS plans to address this issue when implementing the Alternative Accreditation Program.

Comment regarding the nature and purpose of the Alternative Accreditation Program (§725.1501): The commenter stated its position that the best relationship between an accreditation organization and a public regulatory body should be one of partnership, wherein the regulatory body ensures the health and safety while the accreditation body is responsible for voluntary accreditation. This commenter also expressed concern about the philosophical distinction between the practice of licensing, which is a baseline quality assurance, and accreditation, which is intended to insure a higher level standard of quality and also suggested that TDPRS work to guarantee best practices for the children of the state.

Response: The Legislature mandated the Alternative Accreditation Program (§725.1501). TDPRS appreciates the comments

concerning the relationship between an accreditation organization and a regulatory body. TDPRS certainly would not want to be in an adversarial relationship with an accreditation organization; however, TDPRS must carry out the statute. TDPRS is willing to partner with accreditation organizations as the law allows. TDPRS also intends to carefully examine applications for approval as an accreditation organization to ensure the highest quality standards consistent with the legislation.

Comment regarding the qualifications for an accreditation organization (§725.1502 (1)): The commenter objected to the requirement that an accreditation organization, in order to qualify for approval by TDPRS, have experience in the child-care and/or child-placing industry and a credible background in accreditation. The commenter stated that these requirements exceed the qualifications mandated by the statute. The commenter is concerned that newly formed organizations would not qualify under these rules. The commenter proposed that an accreditation organization, in order to qualify for approval by TDPRS, be established for the purposes of accrediting child-care and/or child-placing organizations, and has qualified staff.

Response: Section 725.1502 (1) is amended to allow an accreditation organization to gain approval from TDPRS without organizational experience if the organization employs at least one executive level staff who: (1) has direct responsibility for the organization's operations; and (2) has significant supervisory or administrative experience in the child care industry for the type of facility the organization is seeking approval to accredit. The rule section also allows an accreditation organization without a credible background in accreditation to gain approval from TDPRS if the organization employs at least one executive level staff who: (1) has direct responsibility for the organization's operations; and (2) has experience as an accreditor or experience in regulating the delivery of services similar to child care or child placing services for the type of facility the organization is seeking approval to accredit.

Comment regarding the qualifications for an accreditation organization (§725.1502 (1)): The commenter stated that the level of expertise required for the staff of an accreditation organization is minimal and not the same as the requirements for TDPRS staff with similar responsibilities.

Response: TDPRS has tried to balance the regulations to reflect all of the comments on the level of experience necessary for approval as an accreditation organization.

Comment regarding the qualifications for an accreditation organization (§725.1502 (1)): The commenter proposed that, in order to qualify for approval by TDPRS, an accreditation organization be a statewide organization that has an unblemished record, a history of successful compliance with meeting state standards, and a minimum of five years experience in early care and education and in administering programs designed specifically to address the developmental needs and abilities of children.

Response: TDPRS has tried to balance the regulations to reflect all of the comments on the level of experience necessary for approval as an accreditation organization.

Comment regarding the qualifications for an accreditation organization (§725.1502 (2)): The commenter objected to the requirement that accreditation organizations promulgate, publish, and require compliance with standards and inspection procedures that meet or exceed the state's minimum requirements for

child-care facilities or child-placing agencies. The commenter proposed that TDPRS create a new set of minimum standards specialized for faith-based programs.

Response: The Legislature does not distinguish between faith-based and non-faith-based organizations and the statute itself requires that the accreditation organization meet or exceed the state's minimum requirements in §42.102 (1) of the Human Resources Code. These regulations are intended to implement the statute which was designed to provide the same protection to children in accredited facilities and agencies as those children in licensed facilities and agencies.

Comment regarding the qualifications for an accreditation organization (§725.1502 (2)): The commenter stated that an accreditation organization's inspection procedures should match those in place for programs licensed by TDPRS and should include the use of differential monitoring plans that distinguish between levels of compliance and noncompliance, the clear posting of monitoring visit results, and a mandatory annual unannounced visit.

Response: Section 42.102 (1) requires accreditation organizations to promulgate, publish, and require compliance with inspection procedures that meet or exceed the state's minimum requirements for child-care facilities and child-placing agencies. Section 725.1502 (2) reflects that statutory requirement. Section 725.1502 (5) requires that the accreditation organization meet or exceed TDPRS's policy of communication with parents and guardians of children in care.

Comment regarding the qualifications for an accreditation organization (§725.1502 (3)): The commenter proposed that TDPRS accept degrees and certificates awarded by Bible Colleges and other religious institutions and create provisions for accepting verified experience in lieu of academic experience when reviewing an accreditation organization's qualifications for accredited child-care administrators.

Response: Section 725.1502 (3) is taken from statute (§43.003 (c) of the Human Resources Code). Faith-based and non-faith-based organizations must be treated fairly and both must meet the state's qualifications for a child-care administrator. The qualifications set by statute are laid out in §43.004 of the Human Resources Code and allow for a variety of work experience and education. This statute currently allows TDPRS to accept a high school degree plus six years experience in "child care or a closely related field" as one of the minimum qualifications for child-care administrators.

Comment regarding the qualifications for an accreditation organization (§725.1502 (4)): The commenter objected to the rules prohibiting any member of an accreditation organization's governing board from having "control over the operation" of a child-care facility or child-placing agency accredited by the organization. The commenter stated that TDPRS exceeded the statute, which only prohibits any members of the accreditation organization's governing board from having proprietary interest in of a child-care facility or child-placing agency accredited by the organization.

Response: Section 725.1502 (4) has been clarified based on comments received to allow governing board members who have non-proprietary or non-financial controlling interest in facilities or agencies accredited by the accreditation organization to be approved for accreditation as long as the organization has

policies that safeguard against any conflict of interest between an accredited facility or agency and its accreditor.

Comment regarding the qualifications for an accreditation organization (§725.1502 (6)): The commenter objected to the requirement that an approved accreditation organization, in order to qualify for approval by TDPRS, be able to show evidence of adequate financial resources. The commenter stated that most faith-based ministries rely on donations and would not be able to demonstrate adequate financial resources.

Response: The regulations require an accreditation organization seeking approval from TDPRS to show evidence of adequate financial resources in order to ensure that the organization demonstrates a financial commitment to the safeguard and care of the children in the accredited child-care facilities and child-placing agencies and which will enable them to perform their statutory obligations and to remain in business. These qualifications must apply to faith-based and non-faith-based organizations.

Comment regarding the approval of an accreditation organization (§725.1504): The commenter recommended that an advisory committee of early childhood professionals, parents, and members from existing accrediting bodies be created to oversee the approval of accreditation organizations.

Response: TDPRS will include its advisory committee in the approval process.

Comment regarding the approval of an accreditation organization (§§725.1504 and 725.1508): The commenter objected to the one-year time frame on the approval of an accreditation organization and proposed that an accreditation organization's approval be valid for five years.

Response: Sections 725.1504 (d) and 725.1508 (c) are written to comply with §42.103 (b) and (c) of the Human Resources Code, which requires that approval of an accreditation organization be valid for one year and that the renewal procedure be annual.

Comment regarding the criminal history and background checks conducted as part of the Alternative Accreditation Program (§725.1505 (3)): The commenter objected to the requirement that the accreditation organization furnish TDPRS with the results of criminal and background check results conducted on facility and agency staff and proposed that the accreditation organizations furnish TDPRS with an affidavit once every year stating that the necessary checks have been conducted.

Response: The requirement in §725.1505 (3) is intended to serve two purposes. First, it allows TDPRS to be assured that the criminal and background checks have been conducted. Secondly, it avoids TDPRS having to duplicate the check and charge the child-care facility or child-placing agency the costs in order to fulfill TDPRS's obligations under §42.105 (b). Through these rules, TDPRS will only need to do second checks when a sufficient time has elapsed between the accreditation of the facility or agency by the accreditation organization and the facility's or agency's registration with TDPRS to operate under accreditation.

Comment regarding the notification of revocation or withdrawal of accreditation (§725.1505 (6)): The commenter objected to the requirement that the accreditation organization notify TDPRS no later than the seventh day after the date on which the organization revokes or withdraws the accreditation of a child-

care facility, child-placing agency, or child-care administrator and proposed that TDPRS note the method of notification and accept a 30-day notification period.

Response: Section 725.1505 (6) was written to comply with §42.108 of the Human Resources Code, which requires notification of revocation or withdrawal in seven days to TDPRS by the accreditation organization. TDPRS agrees with the comment that the regulations should address the accepted methods of notification. TDPRS will accept notification by facsimile or telephone as long as a letter of notification is sent by certified mail the same day. Section 725.1505 (6) is amended to reflect that change. These rules and the underlying legislation intend to prevent a revoked facility, agency, or child-care administrator from operating for any longer than necessary without either a valid accreditation or a license issued by TDPRS.

Comment regarding background and criminal histories (§§725.1506 (b) and (c) and 725.1519 (b) and (c)): The commenter objected to the prohibition of child-care administrators and child-care facility and child-placing agency staff who have a "confirmed history of abuse or neglect" from working and proposed that only those staff and child-care administrators who have been "convicted of abuse or neglect" be prevented from working in accredited facilities or agencies. The commenter also proposed an internal administrative appeal process prior to the formal appeal process for addressing criminal and background check results and that TDPRS distinguish between crimes of which a person can have been convicted and continue working during appeal and those crimes of which a person convicted could not work during appeal.

Response: Under §42.105 of the Human Resources Code, the Legislature has mandated that an approved accreditation organization and TDPRS review the general character and fitness of child-care administrators and other staff of accredited child-care facilities and child-placing agencies seeking accreditation, using both convictions of criminal activity and TDPRS's central registry of reported cases of child abuse and neglect. This regulation implements that requirement. Had the Legislature intended for an approved accreditation organization and TDPRS only to check convictions, the approved accreditation and TDPRS would not have been directed to check its central registry. The wording in §§725.1506 (b) and (c) and 725.1519 (b) and (c) has been changed from "confirmed history of abuse or neglect" to "final finding of abuse or neglect" for purposes of clarification. Child-care administrators and other individuals and organizations do have due process hearings available to them under Subchapters OO, PP, and YY of Chapter 725 of the Texas Administrative Code. TDPRS believes that the procedures for administrative review will serve the purpose of an internal review. These processes are designed to meet the requirements of Texas State law and afford adequate due process consistent with the protection of children in care.

Comment regarding background and criminal histories (§§725.1506 (b) and (c) and 725.1519 (b) and (c)): The commenter recommended that the same criteria and procedures used by TDPRS to handle criminal history checks be applied to programs which operate through the alternative accreditation system.

Response: Sections 725.1506 (b) and (c) and 725.1519 (b) and (c) were written to meet the statutory requirements of §42.105 of the Human Resources Code. TDPRS will work

with accreditation organizations to ensure that no endangering persons have contact with children in care.

Comment regarding the renewal of an accreditation organization's approval (§725.1508 (b)): The commenter sought clarification about the procedure for the renewal of TDPRS's approval of an accreditation organization, specifically whether the renewal will be automatic or will require an application for renewal.

Response: TDPRS agrees that the rule needs to address how the renewal process in §725.1508 (b) is begun and TDPRS has amended subsection (a) of that rule to require a request from the accreditation organization for renewal of TDPRS's approval.

Comment regarding inspections of accredited child-care facilities and child-placing agencies (§725.1517): The commenter expressed concern about TDPRS's limited authority to inspect child-care facilities and child-placing agencies holding a certificate to operate under accreditation.

Response: The Legislature gave TDPRS limited authority to inspect child-care facilities and child-placing agencies holding a certificate to operate under accreditation in §42.110 of the Human Resources Code. Section 725.1517 was written to reflect that statute. The accreditation organization has the authority and responsibility for all inspections not directed to TDPRS under §42.110 and any approved accreditation organization should have inspection procedures that meet or exceed those required by the state. TDPRS also intends to carefully examine applications for approval as an accreditation organization to ensure the highest quality standards and inspection procedures consistent with the legislation.

Comment regarding the registration of accredited facilities and agencies (§§725.1515- 725.1519): The commenter objected to the requirement that accredited child-care facilities and child-placing agencies register with TDPRS because the commenter believes that TDPRS should monitor the accreditation organizations and the accreditation organizations should monitor the accredited facilities and child-placing agencies. The commenter believes that the Alternative Accreditation Program was created by the Legislature to isolate faith-based child-care facilities from direct state control.

Response: Sections 42.041 (a) and 42.076 (a) of the Human Resources Code prohibit a child-care facility or child-placing agency from operating without either a license or a certificate to operate under accreditation issued by TDPRS. Furthermore §§42.104 and 42.106 of the Human Resources Code establish the procedures for the registration of accredited facilities and agencies. The statute and the rules give a great deal of authority to the accreditation organization. The actions taken by TDPRS are pursuant to the statutory requirements created to protect the health, safety, and well-being of the children served by the alternative accreditation program. This law applies to both faith-based and non-faith-based organizations alike and our regulations under this statute provide the minimum statutory action deemed necessary by the Legislature to safeguard the health, safety, and well-being of children.

Comment regarding the emergency suspension, denial, and revocation of a child-care facility or child-placing agency (§§725.1518 and 725.1519): The commenter proposed that in all cases other than those involving the physical abuse of children, the accreditation organization, not TDPRS, be the authority designated to suspend, deny, or revoke an accredited

child-care facility's or child-placing agency's certificate to operate under accreditation. The commenter proposed an immediate appeal process for emergency suspension, denial, and revocation prior to the appeal process governed by Chapter 2001, Government Code. The commenter also proposed that, in a situation calling for the emergency suspension of an accredited child-care facility or child-placing agency, the accreditation organization and local law enforcement both be notified and present at the facility or agency along with TDPRS.

Response: Only TDPRS can suspend, deny, or revoke a certificate which it grants. An accreditation organization has the authority to suspend, deny, or revoke its own accreditation which automatically invalidates TDPRS's certificate to operate under accreditation under §42.109 of the Human Resources Code. Regarding the emergency suspension of TDPRS's certificate to operate under accreditation: §725.1518 implements §42.111 of the Human Resources Code and the administrative procedures are those set out in Chapter 2001, Government Code and TDPRS's rules. An internal appeal procedure for emergency suspension would not be effective as the emergency suspension only lasts for ten days. The time limit and the emergency nature of emergency suspension preclude having accreditation organization and local law enforcement agency presence at the inspection. Regarding the denial or revocation of a certificate to operate under accreditation: §725.1519 is intended to implement §42.105 (b) of the Human Resources Code and the internal procedures found in Subchapters OO, PP, and YY of Chapter 725 of the Texas Administrative Code. TDPRS's procedures are intended to be consistent with Texas State law and afford adequate due process consistent with the protection of children in care.

Comment regarding the denial and revocation of a child-care facility or child-placing agency (§725.1519): The commenter recommended that the same criteria and procedures used by TDPRS to handle the revocation of a child-care facility or child-placing agency be applied to programs which operate through the alternative accreditation system.

Response: Section 42.105 (b) of the Human Resources Code gives TDPRS the authority to not issue, not renew, or revoke a facility's or agency's certificate to operate under accreditation based on the results of a background or criminal history check conducted by TDPRS. Section 42.110 (c) of the Human Resources Code gives TDPRS authority to prescribe corrective action and follow-up with inspections to accredited facilities and agencies under the circumstances outlined in §42.110 (a) of the Human Resources Code. Section 42.111 of the Human Resources Code gives TDPRS authority to issue an emergency suspension to accredited facilities and agencies under the circumstances outlined in §42.111 (a) of the Human Resources Code. Sections 725.1517, 725.1518, and 725.1519 reflect these statutory authorities. All other adverse action activities are the responsibility of the accreditation organization.

Comment regarding the accreditation process: The commenter proposed that regulations allow for a provisional accreditation process consistent with the provisional licensing process.

Response: The Legislature specifically authorized provisional licensing and not provisional accreditation. TDPRS believes that under these circumstances, the Legislature did not intend for there to be a provisional accreditation process.

The new sections are adopted under the Human Resources Code (HRC), Title 2, Chapter 42, which authorizes the depart-

ment to administer general child-placing and child care licensing programs.

The new sections implement the HRC, Chapter 42, Subchapter E, §§42.101- 42.111. These sections provide for the procedures for approval of an accreditation organization and renewal of that approval, as well as the certification of facilities and agencies to operate under accreditation, emergency suspension of such facilities and agencies, and withdrawal or revocation of such facilities and agencies, as well as inspections of such facilities and agencies under limited circumstances.

*§725.1502. Accreditation Organization.*

To qualify for approval by the Texas Department of Protective and Regulatory Services (TDPRS) under §725.1501 of this title (relating to the Alternative Accreditation Program) and under §725.1527 of this title (relating to Alternative Accreditation of Child-Care Administrators), an accreditation organization must:

(1) be a recognized private organization that meets the qualifications set out in subparagraphs (A)-(C) of this paragraph:

(A) have experience in the child care and/or child-placing industry or have at least one executive level staff with direct responsibility for operations, who has significant supervisory or administrative experience in the child care industry for the type of facility for which the organization is seeking approval to accredit;

(B) have a credible background in accreditation or have at least one executive level staff with direct responsibility for operations, who has experience as an accreditor or who has experience in regulating the delivery of services similar to child care or child placing services for the type of facility for which the organization is seeking approval to accredit; and

(C) have at least one executive level staff with direct responsibility for operations with a level of expertise similar to that required for a child care administrator's license;

(2) promulgate, publish, and require compliance with standards and inspection procedures for child-care facilities or child-placing agencies that meet or exceed the state's minimum requirements for child-care facilities or child-placing agencies under the Human Resources Code, Title 2, Chapter 42, Subchapter C, with the exception of standards relating to the internal self-governance of a facility or agency and to the curriculum, teaching, or instruction of the facility or agency;

(3) if planning to accredit child-care administrators under §725.1527 of this title, require accredited child-care administrators to meet qualifications that meet or exceed the state's qualifications for a child-care administrator under §43.004 of the Human Resources Code, with the exception of those qualifications relating to the internal self-governance of the child-care institution and to the curriculum, teaching, or instruction of the institution, but including the state's requirements for continuing education required under §43.009(a) of the Human Resources Code;

(4) not have any person serve as a member of the governing body of the accreditation organization who has a proprietary or financial interest in a child care facility or child placing agency that is accredited by the accreditation organization. Proprietary interest is the ownership or possession or exclusive right in the entity. Organizations with governing board members who have non-proprietary or non-financial controlling interest in facilities or agencies accredited by the accreditation organization may be approved if the organization has policies in place which safeguard against conflict of interest between an accredited facility or accredited agency and its accreditor;

(5) demonstrate a strong commitment to ensuring the provision of high-quality child-care services through its standards and inspection procedures, and through a policy of communicating with parents or guardians that meets or exceeds TDPRS's policy of communication with parents or guardians, including sharing the compliance history of the facility or agency with parents or guardians, requiring the facility or agency to post its certificate or letter of accreditation, and sharing any non-compliances related to violation of health and safety standards with parents or guardians; and

(6) show evidence of adequate financial resources necessary to comply with paragraphs (1)- (3) and (5) of this section.

*§725.1505. Ongoing Obligations of Approved Accreditation Organization.*

To comply with the laws and rules governing the Alternative Accreditation Program, and if applicable, the Alternative Accreditation of Child-Care Administrators, the accrediting organization must:

(1) furnish the Texas Department of Protective and Regulatory Services (TDPRS) with the written accreditation report and certificate or letter of accreditation of a facility or agency registering to operate under accreditation and must validate that information to TDPRS upon request;

(2) if accrediting child-care administrators, furnish a copy each child-care administrator's certificate or letter of accreditation;

(3) furnish TDPRS with the results of the background and criminal history checks on:

(A) a child-care administrator seeking accreditation under §43.003(c) of the Human Resources Code;

(B) a person who registers with TDPRS to operate under accreditation or holds a certificate to operate under accreditation issued by TDPRS;

(C) an operator of a child-care facility or child-placing agency accredited by the organization and seeking registration with TDPRS to operate under accreditation or issued TDPRS's certificate to operate under accreditation; and

(D) an employee of or an applicant for employment by a child-care facility or child-placing agency accredited by the organization and seeking registration with TDPRS to operate under accreditation or issued TDPRS's certificate to operate under accreditation;

(4) file the most recent inspection report for each facility and/or agency accredited by the organization 30 days before the date of TDPRS's renewal of the approval of the accreditation organization, in order to assist TDPRS in determining whether the accreditation organization is requiring compliance with standards and inspection procedures which meet or exceed the state's minimum requirements for child-care facilities or child-placing agencies;

(5) file with TDPRS any complaints that, despite the efforts made by the accreditation organization, the facility or agency has violated the standards of the accreditation organization and the violation creates an immediate threat to the health or safety of children attending or residing in the facility or agency; and

(6) notify TDPRS of the revocation or withdrawal of the accreditation of a child-care facility or child-placing agency holding a certificate to operate under accreditation, or the revocation or withdrawal of the accreditation of a child-care administrator. The organization must notify TDPRS no later than the seventh day after the date on which the organization revokes or withdraws the accreditation. The organization may notify TDPRS by facsimile or

by telephone as long as a letter of notification is sent by certified mail the same day.

*§725.1506. Background and Criminal History Checks.*

(a) An approved accreditation organization shall obtain and review the background information from the Texas Department of Protective and Regulatory Services' (TDPRS's) central registry of reported cases of abuse or neglect established under §261.002 of the Family Code and information from the Department of Public Safety established under §411.114 of the Government Code in order to review the general character and fitness of:

(1) a child-care administrator seeking accreditation under §43.003(c) of the Human Resources Code;

(2) a person who registers with TDPRS to operate under accreditation or holds a certificate to operate under accreditation issued by TDPRS;

(3) an operator of a child-care facility or child-placing agency accredited by the organization and seeking registration with TDPRS to operate under accreditation or issued TDPRS's certificate to operate under accreditation; and

(4) an employee of or an applicant for employment by a child-care facility or child-placing agency accredited by the organization and seeking registration with TDPRS to operate under accreditation or issued TDPRS's certificate to operate under accreditation.

(b) An approved accreditation organization shall not accredit a child-care administrator if the results of the background or criminal history check conducted by the organization show that a person has been convicted of an offense under Title 5 or 6, or Chapter 43 of the Penal Code or has a final finding of abuse or neglect.

(c) TDPRS shall revoke the organization's accreditation of a child-care administrator if the results of the background or criminal history check show that a person has been convicted of an offense under Title 5 or 6, or Chapter 43 of the Penal Code or has a final finding of abuse or neglect, and the organization fails to deny, revoke, or withdraw the accreditation of the child-care administrator.

*§725.1508. Renewal of Approval of Accreditation Organization.*

(a) Once every year upon receipt of a request for renewal of approval, the Texas Department of Protective and Regulatory Services (TDPRS) will review the accreditation organization's compliance with laws and rules governing the Alternative Accreditation Program, and if applicable, the Alternative Accreditation of Child-Care Administrators.

(b) If the accreditation organization has maintained compliance with the laws and rules governing the Alternative Accreditation Program, and if applicable, the Alternative Accreditation of Child-Care Administrators, TDPRS will renew the accreditation organization's approval.

(c) A renewed approval of an accreditation organization is valid for one year.

*§725.1519. Denial or Revocation of the Certificate.*

(a) A registration or certificate to operate under accreditation may be denied, revoked, or not renewed based on the results of a background or criminal history check.

(b) The Texas Department of Protective and Regulatory Services (TDPRS) shall deny a registration or renewal of a certificate to operate under accreditation if the results of the background or criminal history check conducted by TDPRS show that a person has been convicted of an offense under Title 5 or 6, or Chapter 43 of the Penal Code or has a final finding of abuse or neglect.

(c) TDPRS shall revoke a certificate to operate under accreditation if the results of the background or criminal history check conducted by TDPRS show that a person has been convicted of an offense under Title 5 or 6, or Chapter 43 of the Penal Code or has a final finding of abuse or neglect, and the facility or agency fails to remove that person from the facility or agency.

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 May 5, 1998.

TRD-9807292

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Effective date: June 1, 1998

Proposal publication date: December 19, 1997

For further information, please call: (512) 438-3765

◆ ◆ ◆  
**40 TAC §§725.1527-725.1533**

The Texas Department of Protective and Regulatory Services (TDPRS) adopts new §§725.1527-725.1533, in its General Licensing Procedures. New §§725.1528, 725.1531, 725.1532, and 725.1533 are adopted with changes to the proposed text published in the December 19, 1997, issue of the *Texas Register* (22 TexReg 12470). New §§725.1527, 725.1529, and 725.1530 are adopted without changes to the proposed text and will not be republished. The new sections are adopted in new Subchapter P, Alternative Accreditation. The purpose of the changes to the proposal is to clarify the rules and to allow flexibility to program applicants and participants.

The justification for the proposal is to create an alternative accreditation program as required by the 75th Legislature.

The new sections will function by ensuring an alternative to licensing as required by the 75th Legislature. Administrators who choose to participate in the alternative accreditation program will pay no fees to TDPRS, while they are required to pay a bi-annual \$50 fee under licensing.

During the public comment period, TDPRS received comments from an individual. A summary of the comments and TDPRS's responses follow:

Comment regarding the qualifications for an accreditation organization for child care administrators (§725.1528 (1)): The commenter objected to the requirement that an accreditation organization for child care administrators, in order to qualify for approval by TDPRS, have experience in the child-care and/or child-placing industry and a credible background in accreditation. The commenter stated that these requirements exceed the qualifications mandated by the statute. The commenter is concerned that newly formed organizations would not qualify under these rules. The commenter proposed that an accreditation organization, in order to qualify for approval by TDPRS, be established for the purposes of accrediting child-care and/or child-placing organizations, and has qualified staff.

Response: Section 725.1528 (1) is amended to allow an accreditation organization for child care administrators to gain approval from TDPRS without organizational experience if the organization employs at least one executive level staff who: (1) has direct responsibility for the organization's operations; and

(2) has significant supervisory or administrative experience in the child care industry for the type of facility the organization is seeking approval to accredit. The rule section also allows an accreditation organization for child care administrators without a credible background in accreditation to gain approval from TDPRS if the organization employs at least one executive level staff who: (1) has direct responsibility for the organization's operations; and (2) has experience as an accreditor or experience in regulating the delivery of services similar to child care or child placing services for the type of facility the organization is seeking approval to accredit.

Comment regarding the qualifications for an accreditation organization (§725.1528 (3)): The commenter objected to the rules prohibiting any member of an accreditation organization's governing board from having "control over the operation" of a child-care facility or child-placing agency accredited by the organization. The commenter stated that TDPRS exceeded the statute, which only prohibits any members of the accreditation organization's governing board from having proprietary interest in of a child-care facility or child-placing agency accredited by the organization.

Response: Section 725.1528 (3) has been clarified based on comments received to allow governing board members who have non-proprietary or non-financial controlling interest in facilities or agencies accredited by the accreditation organization to be approved for accreditation as long as the organization has policies that safeguard against any conflict of interest between an accredited facility or agency and its accreditor.

Comment regarding the notification of revocation or withdrawal of accreditation (§725.1531 (3)): The commenter objected to the requirement that the accreditation organization for child-care administrators notify TDPRS no later than the seventh day after the date on which the organization revokes or withdraws the accreditation of a child-care administrator and proposed that TDPRS note the method of notification and accept a 30-day notification period.

Response: Section 725.1531 (3) was written to be consistent with §42.108 of the Human Resources Code, which requires notification of revocation or withdrawal in seven days to TDPRS by the accreditation organization. TDPRS agrees with the comment that the regulations should address the accepted methods of notification. TDPRS will accept notification by facsimile or telephone as long as a letter of notification is sent by certified mail the same day. Section 725.1531 (3) is amended to reflect that change. These rules and the underlying legislation are intended to prevent a revoked child-care administrator from operating for any longer than necessary without either a valid accreditation or a license issued by TDPRS.

Comment regarding background and criminal histories (§725.1532 (b) and (c)): The commenter objected to the prohibition of child-care administrators who have a "confirmed history of abuse or neglect" from working and proposed that only those child-care administrators who have been "convicted of abuse or neglect" be prevented from working in accredited facilities or agencies. The commenter also proposed an internal administrative appeal process prior to the formal appeal process for addressing criminal and background check results and that TDPRS distinguish between crimes of which a person can have been convicted and continue working during appeal and those crimes of which a person convicted could not work during appeal.

Response: Under §42.105 of the Human Resources Code, the Legislature has mandated that an approved accreditation organization and TDPRS review the general character and fitness of child-care administrators seeking accreditation using both convictions of criminal activity and TDPRS's central registry of reported cases of child abuse and neglect. This regulation implements that requirement. Had the Legislature intended for an approved accreditation organization and TDPRS only to check convictions, the approved accreditation organization and TDPRS would not have been directed to check its central registry. The wording in §725.1532 (b) and (c) has been changed from "confirmed history of abuse or neglect" to "final finding of abuse or neglect" for purposes of clarification. Child-care administrators and other individuals and organizations do have due process hearings available to them under Subchapters OO, PP, and YY of Chapter 725 of the Texas Administrative Code. TDPRS believes that the procedures for administrative review will serve the purpose of an internal review. These processes are designed to meet the requirements of Texas State law and afford adequate due process consistent with the protection of children in care.

Comment regarding the renewal of an accreditation organization's approval (§725.1533): The commenter sought clarification about the procedure for the renewal of TDPRS's approval of an accreditation organization for child-care administrators, specifically whether the renewal will be automatic or will require an application for renewal.

Response: TDPRS agrees that the rule needs to address how the renewal process in §725.1533 is begun and TDPRS has amended the rule to require a request from the accreditation organization for renewal of TDPRS's approval.

The new sections are adopted under the Human Resources Code (HRC), Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs.

The new sections implement the HRC, Chapter 43, §43.003(c). This section provides for the procedures for approval of an accreditation organization exclusively for child-care administrators and renewal of that approval.

*§725.1528. Accreditation Organization for Child-Care Administrators.*

To qualify for approval by the Texas Department of Protective and Regulatory Services under §43.003(c) of the Human Resources Code and §725.1527 of this title (relating to the Accreditation of Child-Care Administrators), an accreditation organization must:

(1) be a recognized private organization that meets the qualifications set out in subparagraphs (A)-(C) of this paragraph:

(A) have experience in the child care and/or child-placing industry or have at least one executive level staff with direct responsibility for operations, who has significant supervisory or administrative experience in the child care industry for the type of facility for which the organization is seeking approval to accredit;

(B) have a credible background in accreditation or have at least one executive level staff with direct responsibility for operations, who has experience as an accreditor or who has experience in regulating the delivery of services similar to child care or child placing services for the type of facility for which the organization is seeking approval to accredit; and

(C) have at least one executive level staff with direct responsibility for operations with a level of expertise similar to that required for a child care administrator's license;

(2) require accredited child-care administrators to meet qualifications that meet or exceed the state's qualifications for a child-care administrator under §43.004 of the Human Resources Code, with the exception of those qualifications relating to the internal self-governance of the child-care institution and to the curriculum, teaching, or instruction of the institution, but including the state's requirements for continuing education required under §43.009(a) of the Human Resources Code;

(3) not have any person serve as a member of the governing body of the accreditation organization who has a proprietary or financial interest in a child care facility or child placing agency that is accredited by the accreditation organization. Proprietary interest is the ownership or possession or exclusive right in the entity. Organizations with governing board members who have non-proprietary or non-financial controlling interest in facilities or agencies accredited by the accreditation organization may be approved if the organization has policies in place which safeguard against conflict of interest between an accredited facility or accredited agency and its accreditor;

(4) demonstrate a strong commitment to ensuring the provision of high-quality child-care services; and

(5) show evidence of adequate financial resources necessary to comply with paragraphs (1), (2), and (4) of this section.

*§725.1531. Ongoing Obligations of Approved Accreditation Organization for Child-Care Administrators.*

In order to comply with the laws and rules governing the Alternative Accreditation of Child-Care Administrators, the accrediting organization must:

(1) furnish the Texas Department of Protective and Regulatory Services (TDPRS) with the certificate or letter of accreditation of a child-care administrator;

(2) furnish TDPRS with the results of the background and criminal history checks on a child-care administrator seeking accreditation under §43.003(c) of the Human Resources Code; and

(3) notify TDPRS of the revocation or withdrawal of the accreditation of a child-care administrator. The organization must notify TDPRS not later than the seventh day after the date on which the organization revokes or withdraws the accreditation. The organization may notify TDPRS by facsimile or by telephone as long as a letter of notification is sent by certified mail the same day.

*§725.1532. Background and Criminal History Checks for Accredited Child-Care Administrators.*

(a) An approved accreditation organization shall obtain and review background information from the Texas Department of

Protective and Regulatory Services' (TDPRS's) central registry of reported cases of abuse or neglect established under §261.002 of the Family Code and information from the Department of Public Safety established under §411.114 of the Government Code in order to review the general character and fitness of a child-care administrator seeking accreditation under §43.003(c) of the Human Resources Code.

(b) An approved accreditation organization shall not accredit a child-care administrator if the results of the background or criminal history check conducted by the organization show that a person has been convicted of an offense under Title 5 or 6, or Chapter 43 of the Penal Code or has a final finding of abuse or neglect.

(c) TDPRS shall revoke the organization's accreditation of a child-care administrator if the results of the background or criminal history check show that a person has been convicted of an offense under Title 5 or 6, or Chapter 43 of the Penal Code or has a final finding of abuse or neglect, and the organization fails to deny, revoke, or withdraw the accreditation of the child-care administrator.

*§725.1533. Renewal of Approval of Accreditation Organization.*

(a) Once every year upon receipt of a request for renewal of approval, the Texas Department of Protective and Regulatory Services (TDPRS) will review the accreditation organization's compliance with laws and rules governing the Alternative Accreditation of Child-Care Administrators.

(b) If the accreditation organization has maintained compliance with the laws and rules governing the Alternative Accreditation of Child-Care Administrators, TDPRS will renew the accreditation organization's approval.

(c) A renewed approval granted by TDPRS under this section applies only to the accreditation of child-care administrators.

(d) A renewed approval of an accreditation organization is valid for one year.

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 May 5, 1998.

TRD-9807293

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Effective date: June 1, 1998

Proposal publication date: December 19, 1997

For further information, please call: (512) 438-3765





# TEXAS DEPARTMENT OF INSURANCE

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## **Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L**

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

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

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## Texas Department of Insurance

### PROPOSED ACTION

The Commissioner of Insurance, at a public hearing under Docket Number 2359 scheduled for July 1, 1998 at 9:00 a.m., in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), Rule 75.C.1.a., involving surcharges under the Texas Driving Insurance Plan. Staff's petition (Reference Number A-0598-13-I), was filed on May 11, 1998.

Staff proposes changing the thresholds for assigning surcharge points for auto accidents by amending Manual Rule 75.C.1.a., Texas Driving Insurance Plan. Specifically, Staff proposes changing the bodily injury threshold from \$0 to \$3000, and the property damage threshold from \$500 to \$1000.

Manual Rule 75.C.1.a. (Rule 75) currently requires assignment of a surcharge point to an insured who has an at-fault auto accident resulting in any bodily injury. An example would be minimal expenses for a doctor's examination for very minor injuries resulting from an auto accident. Staff is concerned that those minimal expenses significantly affect the insured's premiums. To alleviate this problem, Staff proposes changing the \$0 threshold, so that a point will not be assigned unless an auto accident results in bodily injury in excess of \$3000.

Currently Rule 75 requires assignment of a surcharge point to an insured who has an at-fault auto accident resulting in property damage in excess of \$500, regardless of whether anyone is injured. The rule formerly provided for a property damage threshold of \$200 for accidents occurring prior to February 1, 1985. Since 1985, repair costs have increased significantly and the distribution of automobiles on the road has changed dramatically. Consequently, very minor damage can easily exceed \$500. Therefore, Staff recommends changing the \$500 property damage threshold to \$1000.

Staff's Chief Economist has analyzed possible changes in thresholds in an exhibit attached to Staff's petition, and also in a more specific recommendation in the following two paragraphs.

The revised property liability threshold of \$1000 was determined in the following manner. Automobile claims were assumed to follow a lognormal distribution, a distribution that is commonly attributed to

such claims. The probability density function (p.d.f.) of a lognormal distribution can be completely described by two parameters: the mean and standard deviation of the distribution and allows an estimation of the proportion of claims that fall between any two points on the distribution. The average paid claim in 1985 for property damage liability from Fast Track data was \$1,146. Various standard deviations were assumed to model a number of p.d.f.'s. Based on these p.d.f.'s, the estimated proportion of claims that fell below the \$500 threshold in 1985 was calculated. The revised threshold was then determined by finding that threshold which would show the same estimated proportion of claims below it, based on, i). a lognormal distribution, ii). average paid claims of \$2,063 from 3rd quarter 1997 Fast Track data, and iii). the same assumed standard deviations as used for 1985 claims. This threshold was determined to be \$1000.

The bodily injury liability threshold of \$3,000 was determined in the following manner. Lognormal distributions, using the average paid claims of \$7,335 from 3rd quarter 1997 Fast Track data and various standard deviations, were modeled. The threshold was selected as that dollar amount that showed the same estimated proportion of claims falling below the threshold as for the property damage threshold. This threshold was determined to be approximately \$3,000.

A copy of the petition containing the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 463-6326; refer to (Reference Number A-0598-13-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the *Texas Register*, to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Automobile and Homeowners Group, Texas Department of Insurance, P. O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

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

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

TRD-9807787  
Caroline Scott

General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: May 12, 1998



# == REVIEW OF AGENCY RULES ==

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

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

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## Proposed Rule Reviews

Public Utility Commission of Texas

### Title 16, Part II

The Public Utility Commission of Texas files this notice of intention to review §23.104 relating to Telecommunications Pricing pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167). Project Number 18886 has been assigned to the review of this rule section.

As part of this review process, the commission is proposing the repeal of §23.104 and is proposing new §26.213 relating to Telecommunications Pricing to replace §23.104. The proposed repeal and new rules may be found in the Proposed Rules section of the Texas Register. As required by Section 167, the commission will accept comments regarding whether the reason for adopting the rule continues to exist in the comments filed on the proposed new section.

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

16 TAC §23.104. Telecommunications Pricing.

TRD-9807526

Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 8, 1998



Texas Real Estate Commission

### Title 22, Part XXIII

Chapter 531. Canons of Professional Ethics and Conduct for Real Estate Licensees

The Texas Real Estate Commission proposes to review all sections in Chapter 531 in accordance with the Appropriations Act of 1997, HB 1, Article IX, Section 167. The commission will accept comments for 30 days following the publication of this notice in the *Texas Register*

as to whether the reason for adopting each of the sections within this chapter continues to exist.

Any questions pertaining to this notice of intention to review should be directed to Mark A. Moseley, General Counsel, Texas Real Estate Commission. P.O. Box 12188, Austin, Texas 78711-2188 or e-mail to [general.counsel@trec.state.tx.us](mailto:general.counsel@trec.state.tx.us).

§531.1. Fidelity.

§531.2. Integrity.

§531.3. Competency.

§531.18. Consumer Information Form.

§531.19. Discriminatory Practices.

TRD-9807453

Mark A. Moseley  
General Counsel  
Texas Real Estate Commission  
Filed: May 7, 1998



Texas Rehabilitation Commission

### Title 22, Part XXIII

The Texas Rehabilitation Commission proposes to review the following sections from Chapters 104 and 106, pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167. As part of the review process, the Texas Rehabilitation Commission is proposing to amend and continue to adopt the following section in this issue of the *Texas Register*:

§106.3

The commission is proposing to readopt the following section without changes:

§104.5

An amendment to §104.5 is being adopted in this issue of the *Texas Register*. The amendment will take effect May 24, 1998.

The Commission's reason for adopting these sections continues to exist.

Comments on these proposed rules may be submitted to Roger Darley, Assistant General Counsel, Office of the General Counsel, Texas Rehabilitation Commission, Austin, Texas 78751.

TRD-9807652  
Charles Schiesser  
Chief of Staff  
Texas Rehabilitation Commission  
Filed: May 11, 1998



Texas Workforce Commission

#### **Title 40, Part XX**

The Texas Workforce Commission (Commission) files this notice of intention to review 40 TAC Chapter 807, concerning Proprietary Schools, pursuant to Chapter 1275, Acts of the 75th Legislature, 1997, §5(c), and the Appropriations Act, article IX, §167.

As part of this review process, the Commission is proposing the repeal of Chapter 807 and new Chapter 807, §§807.1-807.252. The new rules are a reorganization of the provisions with some changes to the requirements including simplification of the wording, removal of repetition of the statute, clarification of particular responsibilities and changes to requirements. For a detailed comparison between the new rules as proposed and the rules proposed for repeal, contact the Proprietary School Section at (512) 936-3104, facsimile number (512) 936-3111.

The proposed repeal and new rule section may be found in the Proposed Rules section of this *Texas Register*. As required by Section 167, the Commission will accept comments regarding whether the reason for adopting the rule continues to exist in the comments filed on the proposed new rules.

Any questions pertaining to this notice of intention to review should be directed to Michael De Long, Proprietary School Coordinator, Texas Workforce Commission, 101 East 15th Street, Austin, Texas 78778-0001; telephone number (512) 936-3104; facsimile number (512) 936-3111; e-mail address Michael.Delong@twc.state.tx.us.

TRD-9807585  
J. Randel (Jerry) Hill  
General Counsel  
Texas Workforce Commission  
Filed: May 11, 1998



#### **Adopted Rule Reviews**

Office of the Texas State Chemist/Texas Feed and Fertilizer Control Service

#### **Title 4, Part III**

The Office of the Texas State Chemist/Texas Feed and Fertilizer Control Service readopts without changes Chapter 61, Commercial Feed Rules, in accordance with the Appropriations Act, §167.

The proposed review appeared in the April 10, 1998, issue of the *Texas Register* (23 TexReg 3717).

No comments were received regarding the readoption of this chapter.

TRD-9807760  
Dr. George W. Latimer, Jr.  
Assistant to the Associate Vice Chancellor of Agriculture  
Office of the Texas State Chemist/Texas Feed and Fertilizer Control Service  
Filed: May 12, 1998



The Office of the Texas State Chemist/Texas Feed and Fertilizer Control Service readopts without changes Chapter 63, Pet Food Rules, in accordance with the Appropriations Act, §167.

The proposed review appeared in the April 10, 1998, issue of the *Texas Register* (23 TexReg 3717).

No comments were received regarding readoption of this chapter.

TRD-9807759  
Dr. George W. Latimer, Jr.  
Assistant to the Associate Vice Chancellor of Agriculture  
Office of the Texas State Chemist/Texas Feed and Fertilizer Control Service  
Filed: May 12, 1998



The Office of the Texas State Chemist/Texas Feed and Fertilizer Control Service readopts without changes Chapter 65, Commercial Fertilizer Rules, in accordance with the Appropriations Act, §167.

The proposed review appeared in the April 10, 1998, issue of the *Texas Register* (23 TexReg 3717).

No comments were received regarding the readoption of this chapter.

TRD-9807761  
Dr. George W. Latimer, Jr.  
Assistant to the Associate Vice Chancellor of Agriculture  
Office of the Texas State Chemist/Texas Feed and Fertilizer Control Service  
Filed: May 12, 1998



# TABLES & GRAPHICS

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

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

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FIGURE : 28 TAC §21.2305(b)

FIGURE 1  
**NOTICE OF AVAILABILITY OF COVERAGE UNDER THE  
TEXAS HEALTH INSURANCE RISK POOL**

**This notice is to advise you that you may be eligible for coverage from the Texas Health Insurance Risk Pool (Health Pool).**

To be eligible for Health Pool coverage, you must have evidence of at least one of the following:

- refusals or rejection notices based on health reasons, by two health carriers, for hospital, medical or surgical coverage.
- an offer of health coverage with riders excluding certain health conditions you have (For example, a health carrier will provide coverage to you with an exclusion of coverage of your diabetes, heart disease, cancer, etc.).
- a statement containing a rate quote from a health carrier offering to provide health coverage at rates that are higher than the rates of the Health Pool.
- diagnosis of one of the medical conditions specified by the Board of Directors of the Health Pool.
- proof that health coverage has been maintained for the previous 18 months with no gap in coverage greater than 63 days, the most recent coverage with an employer-sponsored plan, government plan or church plan.

For additional information concerning eligibility, coverages, cost, limitations, exclusions and termination provisions, call or write:

**Texas Health Insurance Risk Pool**  
**P. O. Box 90259**  
**Indianapolis, IN 46290-0259**  
**1-888-398-3927**  
**(Hearing Impaired call 1-800-313-4750)**

Health Pool Notice



TEXAS DEPARTMENT OF HUMAN SERVICES  
CREDENTIALING DEPARTMENT  
P.O. Box 149030  
Austin, Texas 78714-9030  
(512) 834-6787  
MAIL CODE: Y-978

COMPLAINT FORM

COMPLAINANT INFORMATION (person reporting)			
Name: _____			
Address: _____		Street Address	City
State	Zip		
Home Phone: _____		Work Phone: _____	

LICENSEE INFORMATION (alleged violator)			
Name: _____			
Address: _____		Street Address	City
State	Zip		
Home Phone: _____		Work Phone: _____	

**SUPPORTING DOCUMENTATION**

Attach documentation such as cancelled checks or receipts, charts, notes, records; also, names addresses, and phone numbers of others who may have information about the alleged violations, etc.

**DETAILS OF COMPLAINT**

Inclusive Dates of Client-Patient/Licensee Relationship: FROM: \_\_\_\_\_ TO: \_\_\_\_\_

Dates of Occurrences Indicating Rule Violations: \_\_\_\_\_

Rule Violations (see board rules): \_\_\_\_\_

DETAILED SUMMARY OF WHAT ACTUALLY OCCURRED THAT CONSTITUTES A STATUTORY OR RULE VIOLATION (Attach additional sheets if necessary):

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Signature of Complainant



Figure: 40 TAC Chapter 807--Preamble

Section Number	Section Title or the title of the Subchapter in which the rules are contained.	Costs of compliance provided by <u>small businesses</u> of the following:		Costs of compliance provided by <u>large businesses</u>
		<u>small proprietary schools per Tex. Educ. Code §132.054</u>	<u>large proprietary schools</u>	
807.4(a)	Waivers	\$200	\$30	\$40 for 4 hours
807.4(b)				
807.4(c)			\$100	
807.5(a)	Exemptions	\$200 for 20 hours	\$10	\$10 for 1 hour
807.5(b)		\$200	\$10	\$10 for 1 hour
807.11	Original approvals	\$7000 <sup>1</sup>	\$100	\$80 for 8 hours
807.12(a)	Renewal	\$1200 <sup>2</sup>	\$50	\$80 for 8 hours
807.12(b)		\$1200 <sup>2</sup>	\$50	\$80 for 8 hours
807.12(d)		\$1200 <sup>2</sup>		
807.13(b)		\$200	\$50	\$40 for 4 hours
807.13(c)		\$1000		
807.13(d)		\$500		
807.14(a)	Locations	\$800	\$20	
807.14(b)		\$800		
807.14(c)		\$1200		
807.14(d)		-	-	-
807.15(a)-(c)	Notification of legal action	\$100	\$10	\$10 for 1 hour
807.16(a)	Associate degrees	\$10,000-1yr process <sup>3</sup>	\$200	\$160 for 8 hours x 2 people
807.16(b)		\$2500 <sup>4</sup>	\$10	\$10
807.16(c)			\$10	\$10
807.17	Penalties and sanctions			
807.32		\$200	\$80 for 8 hours - \$100	\$80 for 8 hours - \$100
807.32(a)		\$1200 <sup>5</sup>		No cost
807.32(b)		\$200 - \$1200 <sup>5</sup>		No cost
807.32(c)		\$200-\$1200 <sup>5</sup>		No cost
807.33	Financial Requirements for Original Approvals		\$240 for 24 hours	
807.34	Financial Requirements for Changes of Ownership		\$120 for 12 hours	
807.35	Financial Requirements for Renewal		\$180 for 18 hours	
807.36	Interim Financial Statements			
807.37	Commission Ordered Audits		\$120 for 12 hours	
807.51(a)	Representative requirements		\$10	
807.51(b)				
807.52(1)-(3)	Representative standards			
807.53(a)	Representative limitations	\$200	\$10	
807.53(b)			\$10	
807.53(c)(1)				
807.53(c)(2)			\$10	
807.53(c)(3)		\$10		\$5 per enrollment
807.53(c)(4)		\$3	\$20	\$20
807.53(c)(6)				
807.53(c)(7)		\$24		
807.53(c)(11)		\$10		
807.53(c)(12)		\$36		
807.53(c)(13)				
807.61(a)	School director requirements	0-\$40 ea.	0-\$20 ea.	0-1 hour; \$20 ea.
807.62(a)-(i)	School director qualifications and duties	0-\$360 ea.	0-\$500 <sup>6</sup> ea.	0- 8 hours; \$160 ea.
807.63	Acting school director	\$30	\$200	1 hour; \$20
807.64	Director of education requirements	\$360	\$5000 <sup>7</sup>	No cost
807.65	Director of degree program requirements	\$480	\$5000 <sup>7</sup>	No cost
807.81(a)	Instructor qualifications		0	No cost
807.81(b)		\$240	\$100	No cost
807.81(c)		\$60	\$100	No cost

807.81(d)		\$45	0	No cost
807.81(e)		\$15	0	No cost
807.81(f)				
807.82(a)	Temporary Instructors	\$15	\$300	1 hour; \$10
807.82(b)		\$15	\$500	No cost
807.82(c)			\$5000	No cost
807.82(d)-(e)				
807.83(a)	Instructor application	\$75	\$500	2 hours; \$20
807.83(b)		\$75	\$200	2 hours; \$20
807.83(c)		\$10	0	No cost
807.83(d)			\$500	No cost
807.84(a)	School responsibilities regarding instructions	\$480	\$1500 <sup>8</sup>	4 hours; \$60
807.84(b)			0	No cost

807.84(c)		\$600	\$500	2 hours; \$30
807.84(d)		\$120	\$100	1 hour; \$15
807.84(e)		\$6 per student	\$500	8 hours; \$80
807.84(f)		\$288	\$500	No cost
807.84(g)				
807.91-807.104				
807.111(1)(a)	Fee Schedule			
807.111(2)-(7)				1 hour; \$10 ea.
807.111(8)(A)-(B)				1 hour; \$10 ea.
807.111(9)-(11)				1 hour; \$10 ea.
807.112(a) & (c)				1 hour; \$10 ea.
807.112(b)				
807.113(b)				No cost
807.121(b)				
807.123(a) & (f)				No cost
807.124(c)				No cost
807.125(a)-(c)				1 hour; \$10 ea.
807.126(a)(1)-(2)				5 hours; \$50 ea.
807.126(b)				8 hours; \$80
807.141				1 hour; \$10
807.142-807.146				
807.147(a)	Admission requirements for degree-granting schools			1 hour; \$10
807.147(b)-(c)			\$100	1 hour; \$10 ea.
807.161(a)	General requirements for progress standards	\$400		No cost
807.161(b)				1 hour; \$10
807.161(c)-(d)				
807.162(a)	Progress Requirements for Residence Schools			1 hour; \$20
807.162(b)		\$100		1 hour; \$20
807.162(c)(1)-(2)		\$100 ea.		1 hour; \$20 ea.
807.162(c)(3)				1 hour; \$20
807.162(d)-(e)		\$100 ea.		1 hour; \$20 ea.
807.162(f)				
807.163	Progress Requirements for Correspondence Schools			1 hour; \$20
807.164	Progress Requirements for Degree Granting Schools			1 hour; \$20
807.171	General Requirements for Attendance			
807.172	Attendance Requirements for Degree Granting Schools			1 hour; \$20
807.173-807.175				No cost
807.191-807.194	Subchapter M. Cancellation and Refund Policy			No cost
807.211-807.213	Subchapter N. Records			No cost
807.214	Employment Records			2 for \$10.00
807.221	School Policy Regarding Complaints			1 to 2 hours - Depending on complaint
807.222	Complaints and Investigation			No cost to 6 to 8 hours

807.231	General Information Relating to Truck Driver Training			1 to 2 hours
807.232	Truck Driver Instructor Development Course			40 hours
807.233	Behind-the-Wheel Instruction			5 1/2 hours
807.234	Motor Vehicle Insurance			N/A
807.235	Prohibited Activities Regarding Truck Driver Training			10 to 12 hours
807.261	School Closures			160 hours based on program
807.252	Tuition Protection Fund			6 hours

- 1 The amount includes all start-up costs: equipment and facilities acquisition, fees, bond, audit, etc.
- 2 The amount includes actual cost (fees) associated with renewal.
- 3 The amount includes all costs associated with becoming qualified to offer associate degrees, including accreditation, Coordinating Board fees, and DOE costs.
- 4 The amount includes fees to the Coordinating Board.
- 5 The amount includes CPA fees.
- 6 The amount includes costs of background investigations, interviews, and application.
- 7 The qualifications will require higher salary.
- 8 The amount includes in-service and continuing education costs for maintaining instructor quality.

# OPEN MEETINGS

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Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

**Emergency meetings and agendas.** Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the *Texas Register*.

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

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## **Texas State Board of Public Accountancy**

Thursday, May 14, 1998, 9:00 a.m.

333 Guadalupe Street, Tower III, Suite 900 Room 910

Austin

Board

EMERGENCY REVISED AGENDA:

1. Possible Investigation
  2. Discussion of file #98-01-64L
  3. Discussion of file #98-01-18L
  4. Discussion of file #98-01-19L
  5. Discussion of file #98-01-17L
  6. Discussion of file #98-01-28L
  7. Review of March 6, 1998 Wall Street Journal
  8. Discussion of file #98-01-16L
  9. Discussion of file #98-01-21L
  10. Discussion of file #98-01-20L
  11. Discussion of file #95-08-39L, 95-08-40L, 95-11-09L through 95-11-14L and 96-03-06L
  12. Discussion of file #95-10-03L and 95-10-04L Amendment to Consultant Contract
  13. Discussion of file #94-09-24L through 94-09-27
- Status Reports on Case Pending Major Case Summary
- Reason for Emergency: Detailed listing omitted from item Number VII.

Contact: Amanda G. Birrell, 333 Guadalupe Boulevard, Tower III, Suite 900, Austin, Texas 78701-3900, (512) 305-7848.  
Filed: May 7, 1998, 10:53 a.m.

TRD-9807420



## **State Office of Administrative Hearings**

Thursday, May 28, 1998, 9:00 a.m.

1700 North Congress Avenue

Austin

Utility Division

AGENDA:

A Hearing on the Merits is scheduled for the above date and time in:

SOAH DOCKET NUMBER 473-98-0813 —PETITION OF HOUSTON LIGHTING AND POWER COMPANY TO REVISE FUEL FACTORS AND IMPLEMENT SURCHARGE FOR PRIOR UNCOLLECTED FUEL COSTS (PUC DOCKET NO. 19115)

Contact: William G. Newchurch, 300 West 15th Street, Austin, Texas 78701-1649, (P.O. Box 13025, 78711-3025), 512/936-0728.

Filed: May 12, 1998, 1:13 p.m.

TRD-9807762



## **Texas Department on Aging**

Tuesday, June 2, 1998, 10:00 a.m.

4900 North Lamar Boulevard, Room 5501

Austin

Board



REVISED AGENDA:

Consider and possibly act on:

Call to order, Discussion of Sunset Report and Public Hearing.  
Possible action on Sunset Report and Public Hearing. Adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78751, 512/424-6840.

Filed: May 13, 1998, 9:34 a.m.

TRD-9807810



### **Texas Department of Agriculture**

Wednesday, May 27, 1998, 9:00 a.m.

1700 North Congress Avenue, Suite 1100

Austin

State Office of Administrative Hearings

AGENDA:

Administrative hearings to review alleged noncompliance with Texas Department of Agriculture Code Annotated §12.0202 and §18.007 (Vernon Supp. 1998) by Laurance Kriegel, Kriegel, Inc.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: May 11, 1998, 3:02 p.m.

TRD-9807681



### **Texas Agricultural Experiment Station**

Wednesday, May 20, 1998, 9:00 a.m.

Room 226, Memorial Student Center (MSC), Texas A&M University

College Station

Texas Equine Research Account Advisory Committee

AGENDA:

Review 1998 Annual Conference Report, Receive update of racing in Texas from the Texas Racing Commission. Hear update on legislative activities. Discussion planning details for 1999 Texas Horse Industry Conference.

Contact: Stephanie Fairhurst, Texas Agricultural Experiment Station, College Station, Texas 77843, 409/845-7980.

Filed: May 11, 1998, 10:35 a.m.

TRD-9807645



### **Texas Commission on Alcohol and Drug Abuse**

Thursday, May 21, 1998, 11:00 a.m.

Highway 281 South, Delicias Restaurant

Rachal

Regional Advisory Consortium (RAC)Region 11

AGENDA:

Call to order; welcome and introductions of guests; approval of minutes; old business; border task force; membership committee, and managed care; new business; update on RAC convenors meeting and

TCADA strategic plan for Fiscal Year 1999-2003; public comment; and adjournment.

Contact: Albert Ruiz, 9001 North IH-35, Suite 105, Austin, Texas 78753-5233, (512) 349-6607 or 1 (800) 832-9623, Extension 6607.

Filed: May 8, 1998, 3:11 p.m.

TRD-9807520



May 22, 1998, 11:00 a.m.

408 Mulberry Street

Brownwood

Regional Advisory Consortium (RAC), Region II

AGENDA:

Call to order; welcome and instructions of guests; approval of minutes; old business; new business: overview of the RAC convenors meeting; public comment; and adjournment.

Contact: Heather Harris, 9001 IH 35, Suite 105, Austin, Texas 78753-5233, (512) 349-6669 or 1 (800) 832-9623, Extension 6669

Filed: May 8, 1998 11:38 a.m.

TRD-9807505



### **Anatomical Board of the State of Texas**

Friday, June 5, 1998, 10:00 a.m.

5323 Harry Hines Boulevard, A.W. Harris Faculty Club at the UTSWMC

Dallas

AGENDA:

1. Call to order
2. Official welcome to the UTSWMC
3. Approval of the agenda
4. Approval of the 1997 minutes
5. Chairman's comments
6. Report of the Secretary
7. Report of the Treasurer
8. 1996-1997 Cadaver and Procurement report
9. Distribution of the cadavers for 1998-1999
10. Election of officers
11. New business
12. Public comment
13. Location of the 1999 meeting
14. Adjourn

Contact: Andrew F. Payer, Ph.D., 301 University Boulevard, Galveston, Texas 77555-0846, 409/772-1166.

Filed: May 12, 1998, 10:24 a.m.

TRD-9807723



### **The State Bar of Texas**

Friday, May 15, 1998, 8:30 a.m.

The Texas Law Center, 1414 Colorado Street, Room 206

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 case; pending and potential litigation; special counsel assignments; and the performance of the General Counsel/Chief Disciplinary Counsel and staff.

PUBLIC SESSION: Discussion 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 as assistance/Review and discuss the outcome of recent disciplinary trials/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: Anne McKenna, P.O. Box 12487, Austin, Texas 78711, 1 (800) 204-2222.

Filed: May 7, 1998, 10:30 a.m.

TRD-9807416



## **Texas Commission for the Blind**

Friday, May 15, 1998, 9:00 a.m.

Criss Cole Rehabilitation Center, 4800 North Lamar Boulevard

Austin

Governing Board

AGENDA:

1. Introductions
2. Public Comments
3. Approval; Minutes from Board Meeting of February 6, 1998

### **New Business**

4. Discussion and action: Executive Director's report on fiscal year 1998 second quarter activities
5. Discussion and action: Acceptance of gifts
6. Discussion and action: Addition of a new individual to the agency's Impartial Hearing Officer Pool
7. Discussion and action: Board Committee reports (refer to individual agendas posted for each Committee meeting)

Audit Committee: New Chair to be announced

Planning Committee: Dr. James L. Caldwell, Chair

Legislative Committee: Frank Mullican, Chair

Budget Committee: Olivia Sandoval, Chair

Administration Committee: Don W. Oates, Chair

8. Discussion and action: Adoption of amendments to §159 regarding Appeals and Hearing Procedures

9. Discussion and action: Adoption of the repeal of Chapter 161, Scope of Services

10. Discussion and action: Adoption of new Chapter 161, Subchapter A, §§161.10-161.44 regarding new hearing rules

11. Discussion and action: Adoption of the repeal of §163.36, Personal Assistant Services

12. Discussion and action: Adoption of new §163.36, Personal Assistance Services

13. Discussion and action: Adoption of amendments to §172.3 concerning advisory committees and councils

14. Discussion and action: Repeal of Chapter 165, Facilities Program

15. Discussion and action: Adoption of Agency Rules Review Plan

16. Discussion and action: Proposed repeal of Chapter 169 and simultaneously propose to adoption of new Chapter 169, Blind and Visually Impaired Children's Program

17. Discussion and action: State Strategic Plan

18. Executive session pursuant to Chapter 551 of the Government Code to discuss personnel and pending or contemplated litigation with attorney

19. Action, if required, on matters discussed in executive session

20. Next regular meeting of the Board

21. Discuss and action: Business Enterprises Program selection process.

Contact: Diane Vivian, P.O. Box 12866, Austin, Texas 78711, (512) 459-2601.

Filed: May 7, 1998, 11:36 a.m.

TRD-9807440



## **Texas School for the Blind and Visually Impaired**

Thursday, May 21, 1998, 8:15 a.m.

1100 West 15th Street, Room 116

Austin

Board of Trustees, Subcommittee on Finance and Audit

AGENDA:

Approval of Minutes:

1. Approval of Minutes from March 31, 1998

Finance Issues

1. Review/Approval of FY 1998-1999 Proposed Operating Budget
2. Review/Approval of FY 1998-1999 Proposed Legacy Budget
3. Review/Approval of Proposed Legislative Budget Request
4. Review of Capital Construction Projects
5. Review of Curriculum Book Sales
6. Review Donations Report
7. Review Investment Report

8. Review Revenue Reports
9. Review Expenditure Reports
10. Review Contingency Fund Report
11. Review/Approval of Amendment to Legacy Budget

Audit Items:

1. Report from Internal Auditor

Contact: Marjorie L. Heaton, 1100 West 45th Street, Austin, Texas 78756, (512) 206-9133.

Filed: May 11, 1998, 8:44 a.m.

TRD-9807556



Thursday, May 21, 1998, 9:00 a.m.

1100 West 45th Street, Room 110

Austin

Board of Trustees, Subcommittee on Policies

AGENDA:

1. Consideration of Approval of Minutes March 31, 1998, Meeting
2. Review and discussion of policies on the March 21, 1998 Agenda:
  - CFDA – Accounting: School Activity Fund Management (Amend)
  - CHB – Purchasing and Acquisition: Petty Cash Account (Adopt)
  - CRE – Insurance and Annuities Management: Workers' Compensation (Amend)
  - DP – Personnel Positions (Amend)
  - FFH – Student Welfare: Weekends Home (Adopt)

Contact: Marjorie L. Heaton, 1100 West 45th Street, Austin, Texas 78756, (512) 206-9133.

Filed: May 11, 1998, 8:44 a.m.

TRD-9807557



Thursday, May 21, 1998, 9:00 a.m.

1100 West 45th Street, Room 151

Austin

Board of Trustees, Subcommittee on Personnel

AGENDA:

1. Approval of Minutes of March 31, 1998 Meeting
2. Consideration of Internal Auditor's Salary Adjustment
3. Consideration of Superintendent's Goals and Objectives
4. Consideration of Human Resources Policies

CRE: Workers' Compensation

DP: Personnel Positions

Contact: Marjorie L. Heaton, 1100 West 45th Street, Austin, Texas 78756, (512) 206-9133.

Filed: May 11, 1998, 8:56 a.m.

TRD-9807558



Thursday, May 21, 1998, 10:00 a.m.

1100 West 45th Street, Room 116

Austin

Board of Trustees

AGENDA:

Approval of Minutes of March 31, 1998 Meeting; Approval Board Policies; Consideration of Approval of Dates for 1998-1999 Board Meetings; Consideration of Approval of Agency Strategic Plan for Fiscal Years 1999-2003; Consideration of Approval of Exceptional Items in the Legislative Appropriations Request for the Fiscal Year 2000/2001 Biennium; Consideration of Approval of Appropriations Transfers

Contact: Marjorie L. Heaton, 1100 West 45th Street, Austin, Texas 78756, (512) 206-9133.

Filed: May 11, 1998, 8:57 a.m.

TRD-9807559



### State Cemetery Committee

Tuesday, May 19, 1998, 10:00 a.m.

909 Navasota

Austin

AGENDA:

I. Call to Order II. Staff, Guests, and Members Present III. Approval of Minutes IV. Consideration of the following Agenda Items: Item 1. Consideration and potential action on requests for burial and cenotaphs. Item 2. Consideration and potential action on the policy regarding dimensions of monuments for the burial spaces in the Texas State Cemetery. Item 3. Consideration and potential action on review of Balance of Accounts. Item 4 Consideration and potential action on the Medal of Honor Memorial and other memorials. Item 5. Consideration and potential action on the draft of the Texas state Cemetery Committee Rules. Items 6. Review of information regarding burials at the Texas State Cemetery from April 7, 1998, to May 19, 1998, Item . Old business: "Avenue of the Flags" Program on Highway 165; Warranty Letter to Contractor regarding Renovation Project: Texas A&M School of Architecture and 7th Street Enhancement; Location for Cenotaphs; Front of Building Sign; Ground Signage; Confederate Monuments; Cemetery Annex V. Scheduling of next Open Meeting. VI. Executive Session to consider personnel matters pursuant to the provisions of Texas Government Code, §551.074: Personnel Action VIII. Adjournment.

Contact: Ann Dillon, 1711 San Jacinto Boulevard, Austin, Texas 78701, (512) 463-3960.

Filed: May 8, 1998, 4:16 p.m.

TRD-9807537



### Coastal Coordination Council

Wednesday, May 13, 1998, 1:30 p.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 118

Austin

EMERGENCY REVISED AGENDA:

Barry McBee, Chairman of the Texas Natural Resource Conservation Commission, will participate by telephone conference call. Mr. McBee's participation by telephone conference call is necessary to provide a quorum for the meeting. The need for Mr. McBee's participation by telephone conference call was not reasonably foreseeable. The convening at one location of a quorum of the Coastal Coordination Council is difficult or impossible.

Reason for Emergency: To provide quorum for meeting

Contact: Janet Fathere, 1700 North Congress, Room 617, Austin, Texas 78701-1495, (512) 463-5385.

Filed: May 13, 1998, 11:41 a.m.

TRD-9807874

### **Council on Competitive Government**

Tuesday, May 19, 1998, 9:30 a.m.

1100 Congress Avenue, Capitol Extension Building, Room 3E.4

Austin

Council

AGENDA:

1. Call to Order; 2. Discussion of statutes and rules applicable to the Council's organization, programs and duties; 3. Open Discussion; 4. Set date and time for next work group meeting; 5. Adjournment.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, and non-English speaking person who may need assistance are requested to contact Michelle Gee at 512/463-3387 several days prior to the meeting by mail, telephone, or RELAY Texas (1/800-735-2989) so that appropriate arrangements may be made.

Contact: Michelle, Gee, 1100 Congress Avenue, Capitol Extension Building, Room 3E.4, Austin, Texas 78701, (512) 463-3387.

Filed: May 7, 1998, 12:15 p.m.

TRD-9807444

### **Corpus Christi Bay National Estuary Program**

Thursday, May 21, 1998, 3:00 p.m.

Blucher Institute, Texas A&M University-Corpus Christi, 6300 Ocean Drive

Corpus Christi

Management Committee of the Corpus Christi Bay National Estuary Program

AGENDA:

I. Call to order/introductions/approval of minutes

II. Approval of FY 1999 Annual Work Plan

III. Approval of Federal Consistency Strategy

IV. Approval of Implementation Strategy

V. Update on Revisions of Bays Plan

VI. Additional items/Adjourn

Contact: Richard Volk, 6300 Ocean Drive, Suite 3300, Corpus Christi, Texas 78412, 512/980-3420.

Filed: May 12, 1998, 10:46 a.m.

TRD-9807725

### **Office of Court Administration**

Thursday, May 14, 1998, 10:00 a.m.

State Capitol Exertion Room E2.020

Austin

Texas Judicial Council Committee on Visiting, and Retired Judges

AGENDA:

I. Commencement of Meeting *Chief Justice John Cayce*

II. Attendance of Members

III. Adoption of Minutes of March 27, 1998 Meeting

IV. Report from Denise Davis

A. *Research Assignments*

B. *Responses to Proposed Legislation*

V. Discussion and Committee Action on Recommendations to Texas Judicial Council Regarding Language for Proposed Legislation and Rules of Court

VI. Future Committee Action on Guidelines for Evaluation of Visiting Judges

VII. Other Business

VIII. Adjourn

Contact: Amy Chamberlain, P.O. Box 12066, Austin, Texas 78711-2066, 512/463-1625.

Filed: May 13, 1998, 8:56 a.m.

TRD-9807798

Tuesday, June 2, 1998, 10:00 a.m.

Harris County Commissioners Court, 1001 Preston

Houston

Texas Judicial Council Committee on Judicial Selection

AGENDA:

I. Commencement of Meeting *Mr. Joseph Callier*

II. Attendance of Members

III. Overview of Background Resources

IV. Discussion of Issues to be Addressed by Committee

V. Invited and Public Testimony

VI. Set Objectives for Future Committee Action

VII. Other Business

VIII. Date of Next Meeting (Calendar)

IX. Adjourn

Contact: Amy Chamberlain, P.O. Box 12066, Austin, Texas 78711-2066, 512/463-1625.

Filed: May 13, 1998, 11:21 a.m.

TRD-9807870

TRD-9807730

◆ ◆ ◆  
**Texas Court Reporters Certification Board**

Friday, May 15, 1998, 5:00 p.m.

2414 North Akard, Suite 600

Dallas

Ad Hoc Rules Committee

**AGENDA:**

According to the complete agenda, the Ad Hoc Rules Committee will call the meeting to order; take attendance; discuss and possible act upon a proposed amendment to the Supreme Court defining proper disclosure in Rule IV.B.4. of the Standards and Rules for Certification of Certified Shorthand Reporters; discuss and possible action upon a proposed amendment or special waiver to the Supreme Court at it relates to a relative reporting proceeding in Rule IV.B.8 of the Standards and Rules for Certification of Certified Shorthand Reporters; schedule next meeting, if necessary; and adjourn.

Person with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Peg Liedtke at 512/463-1747 two work days prior to the meeting so that appropriate arrangements can be made.

Contact: Peg Liedtke, 205 West 14th Street, Suite 101, Austin, Texas 78701, (512) 463-1747

Filed: May 7, 1998, 2:11 p.m.

TRD-9807460

◆ ◆ ◆  
**State Board of Dental Examiners**

Thursday, June 4, 1998, 1:30 p.m.

SBDE Offices, 333 Guadalupe, Tower 3, Suite 800, SBDE Conference Room

Austin

Credentials Review Committee

**AGENDA:**

**I. CALL TO ORDER**

**II. ROLL CALL**

Discussion and a vote may be called for on all Items under the following headings

**III. REVIEW AND APPROVAL OF PAST MINUTES**

**IV. REVIEW DENTAL APPLICATIONS FOR LICENSURE BY CREDENTIALS AND MAKE RECOMMENDATIONS TO THE BOARD FOR APPROVAL OR DENIAL OF SAID APPLICATIONS**

**V. REVIEW DENTAL HYGIENE APPLICATIONS FOR LICENSURE BY CREDENTIALS AND MAKE RECOMMENDATIONS TO THE BOARD FOR APPROVAL OR DENIAL OF SAID APPLICATIONS**

**VI. ANNOUNCEMENTS**

**VII. ADJOURN**

Contact: Mei Ling Clendennen, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, 512/463-6400.

Filed: May 12, 1998, 11:36 a.m.

◆ ◆ ◆  
Thursday, June 4, 1998, 2:30 p.m. until conclusion

SBDE Offices, 333 Guadalupe, Tower 3, Suite 800, SBDE Conference Room

Austin

Enforcement Committee

**AGENDA:**

**I. CALL TO ORDER**

**II. ROLL CALL**

**III. REVIEW AND APPROVE MINUTES**

**IV. ORIENTATION OF NEW COMMITTEE MEMBERS**

**V. RULES**

Discuss and consider proposing new Rule 109.400, Permit Required

Discuss and consider proposing new Rule 109.401, Definitions

Discuss and consider proposing new Rule 109.402, obtaining a Permit

Discuss and consider proposing new Rule 109.403, Operating Requirements for Permitted Mobile Dental Facilities or Portable Dental Units

**VI. DISCUSS AND CONSIDER DEVELOPING LANGUAGE THAT REQUIRES DENTISTS TO LIST THEIR "DEGREE OF PROVIDER" ON BROCHURES, PAMPHLETS, LETTERHEAD, BILLING STATEMENTS OR OTHER PRINTED MATERIAL THAT IS GIVEN TO THE PUBLIC.**

**VII. DISCUSS OF DEFINITION OF BIOHAZARDOUS MATERIAL**

**VIII. DISCUSS AND CONSIDER GUIDELINES FOR FINES AND PENALTIES FOR USE AT SETTLEMENT CONFERENCE HEARINGS**

**IX. DISCUSS AND CONSIDER A SELF-MONITORING CHECKLIST OF ADMINISTRATIVE REQUIREMENTS**

**X. DISCUSS AND CONSIDER DEVELOPING LANGUAGE THAT PROVIDES PENALTIES FOR REFUSAL TO PERMIT SBDE INVESTIGATORS TO ENTER DENTAL OFFICES PURSUANT TO A SANITATION COMPLAINT**

**XI. ANNOUNCEMENTS**

**XII. ADJOURN**

Contact: Mei Ling Clendennen, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, 512/463-6400.

Filed: May 12, 1998, 11:36 a.m.

TRD-9807731

◆ ◆ ◆  
Friday, June 5, 1998, 8:00 a.m., (until conclusion)

333 Guadalupe, Tower 2, 2nd Floor, William Hobby Building

Austin

Board

**AGENDA:**

**I. CALL TO ORDER**

- II. ROLL CALL
- III. REVIEW AND APPROVAL OF PAST MINUTES
- IV. APPEARANCES BEFORE THE BOARD
- V. LICENSING AND EXAMINATION REPORTS
- VI. ENFORCEMENT REPORTS
- VII. ADMINISTRATION REPORTS
- VIII. GENERAL COUNSEL'S REPORT
- IX. EXECUTIVE DIRECTOR'S REPORT
- X. PRESIDENT'S REPORT
- XI. RULES

Discuss and consider final adoption of rules §§104.1, 104.4, 107.101, 107.200, 107.201, rules §§107.400, 109.144.

Discuss and consider and vote on publication for comment proposed amendments to rules §§109.171–109.175.

Contact: Mei Ling Clendennen, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, 512/463–6400.

Filed: May 13, 1998, 12:26 p.m.

TRD-9807880



### **Texas Department of Economic Development**

Friday, May 15, 1998, 11:40 a.m.

217 5th Street, Dyess AFB

Abilene

Texas Strategic Military Planning Commission

**AGENDA:**

11:40 a.m. Call to Order

11:41 a.m. Approval of minutes from TSMPC Regular Meeting #3

11:45 a.m. Dyess AFP Mission Briefing

12:30 p.m. Adjourn

Contact: Yolanda Adams, 1700 North Congress Avenue, Austin, Texas 78701, (512) 936–0171.

Filed: May 7, 1998, 7:06 a.m.

TRD-9807406



Friday, May 15, 1998, 1:45 p.m.

555 Walnut Street

Abilene

Texas Strategic Military Planning Commission

**AGENDA:**

1:45 p.m. Call to Order

1:46 p.m. Base Community Relations

2:15 p.m. Open for Public Comment

2:45 p.m. Update on the Office of Defense Affairs

3:00 p.m. Report on Survivor Contract

3:15 p.m. Discussion and possible action on the development of the Military Strategic Plan

3:40 p.m. Schedule for future meetings of the Texas Strategic Military Planning Commission

3:45 p.m. Discussion and possible action on Military Day and Education Collaboration

4:00 p.m. Adjourn

Contact: Yolanda Adams, 1700 North Congress Avenue, Austin, Texas 78701, (512) 936–0171.

Filed: May 7, 1998, 7:06 a.m.

TRD-9807407



### **State Employee Charitable Campaign**

Thursday, May 14, 1998, 10:00 a.m.

2433 Ridgepoint Drive

Austin

State Policy Committee

**AGENDA:**

I. Call to order and discuss the meeting agenda— Issac Jackson

II. Review and adoption of the April 8, 1998 Meeting Minutes— Issac Jackson

III. State Advisory Committee Report— Le Bourgeois and Way

IV. Public Comment Period

V. Comptroller's Staff Report— Theresa Pesquera

VI. Consider and take action regarding Officer Elections— Issac Jackson

VII. Consider and take action regarding Local Employee Committee Nominations— Issac Jackson

VIII. State Campaign Manager's Report— Laura Lucinda and Mike Terry

IX. Consider and take action regarding letter from Amarillo LEC Chair— Issac Jackson

X. Consider and take action regarding Recertification Compliance Audit Appeals from Statewide Federations— Issac Jackson

XI. Consider and take action regarding Local Eligibility Appeals from Local Entities— Issac Jackson

XII. Consider and take action regarding Review of Campaign Materials— Issac Jackson

XIII. State Policy Committee Chair's Report

XIV. Consider and take action regarding next Meeting date Issac Jackson

XV. Program Report

XVI. Adjourn

Contact: Laura Lucinda, 823 Congress Avenue, Suite 1103, Austin, Texas 78701, (512) 478–6601.

Filed: May 7, 1998, 7:06 a.m.

TRD-9807405



## General Land Office

Tuesday, May 19, 1998, 11:30 a.m.

Center for Energy and Economic Diversification, 1400 North FM 1788

Midland

School Land Board

AGENDA:

Approval of previous board meeting minutes; pooling application, Stratton Ridge Field, Brazoria Co.; consideration of bids received on oil and condensate, Matagorda Island, Clearfield and Mesquite Bay, Aransas Co.; State Tracts 629-L and 659-L, Grass Island Field and State Tract 563-L, Calhoun Co.; Galveston Bay, Chambers Co.; North McElroy Unit, Crane and Upton Counties; East Cowden (Grayburg) Unit, Ector Co., Sabine River Tract 8, Gregg Co.; High Island, Jefferson Co., Stedman Island Field, Nueces Co.; Yates Field Unit, Pecos and Crockett Counties; Consideration of terms and conditions for leasing lands in Culberson and Reeves Counties at a special oil and gas lease sale; Closed and Open Sessions-consideration of proposed settlement agreement on royalty underpayment claims at issue in Cause #9713874, TransTexas Gas Corp. v. Texas General Land Office, v. TransTexas Gas Corp., Inc., and First Union Bank of Connecticut; Closed and Open Sessions-pending or contemplated litigation; and/or settlement offers.

Contact: Linda K. Fisher, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701, Room 836, 512/463-5016.  
Filed: May 11, 1998, 4:17 p.m.

TRD-9807691

## Office of the Governor-Criminal Justice Division

Friday, May 22, 1998, 9:00 a.m.

1100 San Jacinto, State Insurance Building, Second Floor, Conference Room

Austin

Governor's Juvenile Justice Advisory Board

AGENDA:

I. Call to Order

II. Welcome

III. Approval of Minutes

IV. Report on National Coalition Meeting

V. Status of Pending Federal Legislation

VI. Board Recommendations Regarding Grant Application JA-95-J02-11808, Southwest Texas State University, "Juvenile Justice Video Instruction Project"

VII. Board Recommendations Regarding Juvenile Accountability Incentive Block Grants

VIII. Next Meeting

IX. Adjourn

Contact: Aimee Snoddy, P.O. Box 12428, Austin, Texas 78711, (512) 475-2252.

Filed: May 8, 1998, 4:59 p.m.

TRD-9807549

## Texas Department of Health

Thursday, May 14, 1998, 10:30 a.m.

Moreton Building, Room M-739, 1100 West 49th Street

Austin

Strategic Management Committee

AGENDA:

The committee will discuss and possibly act on: approval of the minutes of the April 16, 1998, meeting; acceptance of the long-range plan for Texas Department of Health hospitals; approval for acceptance of a gift of a 1997 Chevrolet Astro van; presentation on House concurrent Resolution 44 concerning the role of state and local governments in providing public health services; updates (Sunset; Office of Border Health and strategic planning); and strategic financial issues.

To request an accommodation under the ADA, 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: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: May 6, 1998, 3:46 p.m.

TRD-9807389

Thursday, May 14, 1998, 1:00 p.m.

Moreton Building, Room M-739, 1100 West 49th Street

Austin

Health Financing Committee

AGENDA:

The committee will discuss and possibly act on: approval of the minutes of the April 17, 1998, meeting; final adoption of a rule concerning Medicaid in-home total parenteral hyperalimentation services; withdrawal of proposed rules concerning (durable medical equipment (DME) providers; independently practicing licensed vocational nurses; outpatient rehabilitation facilities; and private duty nursing services covered by the early and periodic screening, diagnosis, and treatment comprehensive care program); proposed rules concerning (DME providers; outpatient rehabilitation facilities; and private duty nursing services covered by the early and periodic screening, diagnosis, and treatment comprehensive care program); Managed care report; Vendor Drug report on recoupment activities; and Kidney Health Care budget update.

To request an accommodation under the ADA, 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: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: May 6, 1998, 3:46 p.m.

TRD-9807390

Thursday, May 14, 1998, 2:00 p.m.

Moreton Building, Room M-739, 1100 West 49th Street

Austin

Human Resources Committee

AGENDA:

The committee will meet to discuss and possible act on: approval of the minutes of the April 16, 1998, meeting; appointments to the midwifery board; and program and budget briefings for the Bureau of Human Immunodeficiency Virus (HIV) and Sexually Transmitted Diseases (STD) Prevention and Infectious Disease Epidemiology and Surveillance Division

To request an accommodation under the ADA, 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: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: May 6, 1998, 3:46 p.m.

TRD-9807391



Thursday, May 14, 1998, 3:00 p.m.

Moreton Building, Room M-739, 1100 West 49th Street

Austin

Health and Clinical Services Committee

AGENDA:

The committee will discuss and possibly act on: approval of the minutes of the April 17, 1998, meeting; proposed rules concerning death of a person with certain communicable diseases and mandatory testing of persons; final adoption of rules concerning the reporting of ingredients and nicotine content of cigarettes and tobacco products; withdrawal of rules relating to the creation of an immunization registry and to reporting requirements concerning immunizations; changes to immunization requirements for daycares and schools; and a presentation on the Take Time for Kids campaign.

To request an accommodation under the ADA, 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: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: May 6, 1998, 3:46 p.m.

TRD-9807392



Thursday, May 14, 1998, 4:00 p.m.

Moreton Building, Room M-739, 1100 West 49th Street

Austin

Regulatory Committee

AGENDA:

The committee will discuss and possibly act on: approval of the minutes of the April 16, 1998, meeting; final adoption of rules concerning (the licensing of home and community support services agencies; notices, instructions, reports to workers, and inspection protocol under the Texas Radiation Control Act; and fees for

certificates of registration, radioactive material(s) licenses, emergency planning and implementation, and other regulatory services under the Texas Radiation Control Act; proposed rules concerning (repeal and new rules for food establishments; licensing and accreditation for asbestos activities in public and commercial buildings; and restricting the sale and distribution of products containing Ephedrine); and a discussion of proposed rules concerning (a Memorandum of Understanding between the Railroad Commission of Texas, the Texas Department of Health, and the Texas Natural Resource Conservation commission regarding uranium surfacer mining, uranium or mining, and tailings ponds and impoundments).

To request an accommodation under the ADA, 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: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: May 6, 1998, 4:01 p.m.

TRD-9807395



Friday, May 15, 1998, 8:30 a.m.

Moreton Building, Room M-739, 1100 West 49th Street

Austin

Board Briefing Meeting

AGENDA:

The committee will discuss and possibly act on: a briefing by the Commissioner on current activities of the Texas Department of Health; and a discussion concerning procedural and/or administrative issues of the Board of Health.

To request an accommodation under the ADA, 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: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: May 6, 1998, 3:51 p.m.

TRD-9807393



Friday, May 15, 1998, 10:00 a.m.

Moreton Building, Room M-739, 1100 West 49th Street

Austin

Board

AGENDA:

The board will introduce guests and will meet to discuss and possibly act on: approval of the minutes of the April 17, 1998, meeting; commissioner's report; presentation of community service award to Elizabeth Kelley; Strategic Management Committee report (acceptance of a long-range plan for Texas Department of Health hospitals; and approval for acceptance of a gift of a 1997 Chevrolet Astro van); Health Financing Committee report (final adoption of a rule concerning Medicaid in-home total parenteral hyperalimentation services; withdrawal of proposed rules concerning (durable medical equipment (DME) providers; independently practicing licensed vocational nurses, outpatient rehabilitation facilities, and private duty nursing



services covered by the early and periodic screening, diagnosis, and treatment comprehensive care program); and proposed rules concerning (DME providers; outpatient rehabilitation facilities; and private duty nursing services covered by the early and periodic screening, diagnosis, and treatment comprehensive care program); Health and Clinical Services Committee report (proposed rules concerning the death of a person with certain communicable program); Health and Clinical Services Committee report (proposed rules concerning the death of person with certain communicable diseases and mandatory testing of persons; final adoption of rules concerning the reporting of ingredients and nicotine content of cigarettes and tobacco products; and withdrawal of rules relating to the creation of an immunization registry and to reporting requirements concerning immunizations); Human Resources Committee report (appointment to the midwifery board); Regulatory Committee report (final adoption of rules concerning (the licensing of home and community support services agencies; notices, instructions, reports to workers, and inspection protocol under the Radiation Control Act; and fees for certificates of registration; radioactive material(s) license; emergency planning and implementation; and other regulatory services under the Texas Radiation Control Act); proposed rules concerning (repeal and new rules for food establishments; licensing and accreditation for asbestos activities in public and commercial buildings; and restricting the sale and distribution of products containing Ephedrine)); public comments; announcements/comments; and setting the day for the June 199, board meeting.

To request an accommodation under the ADA, 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: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: May 6, 1998, 3:51 p.m.

TRD-9807394



## **Texas Health Reinsurance System**

Wednesday, May 20, 1998, 10:00 a.m.

William F. Hobby, Jr., State Office Building, 333 Guadalupe, Room 1264, Tower I, Room 950-B, (Texas Department of Insurance)

Austin

Board of Directors

AGENDA:

The meeting will be conducted via telephone conference call. The use of a conference call is necessary since only one board member resides in Austin and the consideration of an interim assessment was unforeseeable.

Consider and take possible action on interim assessment which may be necessary as a result of major claims received by the System as a result of reinsured risks.

Consider and take possible action on American National Life Insurance Company request for waiver of sixty day limit to reinsure a risk.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: May 12, 1998, 3:34 p.m.

TRD-9807773



## **Texas Healthy Kids Corporation**

Monday, May 18, 1998, 9:30 a.m.

Hobby Building, 333 Guadalupe, Tower I, Room 1264

Austin

Board of Directors

AGENDA:

THKC staff presentation, possible recommendations, and possible THKC Board deliberation and action/approval regarding the following:

- Issuance of new request for proposal for health benefit plan vendor(s) for THKC program, possible adoption/revision of enrollment projections, benefit plan, eligibility criteria, other program components.
- THKC Management Information Services Agreement with a college or university, proposals relating to same.
- Ongoing THKC program development and design, including community outreach, fundraising efforts.
- The necessity of procuring an independent auditor and possible designation of board member to oversee THKC selection of an auditor.
- Grievance process for handling consumer complaints.
- Timeliness, future meetings, general updates, other administrative, procedural matters, public comments.

EXECUTIVE SESSION: The THKC Board may meet in Executive Session in accordance with the Texas Open Meetings Act.

Person with disabilities who require auxiliary aids, services, or materials in alternate format, please contact THKC at least 3 business days before the meeting.

Contact: Tyrette Hamilton, P.O. Box 1506, Austin, Texas 78767-1506, 512/424-6565 (phone); 512/424-6601 (fax).

Filed: May 8, 1998, 3:57 p.m.

TRD-9807529



## **Texas Higher Education Coordinating Board**

Wednesday, May 14, 1998, 9:00 a.m.

Chevy Chase Office Complex, Building 5, Room 5.264, 7745 Chevy Chase Drive

Austin

Coordinating Board

EMERGENCY MEETING

AGENDA:

To discuss pending litigation, specifically, the case South Texas College of Law v. Texas Higher Education Coordinating Board.

Reason for Emergency: An urgent public necessity exists requiring immediate action because of a reasonably unforeseeable situation.

Contact: Lynn Rodriguez, P.O. Box 12788, Capital Station, Austin, Texas 78711, 512/483-6163.

Filed: May 13, 1998, 11:06 a.m.

TRD-9807866

◆ ◆ ◆  
**Texas Historical Commission**

Wednesday, May 20, 1998, 1:30 p.m.

108 West 16th, Elrose Building, 2nd Floor Library

Austin

Advisory Board of the Texas Preservation Trust Fund

AGENDA:

- 1) Administration of the Texas Prevention Trust Fund
- 2) Status Report on Grant Projects:
  - Fiscal Year 1997 Grant Program
  - Fiscal Year 1998 Grant Program
- 3) Grant Program Application Process: Criteria, Ranking, and Process
- 4) Other Business

Contact: Stan Graves/Lisa Harvell, P.O. Box 12276, Austin, Texas 78711, 512/463-6094.

Filed: May 11, 1998, 9:13 a.m.

TRD-9807699

◆ ◆ ◆  
**Texas Department of Housing and Community Affairs**

Monday, May 18, 1998, 8:30 a.m.

507 Sabine Street

Austin

Finance Committee

AGENDA:

The Finance Committee Meeting of the Board of the Board of Texas Department of Housing and Community Affairs will meet to consider and possibly act on:

Minutes of Meeting of April 20, 1998

Transfer of Ownership of Development, Substitution of Credit Enhancement for High Point Development Ratification of Countrywide Home Loan as Lender for Programs 48-53.

Adjourn.

Contact: L.P. Manley, 507 Sabine, #900, Waller Creek Office Building, Austin, Texas 78701, (512) 475-3934.

Filed: May 8, 1998, 3:40 p.m.

TRD-9807527

◆ ◆ ◆  
Monday, May 18, 1998, 9:00 a.m.

507 Sabine Street

Austin

Program Committee

AGENDA:

The Program Committee Meeting of the Board of the Board of Texas Department of Housing and Community Affairs will meet to consider and possibly act on:

Minutes of Meeting of April 20, 1998

Approval of HOME Program Contract for Pineywood Home Team

Approval of Deobligation of HOME Program Contracts

Approval of HOME Program Contracts Extensions

Approval of HOME Program Contract Modifications

Authorization for Variances on Loans/Contracts under HOME Program

Community Development Block Grant Awards to Hughes Springs and Lufkin

Approval of Acquisition Development Construction Demonstration Housing Program

Neighborhood Partnership Program for City of San Antonio

Adjourn. Individuals who require auxiliary aids or services for this meeting should contact Margaret Donaldson at 512-475-3100 or Relay Texas 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: May 8, 1998, 3:59 p.m.

TRD-9807535

◆ ◆ ◆  
Monday, May 18, 1998, 9:45 a.m.

507 Sabine Street

Austin

Low Income Housing Tax Credit Public Hearing

AGENDA:

The Low Income Housing Tax Credit Committee on the Board of the Texas Department of Housing and Community Affairs will meet to consider and possibly act on:

Minutes of Meeting of April 20, 1998

Approval of Requests for Extension of the Deadline for Closing Construction Loans for 1997 Tax Credit Recipients

Individuals who require auxiliary aids or services for this meeting should contact Margaret Donaldson, ADA Responsible Employee, at 512-475-3100 or Relay Texas 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: May 8, 1998, 3:52 p.m.

TRD-9807528

◆ ◆ ◆  
Monday, May 18, 1998, 10:00 a.m.

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 upon: Minutes of Meeting of April 20, 1998:

Approval of HOME Program Contract for Pineywoods Home Team

Approval of Deobligation of HOME Contracts

Approval of HOME Program Contracts Extensions

Approval of HOME Program Contracts Modifications

Authorization for Variances on Loans/Contracts under HOME Program

Community Development Block Grant Awards to Hughes Springs and Lufkin

Approval of Acquisition Development Construction Demonstration Housing Program

Neighborhood Partnership Program of City of San Antonio

Transfer of Ownership of Development, Substitution of Credit Enhancement for High Point Development

Ratification of Countrywide Home Loans as Lender for Program 48-53

Executive Director 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.

Contact: Larry Paul Manley, 507 Sabine, #900, Austin, Texas 78701, (512) 475-3934.

Filed: May 8, 1998, 4:14 p.m.

TRD-9807536



Monday, May 18, 1998, 12:00 p.m.

507 Sabine Street, Room 437

Austin

Board Meeting

AGENDA:

The Board of Texas Department of Housing and Community Affairs will meet to consider and possibly act on:

Approval of Minutes of Board Meeting of April 20, 1998

Approval of New Home Improvement Loan Program

Approval of Incur Debt Secured by Presidents Corner Apartments within Certain Terms

Approval of Corporations Business Plan

Approval of Most Current Financial Statements

Election of Vice-Chair of the Corporation

Approval of \$1,000,000 Loan Request for Second Lien Financing on Waller Creek Retirement;

PRESIDENTS REPORT 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 at 512-475-3100 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangement can be made.

Contact: Larry Paul Manley, 507 Sabine, #900, Austin, Texas 78701, (512) 475-3934.

Filed: May 8, 1998, 4:38 p.m.

TRD-9807547



## State Independent Living Council

Thursday, May 21, 1998, 9:00 a.m.

Brown-Heatly Building, 4900 North Lamar Boulevard

Austin

Transition Committee

AGENDA:

9:00 Call To Order

Formation of SILC Office

11:00 Adjourn

Contact: John Meinkowsky, 5555 North Lamar Boulevard, Suite J-125, Austin, Texas 78751, 512/467-0744.

Filed: May 11, 1998, 10:43 a.m.

TRD-9807647



Thursday, May 21, 1998, 11:00 a.m.

Brown-Heatly Building, 4900 North Lamar Boulevard

Austin

Executive Committee

AGENDA:

11:00 Call To Order

Transition of SILC Office

12:00 Adjourn

Contact: John Meinkowsky, 5555 North Lamar Boulevard, Suite J-125, Austin, Texas 78751, 512/467-0744.

Filed: May 11, 1998, 10:43 a.m.

TRD-9807648



Thursday-Friday, May 21-22, 1998, 1:00 p.m. and 8:00 a.m. (respectively)

Brown-Heatly Building, 4900 North Lamar Boulevard

Austin

AGENDA:

May 21

1:00 Call to Order (Roll Call, Approval of Agenda)

1:30 Public Comment

2:30 Report (TRC, TCB, SILC Coordinator)

3:30 Committee Reports  
 5:00 Review and Vote on Action Plan  
 6:00 Recess  
 May 22  
 8:00 Full Council Meeting (Call To Order, Roll Call)  
 8:15 Schedule of Meetings for Next Fiscal Year  
 8:30 Transition of SILC Office  
 10:00 Guests: IL Center Directors (Tentative)  
 12:00 Lunch  
 1:00 Review and Approval of State Plan  
 3:00 Adjourn

Contact: John Meinkowsky, 5555 North Lamar Boulevard, Suite J-125, Austin, Texas 78751, 512/467-0744.  
 Filed: May 11, 1998, 10:43 a.m.  
 TRD-9807649



### Texas Department of Insurance

Tuesday, May 19, 1998, 9:30 a.m.  
 333 Guadalupe, Room 102  
 Austin

Life and Health Working Group of the Advisory Committee for the Interim Study for agents and Agents' Licensing Statutes

AGENDA:

Discussion of the requirements of life/accident and health licenses including who should be licensed and what licensing requirements should be imposed. Continued deliberation and possible action regarding the streamlining and consolidation of license types including a proposal of a new "limited" license type covering funeral pre-arrangement, credit insurance, job protection insurance and stipulated premium life insurance. Presentation from the representatives of stipulated premium and funeral pre-arrangement companies concerning license consolidation and streamlining. Presentation from representatives of the Association of Financial Planners concerning requirements for the 11-00 Life Insurance Counselor license. Discussion of the marketing of insurance products including electronic marketing on the Internet and telemarketing. Discussion of regulatory and consumer protection issues concerning telemarketing and electronic commerce on the internet including a discussion of methods to regulate this type of marketing. 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. Discussion of continuing education requirements for the newly proposed "limited" license type. 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: May 7, 1998, 2:19 p.m.  
 TRD-9807461



Wednesday, May 20, 1998, 10:00 a.m.

Omni Marina Hotel, 707 North Shoreline, The Padre Conference Rooms B, C, and D

Corpus Christi

AGENDA:

The Building code Advisory Committee of the Texas Department of Insurance will hold a meeting on May 20, 1998, at 10:00 a.m. at the Omni Marina Hotel in Corpus Christi, Texas to be briefed by Department staff on (i) the status of the Department's training sessions for builders, architects, engineers, insurance agents, and other users of the new Building Code for Windstorm Resident Construction that becomes effective on June 1, 1998, and (ii) issues that have been identified during the training sessions, including possible changes to the new Code.

The Building Code Advisory Committee is appointed by the commissioner pursuant to Article 21.49, §6A(f) of the Insurance Code to advise and make recommendations to the Commissioner on building specifications in the Texas Windstorm Insurance Association (Association) plan of operation for structures to be eligible for windstorm and hail insurance through the Association. The purpose of the Association is to provide windstorm and hail insurance coverage to residents in designated catastrophe areas of the Texas coast who are unable to obtain such coverage in the voluntary market.

The meeting is held pursuant to Article 21.49, §6A(f) of the Insurance Code. There will be an opportunity for public comment, and all interested parties, including members of the general public, are invited to attend.

Contact: Sylvia Gutierrez, 333 Guadalupe Street, Austin, Texas 78701, (512) 463-6327.  
 Filed: May 7, 1998, 4:44 p.m.  
 TRD-9807478



Tuesday, June 9, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100 Austin

AGENDA:

Docket Number 454-98-0781.C. In the Matter of LISA A KELLER.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code, #113-2A, Austin, Texas 78701, 512/463-6328.  
 Filed: May 12, 1998, 3:56 p.m.

TRD-9807774



Wednesday, June 10, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100 Austin

REVISED AGENDA:

Docket Number 454-98-0705.H. In the Matter of SESO FIRE PROTECTION.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code, #113-2A, Austin, Texas 78701, 512/463-6328.  
 Filed: May 12, 1998, 3:56 p.m.

TRD-9807775



Thursday, June 11, 1998, 1:00 p.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100  
Austin

AGENDA:

Docket Number 454-98-0782.C. In the Matter of PARISH M. DAVIS.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code, #113-2A,  
Austin, Texas 78701, 512/463-6328.  
Filed: May 12, 1998, 3:56 p.m.

TRD-9807776

◆ ◆ ◆  
**Interagency Council on Early Childhood Intervention**

Wednesday, May 20, 1998, 9:30 a.m.

909 West 45th

Austin

Board

REVISED AGENDA:

Discussion and approval minutes from the April 22, 1998 meeting. Discussion and approval of Advisory Committee and Director's Forum reports. Discussion and approval of Fiscal Year 1999 Funding Plan. Discussion and approval of the proposed strategic plan for the Interagency Council on Early Childhood Intervention. Discussion and approval of staff recommendation regarding Level III status of Austin-Travis County MHMR Center. Discussion and Approval of *Texas Register* Submittal Plan of review for Agency Rules and First Section of Review Plan. Discussion of preparation of the Legislative appropriations Request. Discussion and Approval of schedule Board Meetings for the remainder of Fiscal Year 1998. FYL.

Linda B. Hill Telephone (512) 424-6753, Interagency Council on Early Childhood Intervention, 4900 North Lamar Boulevard, Austin, Texas 78751. Persons with disabilities who plan to attend the meeting and who may need auxiliary aids or services are requested to contact Linda Hill at least three days prior to the meeting so that arrangements can be made.

Contact: Linda B. Hill, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 424-6753.  
Filed: May 12, 1998, 9:13 a.m.

TRD-9807700

◆ ◆ ◆  
**Board of Law Examiners**

Thursday, June 11, 1998, 11:00 a.m.

Suite 500, Tom C. Clark, 205 West 14th Street

Austin

Mental Health Question Review Committee

AGENDA:

The Committee will review the mental health questions currently used on the forms of the Board of Law Examiners, and will consider possible changes to those questions.

Contact: Rachael Martin, P.O. Box 13486, Austin, Texas 78711-3486,  
(512) 463-8929.

Filed: May 8, 1998, 3:16 p.m.

TRD-9807521

◆ ◆ ◆  
**Board for Lease of University Lands**

Tuesday, May 19, 1998, 10:00 a.m.

Center for Energy and Economic Diversification, 1400 North FM 1788

Midland

AGENDA:

1. Approval of the Minutes of the March 17, 1998, meeting of the Board for Lease of University Lands.
2. Lease procedures and terms for Regular Oil and Gas Lease Sale Number 94 and Frontier Oil and Gas Lease Sale Number 94-A.
3. Lease Amendments
4. Polled Units.
5. Royalty in kind programs
6. Rules of the Board for Lease of University Lands and related matters.
7. Lease awards for Regular Oil and Gas Lease Sale Number 93.
8. Lease awards for Frontier Oil and Gas Lease Sale Number 93-A.

(PERSONS WITH DISABILITIES WHO PLAN TO ATTEND THE MEETING AND WHO MAY NEED AIDS OR SERVICES MAY CONTACT LORETTA LOYD AT (512) 499-4462 AT LEAST TWO DAYS PRIOR TO THE MEETING DATE SO THAT APPROPRIATE ARRANGEMENTS CAN BE MADE.)

Contact: Pamela S. Bacon, 201 West Seventh Street, Austin, Texas 78701, (512) 499-4462.

Filed: May 11, 1998, 3:58 p.m.

TRD-9807688

◆ ◆ ◆  
**Texas Department of Licensing and Regulation**

Thursday, May 14, 1998, 9:30 a.m.

E.O. Thompson Building, State Office Building, 920 Colorado, 4th Floor Conference Room

Austin

Water Well Drillers Advisory Council

EMERGENCY MEETING

AGENDA:

- A. Call to Order
- B. Roll Call and Certification of Quorum- Approval of Minutes – Meeting of March 26, 1998
- C. Report on Investigations and Complaints
- D. Discussion of qualifications and recommendations on applicants for certification in water well driller and pump installer programs
- E. Discussion and recommendations on applications for driller and pump installer-trainee registration

F. Council will make recommendations to the Department on consumer complaints.

1. Greg Issacs complaint on Cory Miller #2464WI
2. Sam Andrade complaint on Joe Carroll #2689W
3. William Thomashide complaint on Dicky Long #1462W
4. Billy and Vicki Hobbs complaint on Thomas Bilski #2301W

G. Staff Reports

H. Open Session/Public Comment

I. Discussion of date, time and location of next Council meeting

J. Adjournment

Person who plan to attend this meeting and require ADA assistance are requested to contact Caroline Jackson at (512) 463-7348 two working days prior to the meeting so that appropriate arrangement can be made.

Fax transmission of the open meeting notice was made on May 4, 1998, however, it was not received by the Register. Emergency posting of the agenda is made this date due to the fact that the meting was scheduled in advanced and interested parities and Council member are enroute to the meeting.

Contact: Steve Wiley, 920 Colorado, Austin, Texas 78711 (512) 463-8876.

Filed: May 11, 1998, 10:38 a.m.

TRD-9807646



Monday, May 18, 1998, 9:30 a.m.

E.O. Thompson Building, 920 Colorado, 4th Floor

Austin

Texas Commission on Licensing and Regulation

AGENDA:

The complete agenda is attached. The Commission will hold a regular meeting according to the following outline: A. call to Order; B. Roll Call and Certification of Quorum; C. Contested Cases; D. Motion to Reconsider in the Matter of Garden Manor Apartments #1, Respondent; E. Agreed Orders; F. Recommended legislative changes to Article 9100, Article 9102, Article 5221f-1, Article 5221a-7, Article 5221a-10, Article 5221a-8, Article 8886, Title 2, Labor Code, Subtitle E, and Texas Water Code, Chapter 32; G. Action on Strategic Plan for 2000-2001 Biennium; H. Staff reports; I. Public Comment; J. Executive Session; K. Open Session for discussion and possible action on pending litigation and settlement offers; discussion and possible action on compensation for exempt positions; L. Discussion of date, time and location of next Commission meeting; M. Budget Round Table discussion and workshop presented by CFO; N. Adjournment.

Contact: Kay Mahan, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701 (512) 463-3173.

Filed: May 7, 1998, 12:15 p.m.

TRD-9807443



## Texas State Board of Medical Examiners

Thursday, May 14, 1998, 9:00 a.m. and Saturday, May 16, 1998, 8:30 a.m. (respectively.)

333 Guadalupe, Tower 2, Suite 225

Austin

AGENDA:

The agenda will include a proposal for decision regarding Amin Jamal, M.D.; approval of orders; approval of committee reports and minutes; executive director's report; consideration and possible action regarding the agency's rule review plan; and approval of nuno pro tuno order.

Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code and the Medical Practice Act, Article 4495b, Texas Revised Civil Statutes, §2.07(b) and §2.09(o) for private consultation and advise of counsel concerning litigation relative to possible disciplinary action.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, phone 512/305-7016, fax 512/305-7008.

Filed: May 6, 1998, 4:26 p.m.

TRD-9807397



Thursday, May 14, 1998, 10:30 a.m.

333 Guadalupe, Tower 3, Suite 610

Austin

Disciplinary Process Review Committee

AGENDA:

Call to Order

Roll Call

Review, discussion, and possible action regarding the April 1998 enforcement Report

Review, discussion, and possible action concerning Board Rules 165.1-165.3 relating to medical records charges

Discussion regarding how cases are referred to Informal Conferences and how to facilitate the process

Executive session to review selected files and cases recommended for dismissal by Informal Settlement Conferences\*

Adjourn

\* Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code, and related to Article 4495b, §§2.07(b), 4.05(c), 5.06(s)(1), and Attorney General Opinion 1974, Number H-484.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, phone 512/305-7016, fax 512/305-7008.

Filed: May 6, 1998, 4:27 p.m.

TRD-9807398



Thursday, May 14, 1998, 10:30 a.m.

333 Guadalupe, Tower 3, Suite 610

Austin

Executive Committee

AGENDA:

1. Call to Order

2. Roll Call

3. Discussion, recommendation, and possible action regarding agency rule review plan, including time line and assignments to Board committees

4. Executive session under the authority of the Open Meeting Act, §551.071 of the Government code to discuss personnel matters

5. Adjourn

\*Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code and the Medical Practice Act, Article 4495b, Texas Revised Civil Statutes, §2.07(b) and §2.09(o) for private consultation and advise of counsel concerning litigation relative to possible disciplinary action.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, phone 512/305-7016, fax 512/305-7008.

Filed: May 6, 1998, 4:27 p.m.

TRD-9807399



Thursday-Friday, May 14-15, 1998, 11:00 a.m. and 3:30 p.m. (respectively)

333 Guadalupe, Tower 2, Suite 225

Austin

Joint Meeting: Endorsement Committee and Examination Committee

AGENDA:

Thursday, May 14, 1998, 11:00 a.m.

Call to order and roll call

Executive session under the authority of the Open Meetings Act §551.071 of the Government Code and Article 4495b, §2.07(b) and §2.09(o), Texas Revised Civil Statutes to consult with counsel regarding pending or contemplated litigation

Letters of eligibility, §3.04(g)(3) of the Medical Practice Act

Review of applications for licensure for a determination of eligibility referred to the committee by the Executive Director

Friday, May 15, 1998, 3:30 p.m.

Discussion, recommendation, and possible action regarding application questions pertaining to the Americans with Disabilities Act

Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, §2.07(b) and §2.09(o), Texas Revised Civil Statutes, and the Medical Practice Act, Article 4495b, 3.081, Texas Revised Civil Statutes.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, phone 512/305-7016, fax 512/305-7008.

Filed: May 6, 1998, 4:32 p.m.

TRD-9807400



Thursday, May 14, 1998, 1:00 p.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Examination Committee

AGENDA:

Call to Order

Roll Call

Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code, and Article 4495b, §2.07(b), and §2.09(o), Texas Revised Civil Statutes to consult with counsel regarding pending or contemplated litigation

Review of licensure applicants

Reconsideration of licensure applicants from the previous meeting

Review of examination applications complete for consideration of licensure

Adjourn

Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code, and Article 4495b, §2.07(b), and §2.09(o), Texas Revised Civil Statutes, and the Medical Practice Act, Article 4495b §3.081, Texas Revised Civil Statutes.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, phone 512/305-7016, fax 512/305-7008.

Filed: May 6, 1998, 4:32 p.m.

TRD-9807401



Thursday, May 14, 1998, 1:00 p.m.

333 Guadalupe, Tower 3, Suite 610

Austin

Endorsement Committee

AGENDA:

Call to Order

Roll Call

Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code, and Article 4495b, §2.07(b), and §2.09(o), Texas Revised Civil Statutes to consult with counsel regarding pending or contemplated litigation

Review of licensure applicants referred to the Endorsement Committee by the Executive Director for determinations of eligibility for licensure

Review of licensure applicants to be consider for permanent licensure by endorsement examination applications complete for consideration of licensure

Adjourn

Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code, and Article 4495b, §2.07(b), and §2.09(o), Texas Revised Civil Statutes, and the Medical Practice Act, Article 4495b §3.081, Texas Revised Civil Statutes.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, phone 512/305-7016, fax 512/305-7008.

Filed: May 6, 1998, 4:32 p.m.

TRD-9807402



Friday, May 15, 1998, 8:30 a.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Finance Committee

AGENDA:

Call to Order

Roll Call

Discussion of the Board's April 1998, Financial Statement

Discussion, recommendation, and possible action regarding the agency's Strategic Plan for fiscal years 1999-2003

Adjourn

Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code, and Article 4495b, §2.07(b), and §2.09(o), Texas Revised Civil Statutes, and the Medical Practice Act, Article 4495b §3.081, Texas Revised Civil Statutes.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, phone 512/305-7016, fax 512/305-7008.

Filed: May 7, 1998, 11:31 a.m.

TRD-9807423



Friday, May 15, 1998, 9:30 a.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Standing Orders Committee

AGENDA:

Call to Order and roll call

Discussion, recommendation and possible action regarding an amendment to Rule 183 relating to Patient Records.

Consideration and approval of acupuncture licensure applicants recommended by the Texas State Board of Acupuncture Examiners: Alighta A. Avenbukh, Pierre Auguste Carmouche, Youhong (Alan Chen, Shing-Hsiung Chuang, Roddey Lynn Cohn, Jennifer Eskey, Helen Tsai-Huey Huang, Asya Kareem, Soon Hwang Bo Lee, Carolyn Mann, Martin Esteban Manrique, Kevin Sean Raper, Mary Samuel, Stephanie Simmon Shea, Jampa MacKenzie Stewart, Jennifer Ann Walz, Kitwoon A. Yan, Xiaodong Zhang

Consideration and approval of Agreed Board Order as recommended by the Texas State Board of Acupuncture Examiners: Khairi R. Mubarak

Proposals for Decision, consideration and approval of recommendation by the Texas State Board of Acupuncture Examiners to revoke licensure: Rodger Kum-Soo Lee, Kdugu Khan, Salim K. Amiyreh, William L. Phillips

Further discussion, recommendation and possible action regarding Board Rule 197 relating to emergency medical services.

Discussion, recommendation and possible action regarding ordering prescription from the Internet.

Adjourn

Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code, and Article 4495b, §2.07(b), and §2.09(o), Texas Revised Civil Statutes, and the Medical Practice Act, Article 4495b §3.081, Texas Revised Civil Statutes.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, phone 512/305-7016, fax 512/305-7008.

Filed: May 7, 1998, 11:31 a.m.

TRD-9807424



Friday, May 15, 1998, 10:00 a.m.

333 Guadalupe, Tower 3, Suite 610

Austin

Ethics Committee

EMERGENCY MEETING

AGENDA:

Call to Order

Roll Call

Discussion on physician abandonment/discharge of patients

Adjourn

Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code, and Article 4495b, §2.07(b), and §2.09(o), Texas Revised Civil Statutes, and the Medical Practice Act, Article 4495b §3.081, Texas Revised Civil Statutes.

Reason for Emergency: Information has been received by the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, phone 512/305-7016, fax 512/305-7008.

Filed: May 7, 1998, 11:31 a.m.

TRD-9807425



Friday, May 15, 1998, 10:30 a.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Medical School Committee

AGENDA:

Call to Order

Roll Call

Report on completed medical school visits

Update on schedule of remaining visit, University of Texas at San Antonio, July 14

Adjourn

Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code, and Article 4495b, §2.07(b), and §2.09(o), Texas Revised Civil Statutes, and the Medical Practice Act, Article 4495b §3.081, Texas Revised Civil Statutes.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, phone 512/305-7016, fax 512/305-7008.

Filed: May 7, 1998, 11:31 a.m.

TRD-9807426



Friday, May 15, 1998, 11:00 a.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Public Information Committee

AGENDA:



Call to Order

Roll Call

Presentation of Spring 1998 newsletter

Discussion, recommendation, and possible action on legal basis for release of social security number

Discussion, recommendation and possible action on preparing and article on the new continuing medical education requirement for one hour of ethics for the Fall 1998 newsletter

Report on Board exhibit booth and upcoming exhibits:

TMA, April 23–25, Austin Convention Center

THA, June 1–2, Dallas

TOMA, June 18–20, Austin Renaissance Hotel

TCADA 41st Annual Institute of Alcohol and Drug Studies, July 26–August 7, Austin Convention Center

Adjourn

Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code, and Article 4495b, §2.07(b), and §2.09(o), Texas Revised Civil Statutes, and the Medical Practice Act, Article 4495b §3.081, Texas Revised Civil Statutes.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768–2018, phone 512/305–7016, fax 512/305–7008.

Filed: May 7, 1998, 11:31 a.m.

TRD-9807427



Friday, May 15, 1998, 1:00 p.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Non—Profit Health Organizations Committee

AGENDA:

Call to Order

Roll Call

Consideration and possible action applications for original certification of non-profit health organizations.

Consideration and possible action on biennial applications for recertification of non-profit health organizations.

Discussion of application of HMO rules to non-profit health organizations and possible action

Discussion of eligibility of physician hold distinguished Professor license to service as director of a non-profit health organization, and possible action

Adjourn

Executive Session under the authority of the Open Meetings Act, §551.071 of the Government Code, and Article 4495b, §2.07(b), and §2.09(o), Texas Revised Civil Statutes, to consult with counsel regarding pending or contemplated litigation. Call to order

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768–2018, phone 512/305–7016, fax 512/305–7008.

Filed: May 7, 1998, 11:31 a.m.

TRD-9807428

◆ ◆ ◆  
Friday, May 15, 1998, 2:00 p.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Ad Hoc Committee for Physicians in Training

AGENDA:

Call to Order

Roll Call

Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code, and Article 4495b, §2.07(b), and §2.09(o), Texas Revised Civil Statutes to consult with counsel regarding pending or contemplated litigation

Discussion, recommendation, and possible action for request of approval of military trauma training at Ben Taub General Hospital.

Discussion, recommendation, and possible action for request for approval of out-of -state physicians to participate in product training in Texas:

Discussion, recommendation and possible action for request for approval of fellowship training program at the W. B. Carrell Memorial Clinic, Dallas, Texas.

Reconsideration of proposed changes to §171.1 of Board rules.

Update on the April 22, 1998 meeting with the deans of Texas medical schools, the directors of Graduate Medical Education and program directors, regarding proposed rules to license residents in post graduate training.

Adjourn

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768–2018, phone 512/305–7016, fax 512/305–7008.

Filed: May 7, 1998, 11:31 a.m.

TRD-9807429



Friday, May 15, 1998, 3:00 p.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Ad Hoc Committee to Study Pharmacist Immunizations under Protocol

AGENDA:

Call to Order

Roll Call

Discussion and clarification of Task Force guidelines

Discussion, recommendation, and possible action regarding rules proposed by the Texas State Board of Pharmacy at their May 5, 1998 meeting

Discussion, recommendation, and possible action regarding protocols and possible amendments to delegation of drug therapy management rule, §193.7

Adjourn

Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code, and Article 4495b, §2.07(b), and

§2.09(o), Texas Revised Civil Statutes, and the Medical Practice Act, Article 4495b §3.081, Texas Revised Civil Statutes.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, phone 512/305-7016, fax 512/305-7008.

Filed: May 7, 1998, 11:31 a.m.

TRD-9807430



## Texas Natural Resource Conservation Commission

Monday, May 18, 1998, 8:30 a.m.

12100 Park 35 Circle

Austin

### AGENDA:

The Commission will meet in Executive Session to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Commission's Executive Director.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: May 8, 1998, 11:59 a.m.

TRD-9807508



Wednesday, May 20, 1998, 8:30, 9:30 a.m. and 1:00 p.m.

12100 Park 35 Circle

Austin

### AGENDA:

The Commission will consider approving the following matters. Hearing Request; Authorization to Construct; Petroleum Storage Tank Enforcement Agreed Orders; Industrial Hazardous Waste Enforcement Agreed Orders; Municipal Waste Discharge Enforcement Default Order; Public Water Supply Enforcement Agreed Orders; Public Water Supply Enforcement Default Order; Air Enforcement Agreed Orders; Air Agreed Order; Superfund; Rules; Executive Session; the Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date and time (REGISTRATION FOR 9:30 AGENDA STARTS 8:45 UNTIL 9:25) The Commission will consider approving the following matters on the 1:00 p.m. agenda; Proposal for Decision. (REGISTRATION FOR 1:00 p.m. AGENDA STARTS 12:30 P.M.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: May 8, 1998, 1:44 p.m.

TRD-9807512



Wednesday, May 20, 1998, 9:30 a.m.

12100 Park 35 Circle

Austin

### REVISED AGENDA:

The Commission will consider the following items: Executive Session; General Permit; Rule.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: May 12, 1998, 2:16 p.m.

TRD-9807765



Friday, May 29, 1998, 9:00 a.m.

1205 North Interstate 35, TNRCC Building F, Room 2210

Austin

State Small Business Compliance Advisory Panel

### AGENDA:

The State Small Business Compliance Advisory Panel will meet with the Small Business Assistance Program to ensure that small businesses have every opportunity to come into compliance with environmental regulations. (Karen Cave)

Contact: Karen Cave, 12015 Park 35, Austin, Texas 78753, (512) 239-1627.

Filed: May 6, 1998, 3:11 p.m.

TRD-9807384



Wednesday, July 15, 1998, 9:30 a.m.

12100 Park 35 Circle, TNRCC Building E, Room 201S

Austin

### AGENDA:

Docket Number 98-0091-DIS; HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 246; Petition for Dissolution of Harris County Municipal Utility District 246, submitted by Tze Lee Wang, General Partner of C&W Barrington, L.P. (The Petitioner). The application is filed and the hearing will be held under the authority of Chapters 49 and 54 of the Texas Water Code, 30 TAC Chapter 293, and under the procedural rules of the Commission. The Petitioner owns a majority of the District's total acreage. Metropolitan Transit Authority, a political subdivision of the State of Texas, owns all of the land not owned by the Petitioner. Metropolitan Transit Authority received utilities services from an adjacent, active municipal utility district, Harris County MUD Number 158. Land within Harris County MUD 246 that is owned by the Petitioner is not large enough to support a separate water, sewer, and drainage system that would be feasible to finance by the sale of bonds. Petitioner wants to dissolve Harris County MUD Number 246 to simplify annexation of his land into Harris County MUD Number 158.

Contact: Cindy Cartwright, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6161.

Filed: May 11, 1998, 8:29 a.m.

TRD-9807551



Wednesday, July 15, 1998, 9:30 a.m.

12100 Park 35 Circle, TNRCC Building E, Room 201S

Austin

### AGENDA:

Docket Number 98-0339-DIS; WEST TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 4; Petition for Dissolution of West Travis County Municipal Utility District 4, submitted by Walter J. Humann, President of WJH Corporation, speaking for said corporation as General Partner of Bon Terre-B, Ltd. (The Petitioner). The application is filed and the hearing will be held under the authority of Chapters 49 and 54 of the Texas Water Code, 30 TAC Chapter 293, and under the procedural rules of the Commission. Petitioner owns 35.032 of the District's total 595.19 acres. The City of Austin (462.403 acres), West Travis County MUD Number 5 (93.187 acres), and the estate of Dorothy G. Baldwin (3.622 acres) own all of the land not owned by the Petitioner. The Petitioner states that dissolution is desirable as the District: (1) has not performed any of the functions for which it was created for five consecutive years preceding the date of the petition for dissolution; (2) is financially dormant; and (3) has not outstanding bonded indebtedness, or assets and liabilities. In addition, the petitioner states that no confirmation election, director elections, or meetings have ever been held.

Contact: Cindy Cartwright, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6161.

Filed: May 11, 1998, 8:29 a.m.

TRD-9807552



### **Board of Nurse Examiners**

Wednesday, May 20, 1998, 10:00 a.m.

333 Guadalupe Street, Tower 3, Room 460

Austin

Advisory Committee on Education

AGENDA:

I. Call to Order

II. Approval of April 1998 Minutes

III. Complete review of revised format and suggested changes to Rules 215.8-215.12

IV. Workgroups meet to discuss major issues

V. Report back from workgroups

VI. Discussion of major issues

VII. New Business

VIII. Other

IX. Adjournment

Contact: Cheryl K. Rosipal, P.O. Box 430, Austin, Texas 78767, (512) 305-6816.

Filed: May 11, 1998, 4:32 p.m.

TRD-9807692



### **Texas Council on Offenders with Mental Impairments**

Friday, May 29, 1998, 9:00 a.m.

Double Tree Hotel, Dewitt Room, 6505 IH-35 North

Austin

Full Council Meeting

AGENDA:

I. Call to Order/Roll Call

II. Introduction of Guests/Public Comments

III. Approval of Minutes

IV. Presentation by Texas Youth Commission

V. Committee Reports

◆ Executive Committee

◆ Planning/Legislative Committee

◆ Program/Research Committee

VI. Biennial Report Recommendations

VII. Director's Report

◆ Status Report-Sunset Commission

◆ Interdisciplinary Conference

◆ General TCOMI Issues

ADJOURNMENT

Contact: Marcia L. Powders, 8610 Shoal Creek Boulevard, Austin, Texas 78757, (512) 406-5406.

Filed: May 12, 1998, 10:10 a.m.

TRD-9807721



### **Texas On-Site Waste Treatment Research Council**

Wednesday, May 20, 1998, 1:00 p.m.

Omni Bayfront Hotel, 900 North Shoreline Drive

Corpus Christi

Council

AGENDA:

The Council will act on the minutes of the previous meeting. The Chairman and the Executive Secretary will provide their reports followed by discussion and possible action on the proposed FY 1999 budget and the location and planner selection for the 1999 Annual On-Site Wastewater Treatment Research Council Conference. The Chairman will discuss his proposed "Contract Time Line for the Year 2000." Discussion and possible action on an amendment to the Texas Natural Resource Conservation Commission's FY 1998-1999 inter-agency contract will be the Council and a review of the follow-up procedure on current and past Council funded projects will follow. The floor will then be open for public comments. Other items on the agenda will include discussion and possible action on: enhancements to the *Texas On-Site Insights* newsletter; three unsolicited proposal from Texas A&M University's Agricultural Extension Service for (1) a study on the "Removal and Fate of Specific Microbial Pathogens with One-site Wastewater Treatment Systems", (2) "On-site Wastewater Treatment Educational Materials", and (3) the study of "Characteristics of Soil Media where Subsurface Drip Systems are Being Used to Distribute Residential Wastewater"; the final report on the comparative cost study of the old on-site sewage facility rules versus the new rules undertaken by Guadalupe Wastewater Company; the additional of drawings to the Guadalupe Wastewater Company's comparative cost study final report; the report from the Cluster Systems Workshop held on April 22, 1998; and

the Request For Proposal committee topics (a study to determine long term infiltration rate of effluent to level of pretreatment for different soils and disposal systems, quantitative evaluation of caliche soil as a treatment media, and evaluation of effectiveness of existing subsurface drip irrigation system in swelling soils). The scheduling of future meetings will end the meeting.

Contact: Annette Maddern, TNRCC, MC 178, P.O. Box 13087, Austin, Texas 78711-3087, (512/239-5304).

Filed: May 8, 1998, 4:25 p.m.

TRD-9807538



Wednesday, May 20, 1998, 1:00 p.m.

Omni Bayfront Hotel, 900 North Shoreline Drive

Corpus Christi

Council

REVISED AGENDA:

The Council will act on the minutes of the previous meeting. The Chairman and the Executive Secretary will provide their reports followed by discussion and possible action on the proposed FY 1999 budget and the location and planner selection for the 1999 Annual On-Site Wastewater Treatment Research Council Conference. The Chairman will discuss his proposed "Contract Time Line for the Year 2000." Discussion and possible action on an amendment to the Texas Natural Resource Conservation Commission's FY 1998-1999 inter-agency contract will be the Council and a review of the follow-up procedure on current and past Council funded projects will follow. The floor will then be open for public comments. Other items on the agenda will include discussion and possible action on: enhancements to the *Texas On-Site Insights* newsletter; three unsolicited proposal from Texas A&M University's Agricultural Extension Service for (1) a study on the "Removal and Fate of Specific Microbial Pathogens with One-site Wastewater Treatment Systems", (2) "On-site Wastewater Treatment Educational Materials", and (3) the study of "Characteristics of Soil Media where Subsurface Drip Systems are Being Used to Distribute Residential Wastewater"; the final report on the comparative cost study of the old on-site sewage facility rules versus the new rules undertaken by Guadalupe Wastewater Company; the addition of drawings to the Guadalupe Wastewater Company's comparative cost study final report; the report from the Cluster Systems Workshop held on April 22, 1998; and to Request For Proposal committee topics (a study to determine the effects of combining absorbic and evaporative disposal methods on drain field sizing, a study to determine long term infiltration rate of effluent to level of pretreatment for different soils and disposal systems, quantitative evaluation of caliche soil as a treatment media, and evaluation of effectiveness of existing subsurface drip irrigation system in swelling soils). The scheduling of future meetings will end the meeting.

Contact: Annette Maddern, TNRCC, MC 178, P.O. Box 13087, Austin, Texas 78711-3087, (512/239-5304).

Filed: May 11, 1998, 12:02 p.m.

TRD-9807668



**Texas Board of Pardons and Paroles**

Wednesday, May 20, 1998, 1:00 p.m.

Amarillo College 2201 South Washington, College Union Building, Badger Room

Amarillo

Rules Committee Meeting

AGENDA:

I. Discussion of Rules under Chapter 141

II. Discussion of Rules under Chapter 145

III. Discussion of Rules under Chapter 146

IV. Discussion of Rules under Chapter 147

V. Discussion of Rules under Chapter 150

*Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.*

Contact: Juanita Llamas, P. O. Box 13401, Austin, Texas 78711, (512) 406-5457

Filed: May 11, 1998, 3:25 p.m.

TRD-9807683



Thursday, May 21, 1998, 8:00 a.m.

Amarillo College 2201 South Washington, College Union Building, Badger Room

Amarillo

Policy Board Meeting

AGENDA:

I. Regular Session

A. Recognition of Guests

B. Presentation by TDCJ-Parole Division

C. Presentation by TDCJ-Texas Council on Offenders with Mental Impairments Special Needs Parole

D. Consent Items

E. Board Committee and Staff Reports

F. Discussion regarding Designation of a Member of a Board Office as a Duty Member

G. Adoption of TDJC Personnel Policies and Directives Resolution Superseding board Resolution 93-I dated September 9, 1993.

H. Adoption of Division of Labor Policy

I. Resolution adopting Board Member's Activity Report

J. Adoption of Proposed New Rule and Amendments to 37 TAC §141 and §145 et seq. As published in the March 13, 1998, issue of the *Texas Register* (23 TexReg 2750).

K. Adoption of Proposed New Rules and Amendment to 37 TAC §§141, 145, and 150 et seq.

II. Executive Session

A. Discussion with attorney concerning Johnson v. Rodriguez, et al; Gosch v. Texas Board of Pardons and Paroles, et al; and Carter v. George W. Bush, et al. (Closed in accordance with §551.071, Government Code.)

B. Discussion of matters made confidential under State Bar Disciplinary Rules of Profession Conduct (Closed in accordance with §551.071, Government Code.)

*Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.*

Contact: Juanita Llamas, P. O. Box 13401, Austin, Texas 78711, (512) 406-5457

Filed: May 11, 1998, 3:02 p.m.

TRD-9807682



### **Texas Peanut Producers Board**

Tuesday, May 19, 1998, 10:00 a.m.

Embassy, Suites, 4750 Ridgmont Drive

Abilene

Board

AGENDA:

Roll call

Introduction of Guests

Discussion and action: On Minutes

Results of 1998 biennial election and referendum

Installation of new directors and draw for terms

Election of officers

Discussion and action on assessment fees for 1998 crop. (Only if referendum passes.)

Discussion: Other Business

Adjourn

Contact: Mary Webb, P.O. Box 398, Gorman, Texas 76454, 817/734-2853.

Filed: May 7, 1998, 9:23 a.m.

TRD-9807412



### **Texas Board of Physical Therapy Examiners**

Monday, May 18, 1998, 9:00 a.m.

Ware and Associates, Inc., 5601 Bridge Street, Suite #430

Fort Worth

Investigation Committee

AGENDA:

I. Call to order

II. Review and possible action on cases: 96165; 97037, 97098; 97199; 97200; 97201; 98003; 98007; 98017; 98031; 98035; 98043; 98046; 98050; 98051; 98053; 98056; 98057; 98058; 98060; 98061; 98063; 98064; 98066; 98067; 98073; 98074; 98076; 98078; 98079; 98080; 98081; 98083; 98090; 98091; 98092; 98093; 98094; 98095; 98097; 98099; 98100; 98101; 98102; 98103; 98104; 98105; 98106; 98107; and 98115

### **III. Adjournment**

Contact: Nina Hurter, 333 Guadalupe, Suite 2-510, Austin, Texas 78701, (512) 305-6900.

Filed: May 8, 1998, 11:38 a.m.

TRD-9807506



### **Texas State Board of Plumbing Examiners**

Thursday, May 21, 1998, 8:00 a.m.

929 East 41st Street

Austin

Enforcement Committee

AGENDA:

May 21, 1998, 8:00 a.m.-Call to order and roll call.

Consideration of Minutes of April 15, 1998, and April 23, 1998 Enforcement Committee Meetings for Adoption as Recorded.

Informal Conferences: Discussion and possible action on the following cases with the individuals who have agreed to appear: Case # 9800263- time 9:00 a.m., Case # 9800233-10:30 a.m. and Case # 9800313-1:00 p.m.

Review of Citation List and possible action.

Review of Applicants with Past Criminal Convictions and possible action.

Consideration of and possible action on cities with more than 5,000 inhabitants that have no licensed plumbing inspectors.

Complaints Cases for Review:

The following cases will be reviewed by and possibly acted upon by the Committee as time allows. Time may not allow for all cases listed to be reviewed.

Case #s—98000531, 98002351, 98002361, 98000821, 98003181, 9800091, 97-0772, 96-0273, 96-0421, 97-0440, 97-0590, 97-0182, 97-0802, 97-0639, 97-0634.

Contact: Robert L. Maxwell, 929 East 41st Street, Austin, Texas 78751, (512) 458-2145.

Filed: May 12, 1998, 4:36 p.m.

TRD-9807788



### **Texas Department of Protective and Regulatory Services**

Friday, May 29, 1998, 10:00 a.m.

Texas Department of Health, Tower Building, Room T652, 1100 49th Street

Austin

Child Fatality Review State Committee Meeting

AGENDA:

WELCOME AND INSTRUCTIONS, REPORTS: 1. Coordinator Report; 2. CTF Report-Video Update. OLD BUSINESS: 1. Annual Report; 2. SIDS Legislation, LUNCH. OLD BUSINESS, CONT.; 3. Child passenger restraints and existing legislation; 4. Investigation Protocol Manual; 5. 1998 Network Meeting, June 28-30. NEW

BUSINESS: 1. Children's Memorial Flag Project; 2. Other.  
ADJOURN.

Contact: Janece Keetch, P.O. Box 149030, Austin, Texas 78714-9030,  
(512) 438-4963.

Filed: May 13, 1998, 10:22 a.m.

TRD-9807837



## Texas Public Finance Authority

Wednesday, May 20, 1998, 10:30 a.m.

William P. Clements Building, 300 West 15th Street

Austin

Board Meeting

AGENDA:

1. Call to order.
2. Approval of minutes of the April 15, 1998 Board Meeting.
3. Consider Request for Financing from Midwestern State University in the amount of approximately \$9 million of Tuition Revenue Bonds.
4. Consider and adopt resolution authorizing the issuance of Texas Public Finance Authority Building Revenue Bonds (Texas Department of Criminal Justice Refunding Project) Series 1998A, the execution of documents in connection therewith, resolving related matters, and approve the preliminary official statement for the issue.
5. Consider and adopt resolution approving a defeasance plan for the Texas Public Finance Authority Texas Workers' Compensation Insurance Fund Maintenance Tax Surcharge Revenue Bonds Taxable Series 1991, authorizing the execution of documents in connection therewith, including a defeasance escrow, and resolving related matters.
6. Report regarding the final numbers for the SCSC defeasance.
7. Consider and possibly act on Bond Counsel and Co-Bond Counsel transaction fees.
8. Consider and possibly adopt the TPFA Strategic Plan.
9. Consider and possibly act on amendments to the Personnel Policy Manual relating to an affirmative action plan.
10. Consider and possibly adopt a rules review plan and proposed amendments concerning administrative rules 34 Texas Administrative Code, Chapters 221-225.
11. Other Business.
12. Adjourn.

Persons with disabilities, who have special communication or other needs, who are planning to attend the meeting should contact Jeanine Barron or Marce Watkins at 512/463-5544. Requests should be made as far in advance as possible.

Contact: Jeanine Barron, 300 West 15th Street, Suite 411, Austin, Texas 78701, 512/463-5544.

Filed: May 12, 1998, 9:27 a.m.

TRD-9807706



## Public Utility Commission of Texas

Friday, May 15, 1998, 1:00 p.m.

William B. Travis Building, 1701 North Congress Avenue, 7th Floor,  
Robert W. Gee Hearing Room

Austin

Synchronous Interconnection Committee

AGENDA:

Project Number 14894: A meeting of the Synchronous Interconnection Committee (SIC) will be held to investigate the most economical, reliable, and efficient means to synchronously interconnect the alternating current electric facilities of electric utilities within the Electric Reliability Council of Texas reliability area to the alternating current electric facilities of electric utilities within the Southwest Power Pool reliability area, including the cost and benefit to effect the interconnection, and estimate of the time to construct the interconnecting facilities, and the service territory of the utilities in which those facilities will be located.

Contact: Bret Slocum, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7265.

Filed: May 7, 1998, 4:18 p.m.

TRD-9807475



## Texas Racing Commission

Friday, May 15, 1998, 10:00 a.m.

Capitol Extension, Room E1.014, 1400 Congress Avenue

Austin

AGENDA:

Call to Order, Roll Call, Consideration of and action on the following rules: §§309.199, 313.61, 321.118, 303.35, 305.4, 305.49, 309.28, 313.503, 313.504, 321.10, 321.70, 321.234; Consideration of and action on the following matters: Agreement between the Texas Thoroughbred HBPA, Inc. and Lone Star Park, Ltd.; Lone Star Park at Grand Prairie request for approval of Special Wagers; 1999-2003 Strategic Plan; Election of Vice Chair; Consideration of and action on membership in a national organization for racing commissions; Executive session pursuant to Texas Racing Act §6.03(b) to consider an Addendum to the Totalisator Services Agreement for Sam Houston Race Park; Old and New Business; Adjourn.

Contact: Roselyn Marcus, P.O. Box 12080, Austin, Texas 78711, (512) 833-6699.

Filed: May 7, 1998, 3:38 p.m.

TRD-9807471



## Railroad Commission of Texas

Friday, May 22, 1998, 9:00 a.m.

1701 North Congress Avenue, 12th Floor Conference Room 12-170

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 on the agenda with the Secretary of State's Office

Contact: Kathy Way, P.O. Box 12967, Austin, Texas 78711, (512) 463-6729

Filed: May 11, 1998, 2:05 p.m.

TRD-9807675

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**Rural Community Health System**

Tuesday, May 26, 1998, 6:30 p.m.

401 West 15th Street

Austin

Executive Committee

AGENDA:

I. Call to Order

II. The Committee will hold a preliminary discussion of agenda items for the Finance Committee, Operations Committee, and Full Board Agenda issued for the Meeting May 27, 1998.

III. Closing

Contact: Victoria Ford, P.O. Box 13556, Austin, Texas 78711, 512/463-0119.

Filed: May 6, 1998, 3:11 p.m.

TRD-9807383

◆ ◆ ◆  
**Texas State Soil and Water Conservation Board**

Wednesday, May 20, 1998, 1:00 p.m.

311 North 5th Street, Hearings Room

Temple

AGENDA:

Review and take appropriate action on the following:

Minutes from March 26, 1998 Board Meeting; District Director Appointments; Expenditure Report for 8-Month Period Ending April 30, 1998; Allocation for Fiscal Year 1998 Subchapter H. Technical Assistance Funds; Fiscal Year 1998 Conservation Assistance Funds; 1999-2003 Agency Strategic Plan; 2000-2001 Biennium Legislative Appropriation Request; Auditors Report on 1996 Management Control Follow Up Audit; Reports from Agencies and Guests; Agency Travel Budget Status Report; Board Member Travel; Human Resources Staffing Update; Conservation Awards Program; District Capacity Building; Future State Meeting Sites; 1998 State Meeting Planning Committee; NRCS-TAES-State Board Memorandum of Understanding; NACD Leadership Conference; Public Information/Education Report; Section 319 Status Report; President's Clean Water Action Plan; Total Maximum Daily Load Activity; Source Water Protection Activities; Coastal Nonpoint Source Program Development; Senate Bill 503 Status Report; Request for Designation As A SB 503 Priority Area; Allocation of FY 1998 SB 503 Cost Share Funds; Texas Coastal Management Program; TNRCC Dam Safety Task Force; North Concho River Brush Control Study; Consider Request for Amend Practice List for SB 503 Cost Share; Election of Officers; Next Regular State Board Meeting-July 15, 1998.

Contact: Robert Buckley, P.O. Box 658, Temple, Texas 76503, (254) 773-2250, TEX-AN 820-1250.

Filed: May 8, 1998, 1:27 p.m.

TRD-9807510

**Texas Department of Transportation**

Thursday, June 4, 1998, 11:40 a.m.

Double Tree Hotel, 6505 IH-35 North

Austin

Aviation Advisory Committee Meeting

AGENDA:

Convene. Approval of minutes of the December 5, 1997 meeting. Briefing on department reorganization. Update on aviation decentralization. Briefing on proposed changes to Routine Airport Maintenance Program (RAMP). Briefing on Terminal Program. Update on Innovative Finance Program. Report on Air Service Meeting. Update on federal legislation. Discussion of state funding issues. Discussion of work session for Aviation Advisory Committee. Discussion of future advisory meeting schedules and travel budget. Public Comments. Adjourn.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463-8630.

Filed: May 13, 1998, 11:00 a.m.

TRD-9807864

◆ ◆ ◆  
**University of Houston**

Monday, May 18, 1998, 1:00 p.m.

S&RII, Room 501, University of Houston, 4800 Calhoun Boulevard  
Houston

Institutional Animal Care and Use Committee

AGENDA:

OLD BUSINESS

A. Approval of April 20, 1998 minutes.

B. 98009-"Cannabinoids in Glutamate Neurotransmission"

NEW BUSINESS

I. NEW PROTOCOLS

A. 98011-"Transcriptional Regulation of the Aging Heart: Role of Transcription Factors in Age-related Hypertrophy"

II. RENEWAL PROTOCOLS

A. R196014-"Neuropeptides and Baroreflexes in Hypertension"

B. R196015-"Effect of Fragmentation of Wetland Habitat on Rodent Population Structure"

III. OTHER BUSINESS

A. HVAC and light renovation in progress.

Contact: Charles Rafo, 4800 Calhoun Boulevard, Houston, Texas 77204-5510, (713) 743-9191.

Filed: May 8, 1998, 9:16 a.m.

TRD-9807484

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**The University of Texas System**

Tuesday, May 12, 1998, 1:00 p.m. (Executive Session)

Ex-Students' Association Building, (Legends Room) 21st and San Jacinto

Austin

Intercollegiate Athletics for Men U.T. Austin

AGENDA:

Convene into Open Session; Recess into Executive Session; Reconvene into Open Session; Approve Minutes of March 2, 1998; Items from Executive Session; Major Gifts and Planned Giving; Development; Awards; Tickets/Ticket Policy; Budget/Budget Items; Construction Items; New Business; Old Business; and, Adjourn.

Contact: Betty Corley, P.O. Box 7399, Austin, Texas 78713, 512/471-5757.

Filed: May 7, 1998, 11:47 a.m.

TRD-9807442



Tuesday, May 12, 1998, 2:00 p.m.

21st and San Jacinto Streets, Bellmont Hall 718

Austin

U.T. Austin-Council for Intercollegiate Athletics for Women

AGENDA:

I. Call to Order

II. Remarks by President Larry Faulkner

III. Approval of Minutes of the Previous Meeting

IV. New Business

V. Announcements/Information Reports

VI. Executive Session

Personnel Matters Relating to Appointment, Employment, Evaluation, Assignment, Duties, Discipline, or Dismissal of Officers or Employees-Section 551.074 of the Texas Government Code

VII. Adjournment

Contact: Jody Conratt, Women's Athletics, Bellmont Hall 718, Austin, Texas 78712-1286.

Filed: May 8, 1998, 11:01 a.m.

TRD-9807499



Wednesday—Thursday, May 13–14, 1998, 1:30 p.m. and 8:45 a.m. (respectively)

May 13—Alamo 2 Radisson Hotel and Conference Center, 5200 East University Boulevard and May 14—Devonian Room, Mesa Building, U.T. Permian Basin, 4901 East University Boulevard

Odessa

Board of Regents and Standing Committee

REVISED AGENDA:

At the conclusion of the Business Affairs and Audit Committee, the Executive Vice Chancellor for Business Affairs will report to the Board on the status of the following ongoing projects. No formal action by the Board is anticipated.

- John Nance Garner Museum, Uvalde
- Deregulation of Utilities
- Compliance with Regulatory Requirements

- Year 2000 Computer Compatibility

All other factors related to the meetings on May 13–14, 1998, remain as posted on May 4, 1998.

Contact: Arthur H. Dilly, 201 West Seventh Street, Austin, Texas 78701-2981, 512/499-4402.

Filed: May 8, 1998, 9:17 a.m.

TRD-9807485



## Texas Water Development Board

Wednesday, May 20, 1998, 3:30 p.m.

Stephen F. Austin, Building, Room 513-F, 1700 North Congress Avenue

Austin

Finance Committee

AGENDA:

1. Consider approval of the minutes of the meeting April 15, 1998.
2. Briefing and discussion on the State Revolving Fund Program Bond Program.
3. Consider approving revisions to the Authorized Dealers List.
4. Briefing and discussion on present and future EDAP projects.
5. May consider items on the agenda of the May 21, 1998 Board meeting.

\* Additional non-committee Board members may be present to deliberate but will not vote in the Committee meeting.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, 512/463-7847.

Filed: May 12, 1998, 9:45 p.m.

TRD-9807713



Thursday, May 21, 1998, 9:00 a.m.

Stephen F. Austin, Building, Room 118, 1700 North Congress Avenue

Austin

Board

AGENDA:

The Board will consider: minutes; committee, executive and financial reports; resolutions honoring past board members; Brazos River Authority issues; financial assistance to San Patricio Municipal Water District, Benbrook Water and Sewer Authority, Fritch, Tahoka, Hallsville, Nacogdoches, Lumberton MUD, Greater Texoma Utility Authority-Pottsboro, Travis Co. Water Control and Improvement District-Point Venture, San Antonio Water System, Austin, Houston, Humble, Hunter's Glen Municipal Utility District, Lake Jackson, La Marque, Montgomery Co. Utility District #3, Pasadena, Pearland, and Shasla Public Utility District; an increase to First Colony Municipal Utility District #9; an amendment increasing limit of bond counsel contract; transfer of \$25,000,000 from the Financial Assistance Account of the Water Development Fund II to the State Water Pollution Control Revolving Fund (SRF) to provide state match requirement for federal grant funds and schedule for repayment; amendments to transfer resolutions to allow the SRF to shift payments on loans from existing Texas Water Development Fund to D Fund II; authoriza-



tion to close loan commitments made from the existing Texas Water Development Fund in either Development Fund I or Development Fund II and establish new lending rates scales for the Development Fund I and II programs and Economically Distressed Areas Program-Development Fund II for tax-exempt loans; accepting donation of a color copier; grant applications for the purchase of agricultural conservation equipment and execution of those agreements; an increase in funds authorized from the Colonia Wastewater Treatment Assistance Program for the Cameron Co. regional Facility Plan contract with Michael Sullivan and Association and reassignment of funds for preparation of environmental analysis to Blanton and Association and increase of such portion; amendments to Chapter 371, DWSRF, regarding privately owned water systems issuance, sale and delivery of \$350,000,000 TWDB SRF Senior Lien Revenue Bonds, Series 1998 and related actions and selection of co-managers; the Strategic Plan for 1999-2003; amendments to the FY 1997 Intended Use Plan; contracts for grant proposals for the initial scope of work development for regional water planning for regions A, B, D, F, M, and N and transfer of funds; publication of proposed rule relating to the Board's assumption of Federal Floor Mitigation Assistance Program; authorizing requests for qualifications and selection process for bond counsel for FY 1999; proposed amendments to Chapter 363 concerning a new definition for payment schedule and changes to administrative cost recovery assessment; funding EDAP projects based on Hidalgo County's enforcement of model political subdivision rules; financial assistance to Military Highway Water Supply Corporation-South Tower Estates, and increase to Weslaco, a change to condition for closing North Alamo Water Supply Corporation.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, 512/463-7847.

Filed: May 13, 1998, 12:26 p.m.

TRD-9807882

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**Texas Water Resources Finance Authority**

Thursday, May 21, 1998, 9:00 a.m.

Stephen F. Austin, Building, Room 118, 1700 North Congress Avenue  
Austin

Texas Water Resources Finance Authority

**AGENDA:**

1. Consider approval of the minutes of the meeting of April 16, 1998.
2. Consider authorizing staff to proceed with request for request for qualifications and selection process for bond counsel for Fiscal Year 1999.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, 512/463-7847.

Filed: May 13, 1998, 12:26 p.m.

TRD-9807881

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**Texas Workforce Commission**

Tuesday, May 19, 1998, 9:00 a.m.

Room 644, TWC Building, 101 East 15th Street

Austin

**AGENDA:**

Approval of prior meeting notes; Public comment; General discussion and staff report concerning the Employment Service and related functions at the Texas Workforce Commission; Discussion, consideration and possible action: (1) on acceptance of donations of Child Care Matching Funds; (2) on Workforce applicant child Care (Chapter 809); (3) on distribution of Child Care Appropriations to School Districts (SB 503, Chapter 809); (4) on the Child Care Advisory Committee (SB 1490, Chapter 809); (5) relating to House Bill 2777 and the development and implementation of a plan for the integration of services and functions relating to eligibility determination and service delivery by Health and Human Services Agencies and TWC; (6) on the State Welfare-to-Work Plan for submission to the U.S. Department of Labor; (7) on the revisions to the Texas Workforce Commission Strategic Plan for submission to the Office of the Governor and the Legislative Budget Board; (8) on the Strategic Plan for Project RIO; (9) on an affirmative action plan for Equal Opportunity and Diversity; (10) concerning the use of UI Wage Records as the database for JTPA follow-up; (11) on the combined JTPA/Wagner Peyser State Plan; (12) on the JTPA PY98 Section 123 Policy; (13) regarding approval of JTPA PY98-99 Categorical Plans; (14) on the JTPA PY98 Incentive Policy; (15) on approaches to the expansion of Choices Services beyond the current 87 counties; (16) regarding potential and pending applications for certification and recommendations to the Governor of Local Workforce Development Boards for Certification; (17) regarding recommendations to TCWEC and status of strategic and operational plans submitted by Local Workforce Development Boards; and (18) regarding approval of Local Workforce board or Private Industry Council Nominees; Staff report and discussion-update on activities relating to: Administration Division, Finance Division, Information Systems Division, Unemployment Insurance Division, Welfare Reform Division and Workforce Division; Executive Session pursuant to: Government Code §551.074 to discuss the duties and responsibilities of the executive staff and other personnel; Government Code §551.071(1) concerning the pending or contemplated litigation of the Texas AFL-CIO v. TWC; TSEU/ CWA Local 6184, AFL-CIO v. TWC; TSEU/CWA Local 6186, AFL-CIO, Lucinda Robles, and Maria Rousett v. TWC *et al*; Barbara Woodard v. TEC; Midfirst Bank v. Reliance Health Care *et al*; (Enforcement of Oklahoma Judgment); and Gene E. Merchant *et al*. v. TWC; Government Code §551.071(2) concerning all matters identified in this agenda where the Commissioners seek the advice of their attorney as Privileged Communications under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas and to discuss the Open Meetings Act and the Administrative Procedure Act; Actions, if any, resulting from executive session; Consideration, discussion, questions, and possible action on: (1) whether to assume continuing jurisdiction on Unemployment Compensation cases and reconsideration of Unemployment Compensation cases, if any; and (2) higher level appeals in Unemployment Compensation cases listed on Texas Workforce Commission Docket 20.

Contact: J. Randel (Jerry) Hill, 101 East 15th Street, Austin, Texas 78778, (512) 463-8812.

Filed: May 11, 1998, 3:02 p.m.

TRD-9807680

◆ ◆ ◆  
**Texas Council on Workforce and Economic Competitiveness**

Tuesday, May 19, 1998, 9:30 a.m.

Holiday Inn Town Lake, Sunflower Room, 20 North IH-35

Austin

Ad Hoc Committee on Welfare to Work

AGENDA:

Agenda: 9:30 a.m.-Call to Order; Public Comments; Discussion Items: Organization of Committee, and Committee's Scope of Work, 10:00 a.m. Recess; Reconvene at 3:00 p.m.-Adjourn.

Notice: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services should contact Val Blaschke, 512/936-8103 (or Relay Texas 800-735-2988), at least two days before this meeting so that appropriate arrangements can be made.

Contact: Val Blaschke, P.O. Box 2241, Austin, Texas 78768, (512) 936-8103.

Filed: May 8, 1998, 2:50 p.m.

TRD-9807518



Tuesday, May 19, 1998, 10:00 a.m.

Austin Community College District Administrative Offices, Room 204, 5930 Middle Fiskville Road

Austin

Executive Committee

AGENDA:

10:00 a.m.-Call to Order; Introductions and Announcements; Public Comments; Open Dialogue with Chairs of Local Workforce Development Boards on System Focus (looking at the big picture vs. individual programs, Employment Services (changing service delivery), Collaboration (working with multiple stakeholders), Skill Standards (using standards to drive workforce development), Contracts (creating pool of potential contractors), Member Involvement (keeping boards at full strength, System Changes (legislative, policy, practices), and Other Workforce Issues; Action Item; Approval of Local Workforce Development Board Plans; Other Business; Adjournment approximately 4:00 p.m.

Notice: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services should contact Val Blaschke, 512/936-8103 (or Relay Texas 800-735-2988), at least two days before this meeting so that appropriate arrangements can be made.

Contact: Val Blaschke, P.O. Box 2241, Austin, Texas 78768, (512) 936-8103.

Filed: May 7, 1998, 2:34 p.m.

TRD-9807466



Tuesday, May 19, 1998, 10:30 a.m.

Holiday Inn Town Lake, Sunflower Room, 20 North IH-35

Austin

Executive Committee

REVISED AGENDA:

10:00 a.m.-Call to Order; Introductions and Announcements; Public Comments; Open Dialogue with Chairs of Local Workforce Development Boards on System Focus (looking at the big picture vs. individual programs, Employment Services (changing service delivery), Collaboration (working with multiple stakeholders), Skill Standards (using standards to drive workforce development), Contracts (creating pool of potential contractors), Member Involvement (keeping boards at full strength, System Changes (legislative, policy, practices), and

Other Workforce Issues; Action Item; Approval of Local Workforce Development Board Plans; Other Business; Adjournment approximately 4:00 p.m.

Notice: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services should contact Val Blaschke, 512/936-8103 (or Relay Texas 800-735-2988), at least two days before this meeting so that appropriate arrangements can be made.

Contact: Val Blaschke, P.O. Box 2241, Austin, Texas 78768, (512) 936-8103.

Filed: May 8, 1998, 11:38 p.m.

TRD-9807504



**Texas Youth Commission**

Wednesday, May 20, 1998, 4:30 p.m.

4900 North Lamar Boulevard, TYC Human Resources Conference Room

Austin

Board Budget Committee Meeting

AGENDA:

Approval of Minutes of the March 18, 1998 (Action)

Approval of Strategic Plan (Action)

Approval in Concept of Base-Line Funding Levels and Major Budget Initiatives to be Included in the FY 2000-2001 Legislative Appropriations Request (Action)

Approval to Request Authority to Exceed the Full-Time Equivalent (FTE) Position Limitations Established by the 75th Legislature, House Bill 1, for FY 1998-1999 (Action)

Contact: Eleanor Bryant, 4900 North Lamar Boulevard, Austin, Texas 78765, 512/424-6004.

Filed: May 12, 1998, 10:08 a.m.

TRD-9807716



Wednesday, May 20, 1998, 5:00 p.m.

4900 North Lamar Boulevard, TYC Executive Conference Room

Austin

Board Audit Committee Meeting

AGENDA:

Approval of Audit Report on Youth Rights (Action)

Status of Projects (Information)

Contact: Eleanor Bryant, 4900 North Lamar Boulevard, Austin, Texas 78765, 512/424-6004.

Filed: May 12, 1998, 10:09 a.m.

TRD-9807717



Wednesday, May 20, 1998, 5:30 p.m.

4900 North Lamar Boulevard, TYC Executive Conference Room

Austin

Board Construction Committee Meeting

AGENDA:

Approval of Minutes of January 14, 1998 (Action)  
FY 1996–1997 Construction Program Update (Information)  
FY 1998–1999 Construction Program Update (Information)  
Board Agenda Items  
TYC-TDCJ Construction Management Services Contract (Action)  
Time Extension for TDCJ J.W. Hamilton Facility Project (Action)  
Time Extension for TXMHMR Vernon Facility Project (Action)  
Contact: Eleanor Bryant, 4900 North Lamar Boulevard, Austin, Texas 78765, 512/424–6004.  
Filed: May 12, 1998, 10:09 a.m.  
TRD-9807720



Thursday, May 21, 1998, 8:00 a.m.  
4900 North Lamar Boulevard, TYC Human Resources Conference Room  
Austin  
Board Charitable Trusts Committee Meeting

AGENDA:

Approval of Minutes of March 18, 1998, Subcommittee Meeting (Action)  
Consideration of Extension of Parrie Haynes Ranch Lease with Texas Parks and Wildlife Department (Action)  
Contact: Eleanor Bryant, 4900 North Lamar Boulevard, Austin, Texas 78765, 512/424–6004.  
Filed: May 12, 1998, 10:09 a.m.  
TRD-9807718



Thursday, May 21, 1998, 9:00 a.m.  
4900 North Lamar Boulevard, Public Hearing Rooms 1420 and 1430  
Austin  
Board Meeting

AGENDA:

Approval of Minutes of the March 19, 1998 Board Meeting (Action)  
Executive Director's Report (Information)  
Public Comments (Information)  
Approval of TYC Strategic Plan (Action)  
Approval in Concept of Base-Line Funding Levels and Major Budget Initiatives to be Included in the FY 2000–2001 Legislative Appropriations Request (Action)  
Approval of Request Authority to Exceed the Full-Time Equivalent Position Limitations Established by the 75th Legislature, HB 1; for FY 1998–1999 (Action)  
Consideration of Parrie Ranch Lease (Action)  
Approval of Application for Grant Funding for Counsel for Indigent Parolees (Action)  
Approval of Youth Rights Audit Report (Action)

Report on Alleged Mistreatment Investigations (Information)  
Statistical Summary (Information)  
Approval of Time Extension for TYC-TDCJ Hamilton Facility Project (Action)  
Approval of Time Extension for TYC-TDCJ Vernon Facility Project (Action)  
TYC-TDCJ Construction Management Services Contract (Information)  
Contact: Eleanor Bryant, 4900 North Lamar Boulevard, Austin, Texas 78765, 512/424–6004.  
Filed: May 12, 1998, 10:09 a.m.  
TRD-9807719



Regional Meetings

Meetings filed May 6, 1998  
Ark-Tex Council of Governments, Ark-Tex Private Industry Council Full ATPIC Meeting, met in a revised agenda at Titus County Civil Center, Mt. Pleasant, May 21, 1998, at 10:30 a.m. Information may be obtained from Sharon Davis, P.O. Box 5307, Texarkana, Texas 75505, (903) 832–8636. TRD-9807403  
Austin Transportation Study, Policy Advisory Committee met at the Joe C. Thompson Conference Center, Room 2.120, 26th and Red River, Austin, May 11, 1998, at 6:00 p.m. Information may be obtained from Michael R. Aulick, 301 West 2nd Street, Austin, Texas 78701, (512) 499–2275. TRD-9807388.  
Bi-county Water Supply Corporation, met at the Arch Davis Road, FM 2254, Pittsburg, May 12, 1998, at 7:00 p.m. Information may be obtained from Jannell Larson, P.O. Box 848, Pittsburg, Texas 75686, (903) 856–5840. TRD-9807386.  
Brazos Valley Council of Governments, Brazos Valley Council of Governments, Board of Directors Meeting met in a revised agenda at 1706 East 29th Street, Bryan, May 13, 1998, at 1:30 p.m. Information may be obtained from Nelda Thompson, P.O. Drawer 4128, Bryan, Texas 77805–4128, 409/775–4244, Extension 102. TRD-9807376.  
North Texas Regional Library System, Board of Directors met at 1111 Foch Street, Suite 100, Fort Worth, May 12, 1998, at 1:30 p.m. Information may be obtained from Marlin Anglin, 1111 Foch Street, Suite 100, Fort Worth Texas, 76107, 817/335–6076. TRD-9807387.  
Rio Grande Council of Governments, Board of Director's Meeting, met at 1100 North Stanton, 6th Floor Conference Center, El Paso, May 15, 1998, at 1:00 p.m. Information may be obtained from Michele Maley, 1100 North Stanton, Suite 610, El Paso, Texas 79902, 512/533–0998. TRD-9807382.  
Taylor County Central Appraisal District, Board of Directors met at 1534 South Treadaway, Abilene, May 13, 1998, at 3:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676–9381, Extension 24 or Fax (915) 676–7877. TRD-9807396.  
Tri County Special Utility District (SUD), Board of Directors Meeting met in a revised agenda at Highway 7 East, Marlin, May 11, 1998, 7:30 p.m. Information may be obtained from Patsy Booher, P.O. Box 976, Marlin, Texas 76661, 254/803–3553. TRD-9807379.  
Upshur County Appraisal District, Appraisal Review Board met at 1711 Latch Road, Gilmer, May 11, 1998, at 9:00 a.m. Information

may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644-0280, (903) 843-3041. TRD-9807377.

Meetings filed on May 7, 1998

Central Texas Council of Governments, K-TUTS Transportation Planning Policy Board, met at 302 East Central, Belton, May 12, 1998, 9:00 a.m. Information may be obtained from Jim Reed, P.O. Box 729, Belton, Texas 76513, 254/939-7075, Extension 203. TRD-9807474.

Central Texas Water Supply Corporation, Special Meeting will meet at 4020 Lake Cliff Drive, Harker Heights, June 4, 1998, at 10:00 a.m. Information may be obtained from Delores Hamilton, 4020 Lake Cliff Drive, Harker Heights, Texas 76548, 254/698-2779. TRD-9807473.

Concho Valley Council of Governments, Economic Development District, met at 5014 Knickerbocker Road, San Angelo, May 13, 1998, at 2:00 p.m. Information may be obtained from Troy Williamson, P.O. Box 60050, San Angelo, Texas 76906, (915) 944-9666. TRD-9807451.

Concho Valley Council of Governments, Executive Committee Meeting, met at 5002 Knickerbocker Road, May 13, 1998, at 7:00 p.m. Information may be obtained from Robert Weaver, P.O. Box 60050, San Angelo, Texas 76906, (915) 944-9666. TRD-9807450.

East Texas Council of Governments, Youth Committee of the Workforce Development Board met at 3800 Stone Road, Kilgore, May 13, 1998, at 9:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, 903/984-8641. TRD-9807472.

Education Service Center, Region XI, Board of Directors met at 3001 North Freeway, Fort Worth, May 18, 1998, at 10:00 a.m. Information may be obtained from Dr. Ray L. Chancellor, 3001 North Freeway, Fort Worth, Texas 76106, (817) 625-5311. TRD-9807483.

Edwards Aquifer Authority, Board Meeting met at 1615 North St. Mary's Street, San Antonio, May 12, 1998, at 4:00 p.m. Information may be obtained from Mary Esther R. Cortez, 1615 St. Mary's Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9807445.

El Oso Water Supply Corporation, Board of Directors met at Highway 99, Karnes City, May 12, 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-9807414.

Elm Creek WSC, Board met at 508 Avenue "E", Moody, May 11, 1998, at 7:00 p.m. Information may be obtained from Rita Foster, P.O. Box 538, Moody, Texas 76557, (254) 853-3838. TRD-9807447.

Golden Crescent Regional Planning Commission, Executive Committee, met at 568 Big Bend Drive, Victoria, May 20, 1998, at 4:30 p.m. Information may be obtained from Rhonda G. Stastny, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587. TRD-9807469.

Guadalupe-Blanco River Authority, Retirement and Benefit Center and Board of Directors met at GBRA Office, 933 East Court Street, Seguin, May 14, 1998, at 10:00 a.m. Information may be obtained from W. E. West, Jr., 933 East Court Street, Seguin, Texas 78155, 830/379-5822. TRD-9807411.

Guadalupe-Blanco River Authority, Retirement and Benefit Center and Board of Directors met in a revised agenda at GBRA Office, 933 East Court Street, Seguin, May 14, 1998, at 10:00 a.m. Information may be obtained from W. E. West, Jr., 933 East Court Street, Seguin, Texas 78155, 830/379-5822. TRD-9807467.

Henderson County Appraisal District, Board of Directors met at 1751 Enterprise Street, Athens, May 14, 1998, at 5:30 p.m. Information

may be obtained from Lori Fetterman, 1751 Enterprise Street, Athens, Texas 75751, (903) 675-9296. TRD-9807417.

High Plains Underground Water Conservation District Number 1, Board Meeting met at 2930 Avenue Q, Board Room, Lubbock, May 12, 1998, at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9807404.

High Plains Underground Water Conservation District Number 1, Board Meeting met in a revised agenda at 2930 Avenue Q, Board Room, Lubbock, May 12, 1998, at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9807477.

Hockley County Appraisal District, Board of Directors met at 1103 Houston Street, Levelland, May 11, 1998, at 7:30 p.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336-1090, (806) 894-9654. TRD-9807476.

Lower Colorado River Authority, Planning and Public Policy Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Conference Room, Austin, May 12, 1998, at 10:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3371. TRD-9807446.

Texas Municipal Power Agency ("TMPA"), Audit and Budget Committee met at the Holiday Inn Select LBJ Northeast, Board Room, 11350 LBJ Freeway at South Jupiter, Dallas, May 14, 1998, at 8:00 a.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-1131. TRD-9807448.

Texas Municipal Power Agency ("TMPA") Board of Directors met at the Holiday Inn Select LBJ Northeast, Rose Room, 11350 LBJ Freeway at South Jupiter, Dallas, May 14, 1998, at 10:00 a.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-1131. TRD-9807449.

Nortex Regional Planning Commission, Executive Committee, met at The Galaxy Center, #2 North, Suite 200, 4309 Jacksboro Highway, Wichita Falls, May 21, 1998, at Noon. Information may be obtained from Dennis Wilde, P.O. Box 5144, Wichita Falls, Texas 76307-5144, (940) 322-5281 or Fax: (940) 322-6743. TRD-9807468.

Nueces River Authority, The Coastal Bend Regional Planning Group for the Senate Bill One Regional Water Planning met at the Auditorium at the TAMU Research and Extension Center, 10345 Agnes Street, Corpus Christi, May 14, 1998, at 1:30 p.m. Information may be obtained from Nueces River Authority, Coastal Bend Division, 6300 Ocean Drive, NRC 3100, Corpus Christ, Texas 78412, (512) 980-3193. TRD-9807409.

San Antonio River Authority, South Central Texas Regional Water Planning Group met at 100 East Guenther Street, Boardroom, San Antonio, May 14, 1998, at 10:00 a.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (210) 227-1373. TRD-9807464.

Tarrant Appraisal District, Board of Directors met at 2301 Gravel Road, Fort Worth, May 12, 1998, at 9:00 a.m. Information may be obtained from Mary McCoy, 2315 Gravel Road, Fort Worth, Texas 76118, (817) 284-0024. TRD-9807418.

Tarrant Appraisal District, Board of Directors met at 2301 Gravel Road, Fort Worth, May 15, 1998, at 9:00 a.m. Information may be obtained from Mary McCoy, 2315 Gravel Road, Fort Worth, Texas 76118, (817) 284-0024. TRD-9807419.

Wheeler County Appraisal, Board of Directors met at 117 East Texas, Courthouse Square, Wheeler, May 18, 1998, at 7:00 p.m. Information

may be obtained from Larry Schoenhals, P.O. Box 1200, Wheeler, Texas 79096, (806) 826-5900. TRD-9807415.

Wise County Appraisal District, Board of Directors, met at 206 South State, Decatur, May 12, 1998, at 8:00 p.m. Information may be obtained from Freddie Triplett, 206 South State, Decatur, Texas 76234, (940) 627-3081. TRD-9807462.

Meetings filed on May 8, 1998

Angelina and Neches River Authority, ANRA Board of Directors met at ANRA Board Meeting Room, 210 Lufkin Avenue, Lufkin, May 13, 1998, at 10:00 a.m. Information may be obtained from Thomas D. Burr, P.O. Box 387, Lufkin, Texas 75901, (409) 632-7795 or Fax (406) 632-2564. TRD-9807523.

Archer County Appraisal District, Appraisal Review Board of Directors met at 101 South Center, Archer, May 13, 1998, at 9:00 a.m. Information may be obtained from Edward H. Trigg, III, P.O. Box 1111, Archer City, Texas 76351, (940) 574-2172. TRD-9807488.

Barton Springs/Edward Aquifer Conservation District, Board of Director-Called Meeting met at 1124A Regal Row, Austin, May 13, 1998, Noon. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282-8441, or Fax (512) 282-7016. TRD-9807480.

Bexar Appraisal District, Appraisal Review Board met at 535 South Main Street, San Antonio, May 15, 1998, at 9:00 a.m. Information may be obtained from Ann Elizondo, P.O. Box 830248, San Antonio, Texas 78283-0248, (210) 224-8511. TRD-9807496.

Coleman County Water Supply Corporation, Board of Directors met at 214 Santa Anna Avenue, Coleman, May 13, 1998, at 1:30 p.m. Information may be obtained from Davey Thweatt, 214 Santa Anna Avenue, Coleman, Texas 76834, (915) 625-2133. TRD-9807486.

Dallas Area Rapid Transit, Regional Rail Right-of-Way Corporation, met at 1401 Pacific Avenue, Ex. Conf. Rm A, 2nd Floor, Dallas, May 12, 1998, at 11:00 a.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9807540.

Dallas Area Rapid Transit, Administrative Committee, met at 1401 Pacific Avenue, Conference Room "C", 1st Floor, Dallas, May 12, 1998, at Noon. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9807542.

Dallas Area Rapid Transit, External Communications Committee, met at 1401 Pacific Avenue, Conference Room "C", Dallas, May 12, 1998, at 2:00 p.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9807539.

Dallas Area Rapid Transit, Operations Committee, met at 1401 Pacific Avenue, Conference Room "B", 1st Floor, Dallas, May 12, 1998, at 2:00 p.m.. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9807541.

Dallas Area Rapid Transit, Committee-of-the-Whole, met at 1401 Pacific Avenue, Conference Room "C", 1st Floor, Dallas, May 12, 1998, at 4:00 p.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9807543.

Dallas Area Rapid Transit, Board of Directors, met at 1401 Pacific Avenue, Board Room, 1st Floor, Dallas, May 12, 1998, at 6:30 p.m.

Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9807544.

Deep East Texas Council of Governments, East Texas Regional Water Planning Group, RWPA "1" met at 1615 South Chestnut, Lufkin, May 18, 1998, at 1:30 p.m. Information may be obtained from Walter G. Diggles, 274 East Lamar Boulevard, Jasper, Texas 75951, (409) 384-5704, or (409) 384-5390. TRD-9807502.

Garza Central Appraisal District, Board of Director met at 124 East Main, Post, May 14, 1998, at 9:00 a.m. Information may be obtained from Billie Y. Windham, P.O. Drawer F, Post, Texas 79356, (806) 495-3518. TRD-9807515.

Garza Central Appraisal District, Appraisal Review Board met at 124 East Main, Post, May 14, 1998, at 2:00 p.m. Information may be obtained from Billie Y. Windham, P.O. Drawer F, Post, Texas 79356, (806) 495-3518. TRD-9807511.

Grayson Appraisal District, Board of Directors met at 205 North Travis, Sherman, May 20, 1998, at 4:00 p.m. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9807519.

Gulf Bend Center, Mid-Coast Community Management met at 1502 East Airline, Victoria, May 20, 1998, at Noon. Information may be obtained from Janet Walters, 1502 East Airline, Victoria, Texas 77901, (512) 575-0611. TRD-9807498.

Hays County Appraisal District, Board of Directors met at 21001 North IH-35, Kyle, May 14, 1998, at 3:30 p.m. Information may be obtained from Pete T. Islas, 21001 North IH-35, Kyle, Texas 78640, (512) 268-2522. TRD-9807548.

Henderson County Appraisal District, Board of Director me in a revised agenda at 1751 Enterprise Street, Athens, May 14, 1998, at 5:30 p.m. Information may be obtained from Lori Fetterman, 1751 Enterprise Street, Athens, Texas 75751, (903) 675-9296. TRD-9807522.

Hickory Underground Water Conservation District Number One, Board and Advisors met at 111 East Main, Brady, May 14, 1998, at 7:00 p.m. Information may be obtained from Stan Reinhard, P.O. Box 1214, Brady, Texas 76825, (915) 597-2785. TRD-9807497.

Hood County Appraisal District, Board of Directors met at 1902 West Pearl Street, District Office, Granbury, May 19, 1998, at 7:30 p.m. Information may be obtained from Jeffery D. Law, P.O. Box 819, Granbury, Texas 76048, (817) 573-2471. TRD-9807487.

Hunt County Appraisal District, Board of Directors met in a regular meeting at 4801 King Street, Greenville, May 14, 1998, at Noon. Information may be obtained from Shirley Smith, P.O. Box 1339, Greenville, Texas 75403, (903) 454-3510. TRD-9807493.

Jim Wells County Soil and Water Conservation District met at 2287 North Texas Boulevard, Suite 5, Alice, May 13, 1998, at 1:30 p.m. Information may be obtained from Joan D. Rumfield, 2287 North Texas Boulevard, Suite 5, Alice, Texas 78332, (512) 668-8363, Extension 202. TRD-9807482.

Lee County Appraisal District, Appraisal Board met at 218 East Richmond Street, Giddings, May 13, 1998, at 9:00 a.m. Information may be obtained from Lynette Jatzlau, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9807495.

Lower Colorado Regional Water Planning Group met at Park Road, 1-C, Smithville, May 13, 1998, at 10:00 a.m. Information may be obtained from Quentin Martin, 3701 Lake Austin Boulevard, Austin, Texas 78703, (512) 473-4064. TRD-9807509.

Manville Water Supply Corporation, Regular Board Meeting met at 108 North Commerce Street, Coupland, May 14, 1998, at 7:00 p.m. Information may be obtained from Tony Graf, P.O. Box 248, Coupland, Texas 78615, (512) 272-4044. TRD-9807503.

Texas Political Subdivision Joint Self-Insurance Funds, Board of Trustees, met at the Embassy Suites Hotel, 13131 North Central Expressway, Dallas, May 15, 1998, at 9:00 a.m. Information may be obtained from David J. LaBrec, 901 Main Street, Suite 4300, Dallas, Texas 75202, (214) 651-4752. TRD-9807507.

Scurry County Appraisal District, Agricultural Advisory Committee met at 2612 College Avenue, Snyder, May 13, 1998, at 8:00 a.m. Information may be obtained from L.R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549. TRD-9807494.

Upper Rio Grande Workforce Development Board, Upper Rio Grande Workforce Development Board/Special Meeting met at 5919 Brook Hollow, El Paso, May 13, 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-9807530.

Wood County Appraisal District, Board of Directors met at 210 Clark Street, (P.O. Box 518), Quitman, May 14, 1998, at 10:00 a.m. Information may be obtained from Lois McKibben or Rhonda Powell, P.O. Box 518, Quitman, Texas 75783-0518, (903) 763-4891. TRD-9807481.

Meetings filed on May 11, 1998

Bexar Appraisal District, Board of Director met at 535 South Main Street, San Antonio, May 14, 1998, at 5:00 p.m. Information may be obtained from Sally Kronenthal, P.O. Box 830248, San Antonio, Texas 78283-0248, (210) 224-8511, TRD-9807684.

Concho Valley Workforce Development Board met at 1021 University, San Angelo, May 14, 1998, at 2:00 p.m. Information may be obtained from Hayden Woodard, 1021 University, San Angelo, Texas 76904, (915) 446-2526, or Fax (915) 446-3964. TRD-9807659.

Concho Valley Workforce Development Board met in a revised agenda at 1021 University, San Angelo, May 14, 1998, at 2:00 p.m. Information may be obtained from Hayden Woodard, 1021 University, San Angelo, Texas 76904, (915) 446-2526, or Fax (915) 446-3964. TRD-9807674.

Creedmoor-Maha, WSC, Monthly Meeting met at 1699 Laws Road, Mustang Ridge, May 13, 1998, at 7:30 p.m. Information may be obtained from Charles Laws, 1699 Laws Road, Mustang Ridge, Texas 78610, (512) 243-2113 or (512) 243-1991. TRD-9807657.

Denton Central Appraisal District, Appraisal Review Board met at 3911 Morse Street, Denton, May 20, 1998, at 9:00 a.m. Information may be obtained from Connie Bradshaw, P.O. Box 2816, Denton, Texas 76202-2816, (940) 566-0904. TRD-9807644.

Denton Central Appraisal District, Board of Director will meet at 3911 Morse Street, Denton, May 28, 1998, at 3:00 p.m. Information may be obtained from Connie Bradshaw, P.O. Box 2816, Denton, Texas 76202-2816, (940) 566-0904. TRD-9807658.

Denton Central Appraisal District, Appraisal Review Board will meet at 3911 Morse Street, Denton, June 1-July 17, 1998, at 9:00 a.m. Information may be obtained from Connie Bradshaw, P.O. Box 2816, Denton, Texas 76202-2816, (940) 566-0904. TRD-9807643.

Dewitt County Appraisal District, Board of Director met at 103 Bailey Street, Cuero, May 19, 1998, at 7:30 p.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas, (512) 275-5753. TRD-9807650.

Education Service Center, Region VIII, Board of Director's Meeting will meet at the BENBRAD Ranch, CR 1323, Pittsburg, May 28, 1998, at 11:00 a.m. Information may be obtained from Scott Ferguson, P.O. Box 1894, Mt. Pleasant, Texas 75456-1894, (903) 572-8551. TRD-9807687.

Education Service Center, Region XII, Board of Director met at 2101 West Loop 340, Waco, May 14, 1998, at 10:00 a.m. Information may be obtained from Harry J. Beavers or Vivian L. McCoy, P.O. Box 23409, Waco, 76702-3409, (817) 666-0707. TRD-9807693.

Golden Cresecent Workforce Development Board, Executive Committee Meeting, met at 2401 Houston Highway, Victoria, May 14, 1998, at 3:30 p.m. Information may be obtained from Laura Sanders, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9807676.

Hansford County Appraisal District, Board of Directors met at 709 West 7th Street, Spearman, May 13, 1998, at 9:00 a.m. Information may be obtained from Alice Peddy, 709 West 7th Street, Spearman, Texas 79081-0519, (806) 659-5575. TRD-9807553.

Harris County Appraisal Review Board met at 2800 North Loop West, Houston, Information may be obtained from Bob Gee, 2800 North Loop West, Houston, Texas 77092, (713) 957-5222. TRD-9807555.

Houston-Galveston Area Council, Projects Review Committee met at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, May 19, 1998, at 9:00 a.m. Information may be obtained from Rowena Ballas, 3555 Timmons Lane, Suite 500, Houston, Texas 77027, (713) 627-3200. TRD-9807686.

Houston-Galveston Area Council, General Assembly Meeting met at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, May 19, 1998, at 10:00 a.m. Information may be obtained from Mary Ward, P.O. Box 22777, Houston, Texas 77227, (713) 627-3200. TRD-9807694.

Jones County, Appraisal District, Board of Directors met at 1137 East Court Plaza, Anson, May 21, 1998, at 8:30 a.m. Information may be obtained from Susan Holloway, P.O. Box 348, Anson, Texas 79501, (915) 823-2422. TRD-9807666.

Kendall Appraisal District, Appraisal Review Board met at 121 South Main Street, Boerne, May 19, 1998, at 9:00 a.m. Information may be obtained from Leta Schlinke, P.O. Box 788, Boerne, Texas 78006, (830) 249-8012, or Fax (830) 249-3975. TRD-9807561.

Liberty County Central Appraisal District, Appraisal Review Board, met at 315 Main Street, Liberty, May 20, 1998, at 9:00 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722. TRD-9807678.

Liberty County Central Appraisal District, AG Advisory Board, met at 315 Main Street, Liberty, May 20, 1998, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722. TRD-9807679.

Lower Neches Valley Authority, LNVA Environmental Committee met at 7850 Eastex Freeway, Beaumont, May 14, 1998, at 10:00 a.m. Information may be obtained from A.T. Hebert, Jr., P.O. Box 5117, Beaumont, Texas 77726-5117, (409) 892-4011. TRD-9807640.

Northeast Texas Municipal Water District, Board of Directors met at Highway 250 South, Hughes Springs, May 18, 1998, at 10:00 a.m. Information may be obtained from Walt Sears, Jr., P.O. Box 955, Hughes Springs, Texas 75656, (903) 639-7538. TRD-9807642.

Sabine Valley Center, Personnel Committee will meet at 401 North Grove Moore, Marshall, May 22, 1998, at 9:00 a.m. Information

may be obtained from Inman White or Ann Reed, P.O. Box 6800, Longview, Texas 75608, (903) 237-2362. TRD-9807685.

San Antonio-Bexar County Metropolitan Planning Organization, Transportation Steering Committee met at the Executive Assembly Center of the Convention Center Complex-Corner South Alamo and East Market, San Antonio, May 18, 1998, at 1:30 p.m. Information may be obtained from Janet A. Kennison, 603 Navarro, Suite 904, San Antonio, Texas 78205, (210) 227-8651. TRD-9807653.

San Antonio River Authority, Real Estate Policy Guidelines Committee, met at 100 East Guenther Street, Boardroom, San Antonio, May 20, 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-9807563.

San Antonio River Authority, Board of Directors met at 100 East Guenther Street, Boardroom, San Antonio, May 20, 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-9807562.

South Plains Regional Workforce Development Board met at 1301 Broadway, Downstairs Conference Room, Lubbock, May 14, 1998, at 3:00 p.m. Information may be obtained from Martha Medina, P.O. Box 10227, Lubbock, Texas 79457, (806) 744-1987. TRD-9807667.

Sulphur-Cypress SWCD, #419, met at 1809 W. Ferguson, Mt. Pleasant, May 14, 1998, at 9:30 a.m. Information may be obtained from Beverly Amerson, 1809 West Ferguson Road, Suite D, Mt. Pleasant, Texas 75455, (903) 672-5411. TRD-9807554.

Upper Rio Grande, Workforce Development Board, Upper Rio Grande Workforce Development Board/Special Meeting, met at 5910 Brook Hollow, El Paso, May 13, 1998, at 2:00 p.m. Information may be obtained from Norman R. Haley, 5910 Brook Hollow, El Paso, Texas 79925, (915) 772-5627, Extension 406. TRD-9807560.

Meetings filed May 12, 1998

Brazos Valley Council of Governments, Solid Waste Advisory Committee met at 1706 East 29th Street, Bryan, May 15, 1998, at 10:00 a.m. Information may be obtained from Linda McGill, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244, Extension 121. TRD-9807729.

Central Texas Water Supply Corporation, Special Meeting will meet at 4020 Lake Cliff Drive, Harker Heights, June, 4, 1998, at 10:00 a.m. Information may be obtained from Delores Hamilton, 4020 Lake Cliff Drive, Harker Heights, Texas 76548, (254) 698-2779. TRD-9807724.

Deep East Texas Council of Governments, Regional Solid Waste Task Force met at 274 East Lamar Street, Jasper, May 20, 1998, at 10:00 a.m. Information may be obtained from Van Bush, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704. TRD-9807697.

Elm Creek WSC, Board met at 508 Avenue E, Moody, May 18, 1998, at 7:00 p.m. Information may be obtained from Rita Foster, 508 Avenue E, Moody, Texas 76557, (254) 853-2125. TRD-9807783.

Gray County Appraisal District, Board of Directors Special Meeting met at 815 North Sumner, Pampa, May 18, 1998, at 5:00 p.m. Information may be obtained from Kim Hinds, P.O. Box 836, Pampa, Texas 79065, (806) 665-0791. TRD-9807715.

Johnson County, Central Appraisal District, Board of Directors met at 109 North Main Suite, 201, Room 202, Cleburne, May 21, 1998, at 4:30 p.m. Information may be obtained from Don Gilmore, 109 North Main, Cleburne, Texas 76031, (817) 558-8100. TRD-9807792.

Limestone County Appraisal District, Board of Directors met at 200 West State Street, Groesbeck, May 19, 1998, at 1:30 p.m. Information may be obtained from Karen Wietzikoski, 200 West State Street, Groesbeck, Texas 76642, (254) 729-3009. TRD-9807712.

Middle Rio Grande Workforce Board, By-Laws Committee Special Called Board Meeting met at 920 East Main Street, Sage Room, Holiday, Inn, Uvalde, May 14, 1998, at 11:00 a.m. Information may be obtained from Ricky McNeil, 100 West South Street, Uvalde, Texas 78801, (830) 591-0141. TRD-9807695.

Mills County Appraisal District, Board of Directors met at the Mills County Courthouse, Jury Room-Fisher Street, Goldthwaite, May 19, 1998, at 6:30 p.m. Information may be obtained from Bill Presely, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253. TRD-9807698.

Nortex Regional Planning Commission, Executive Committee met in a revised agenda at the Galaxy Center, #2 North, Suite 200, 4309 Jacksboro, Highway, Wichita Falls, May 21, 1998, at Noon. Information may be obtained from Dennis Wilde, P.O. Box 5144, Wichita Falls, Texas 76307-5144, (940) 322-5281 or Fax (940) 322-6743. TRD-9807696.

Region C Regional Water, Planning Group will meet at the Central Wastewater Plant, Trinity River Authority, 6500 West Singleton Boulevard, Grande Prairie, May 27, 1998, at 4:00 p.m. Information may be obtained from Carl W. Riehn, P.O. Box 2408, Wylie, Texas 75098, (972) 442-5405. TRD-9807789.

Region F Regional Water Planning Group, Professional Service Review Committee met at the Chevron USA, Inc.- Permian Basin, Training Center, 4200 North FM 1788, Midland, May 18, 1998, at 10:30 a.m. Information may be obtained from John W. Grant, P.O. Box 869, Big Spring, Texas 79721, (915) 267-6341. TRD-9807784.

Region F Regional Water Planning Group, met at the Chevron USA, Inc.- Permian Basin, Training Center, 4200 North FM 1788, Midland, May 18, 1998, at 11:00 a.m. Information may be obtained from John W. Grant, P.O. Box 869, Big Spring, Texas 79721, (915) 267-6341. TRD-9807785.

Texas Rural Communities, Inc., Board of Directors will meet at the Del Lago Conference Resort, 600 Del Lago Boulevard, Montgomery, June 2, 1998, at 9:00 a.m. Information may be obtained from Leslie Janca, 12401 Hymeadow Drive Building One, Suite 1B, Austin, Texas 78750, (512) 219-0468. TRD-9807764.

Trinity River Authority of Texas, Ten Mile Creek Regional Wastewater System Right-of-Way Committee met at 5300 South Collins Street, Arlington, May 19, 1998, at 10:30 a.m. Information may be obtained from James L. Murphy, P.O. box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9807763.

West Texas Municipal Power Agency, Board of Director met at the City Hall/Training Room (downstairs), 1625 13th Street, Lubbock, May 14, 1998, at Noon. Information may be obtained from Paul Thompson, P.O. Box 2000, Lubbock, Texas 79457, (806) 775-2500. TRD-9807728.

Meetings filed May 13, 1998

Ark-Tex Council of Governments, Executive Committee will meet at the Mt. Pleasant Chamber of Commerce, 1604 Jefferson, Mt. Pleasant, May 28, 1998, at 2:00 p.m. Information may be obtained from Sandie Brown, P. O. Box 5307, Texarkana, 75505, (903) 832-8636. TRD-9807794.

Bexar-Medina-Atascosa Counties Water Control and Improvement District #1, Board of Directors met at 226 Highway 132, Natalia,

May 18, 1998, at 8:30 a.m. Information may be obtained from John W. Ward, III, 226 Highway 132, Natalia, Texas 78059, (830) 665-2132. TRD-9807793.

Brazos Valley Workforce Development, Brazos Valley Workforce Development Board Planning Committee met at 1905 South Texas Avenue, Bryan, May 15, 1998, at 9:00 a.m. Information may be obtained from Mollie Moore, 1905 South Texas Avenue, Bryan, Texas 77802, (409) 821-0202 or Fax (409) 779-9297. TRD-9807802.

Brazos Valley Workforce Development, Brazos Valley Workforce Executive Committee met at 1905 South Texas Avenue, Bryan, May 21, 1998, at 1:30 p.m. Information may be obtained from Mollie Moore, 1905 South Texas Avenue, Bryan, Texas 77802, (409) 821-0202 or Fax (409) 779-9297. TRD-9807803.

Brazos Valley Workforce Development, Brazos Valley Workforce Development Board met at 1905 South Texas Avenue, Bryan, May 21, 1998, at 2:30 p.m. Information may be obtained from Mollie Moore, 1905 South Texas Avenue, Bryan, Texas 77802, (409) 821-0202 or Fax (409) 779-9297. TRD-9807809.

Cash Water Supply Corporation, Board of Directors met at the Corporation Office, FM 1564 at Highway 34, Greenville, May 18, 1998, at 7:00 p.m. Information may be obtained from Clay Hodges, P.O. Box 8129, Greenville, Texas 75404-8129, (903) 883-2695. TRD-9807863.

Dallas Central Appraisal District, Appraisal Review Board Meeting will meet at 2949 North Stemmons Freeway, 2nd Floor Community Room, Dallas, May 29, 1998, at 11:30 a.m. Information may be obtained from Rick Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9807797.

Guadalupe-Blanco River Authority, Board of Directors met at the Seguin Independent School District Board Room, 1221 East Kingsbury, Seguin, Guadalupe County, Texas May 20, 1998, at 10:00 a.m. Information may be obtained from W.E. West, Jr., 933 East Court Street, Seguin, Texas 78155, (830) 379-5822. TRD-9807836.

Kleberg-Kenedy Soil and Water Conservation District, #356, Board of Directors Meeting met at 1017 South 14th Street, Kingsville, May 18, 1998, at 1:30 p.m. Information may be obtained from Joan D. Rumfield, 920 East Caesar, Suite 4, Kingsville, Texas 78363, (512) 592-0309. TRD-9807799.

North Texas Municipal Water District, Board of Directors will meet at the Administration Office, 505 East Brown Street, Wylie, May 28, 1998, at 4:00 p.m. Information may be obtained from James M. Parks, P.O. Box 2408, Wylie, Texas 75098, (972) 442-5405. TRD-9807872.

North Texas Local Workforce Development Board will meet at 4309 Jacksboro, Suite 200 Wichita Falls, May 28, 1998, at Noon. Information may be obtained from Mona W. Statser, 4309 Jacksboro, Suite 200 Wichita Falls, Texas 76302, (940) 322-5281 or Fax (940) 322-2683. TRD-9807845.

West Central Texas Workforce Development Board met at 1025 EN 10th Street, Abilene, May 20, 1998, at 10:30 a.m. Information may be obtained from Mary Ross, 1025 EN 10th Street, Abilene, Texas 79601, (915) 672-8544. TRD-9807839.

West Central Texas Workforce Development Board, School-to-Work-Committee met at 1025 EN 10th Street, Abilene, May 20, 1998, at 1:00 p.m. Information may be obtained from Mary Ross, 1025 EN 10th Street, Abilene, Texas 79601, (915) 672-8544. TRD-9807838.



# IN ADDITION

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The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

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## Office of the Attorney General

### Notice of Request for Proposals

The Office of the Attorney General (OAG) hereby gives notice of a Request for Proposals (RFP) for the provision of expert witness services in the form of scientifically acceptable DNA paternity testing services and litigation support, including testimony, in proceedings pursuant to Texas law. Offerors may propose to perform the requested service in both in state and out of state cases.

The OAG Child Support Division has 74 unit offices located throughout the state which serve certain specified counties. The unit offices are organized into eight Administrative Areas. Offerors may propose to perform services for all Administrative Areas or to perform services for one or more Administrative Areas. The OAG estimates that it will require services for approximately 14,385 paternity cases each year.

The OAG reserves the right to make one or more awards. Award(s) may be for the entire state or for one or more Administrative Areas.

The OAG cannot and does not guarantee the acquisition of any quantities. Total for the Contract will be determined by usage.

Copies of the RFP may be requested from: Ms. Vickie Pounds, Purchaser III, Office of the Attorney General, 300 West 15th Street, 3rd Floor, Austin, Texas 78701 (delivery address), Post Office Box 12548, Austin, Texas 78711-2548 (mail address), or by facsimile (512) - 397-1627. The request should include the name of the Requestor, the Address of the Requestor, the name of a contact person, and a telephone and facsimile number for that person. Requests for a Request for Proposals may be sent to the OAG beginning on the date that this notice is published in the *Texas Register*.

The closing date for the receipt of proposals is June 22, 1998.

TRD-9807834

Sarah Shirley

Assistant Attorney General

Office of the Attorney General

Filed: May 13, 1998



## Coastal Coordination Council

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC 501. Requests for federal consistency review were received for the following projects(s) during the period of May 5, 1998, through May 11, 1998:

#### FEDERAL AGENCY ACTIONS:

Applicant: Orange County Sheriff's Department; Location: On the west bank of the Sabine River, south of Henderson, north of Polk, and east of Market, in Orange, Orange County, Texas; Project Number: 98-0199-F1; Description of Proposed Action: The applicant proposes to construct a 38 foot by 32 foot boat slip and a covered boathouse with two berths and associated walkways. Construction would include the dredging of approximately 280 cubic yards of material to a depth of -4.5 to -6.0 feet mean sea level. A 38-foot bulkhead will be installed across the back of the boat slip. In addition, the applicant proposes to place approximately 64 cubic yards of concrete riprap in 12 by 12-foot areas along the northern and southern waterward ends of the boathouse below mean sea level; Type of Application: U.S.C.O.E. permit application #21278 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Loren Smith and Alana Vickers; Location: On the southeast shoreline of Robinson Bayou, Lot 28 at the Lakefront Subdivision, League City, Galveston County, Texas; Project Number: 98-0201-F1; Description of Proposed Action: The applicant proposes to construct a boat slip by excavating approximately 160 cubic yards of material. The slip would be 45 feet long, 16 feet wide, and 6 feet deep. In addition, the applicant proposes to construct a 31-foot by 10-foot concrete bulkhead on the south side of the slip. The applicant proposes to mitigate wetland impacts by planting 1,000 square feet of smooth cordgrass adjacent to the site in conjunction with the mitigation project authorized by the Department of the Army Permit 19466(02); Type of Application: U.S.C.O.E. permit

application #21107 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: DeKaizered, Inc.; Location: Number 1 Wharf Street, Houston Ship Channel, in the proximity of the Turning Basin, Houston, Harris County, Texas; Project Number: 98-0202-F1; Description of Proposed Action: The applicant proposes to conduct maintenance dredging of a 700 foot by 125-foot area. Construction of a levee area is proposed to prevent erosion; Type of Application: U.S.C.O.E. permit application under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Petro-Guard Production; Location: In Matagorda Bay and vicinity, Calhoun and Matagorda Counties, Texas; Project Number: 98-0204-F1; Description of Proposed Action: The applicant proposes to amend the blanket permit to add State Tract 629S-Gulf of Mexico, State Tract "M"-Matagorda Island, Town Tract of Saluria-A-274, H.W. Hawes Survey-A-77, and H.W. Hawes Survey-A-78, to perform dredging of channels and maintenance dredging of existing channels; Type of Application: U.S.C.O.E. permit application #21161(01) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Petro-Guard Production; Location: In San Antonio Bay and vicinity, Calhoun County, Texas; Project Number: 98-0205-F1; Description of Proposed Action: The applicant proposes to amend the blanket permit to add the north half of State Tract 163, San Antonio Bay to the permit area for mineral development; Type of Application: U.S.C.O.E. permit application #15775(06) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Petro-Guard Production; Location: In Espiritu Santo Bay and Pringle Lake, Calhoun County, Texas; Project Number: 98-0206-F1; Description of Proposed Action: The applicant proposes to amend the blanket permit to add the north half of State Tract 224, Espiritu Santo Bay to the permit area for mineral development; Type of Application: U.S.C.O.E. permit application #11006(12) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

#### FEDERAL AGENCY ACTIVITIES:

Applicant: Texas Department of Transportation; Location: Approximately 7.5 miles west of the Texas Parks and Wildlife Department Peach Point Wildlife Management Area and approximately 5 miles northwest of the San Bernard National Wildlife Refuge, Brazoria County, Texas; Project Number: 98-0200-F2; Description of Proposed Action: The applicant proposes to establish a 3,825-acre mitigation bank to increase the functional habitat values for fish and wildlife; Type of Application: U.S.C.O.E. application #MB017 under §404 of the Clean Water Act (33 U.S.C.A. §§1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action should be referred to the Coastal Coordination Council for review and whether the action is or is not consistent with the Texas Coastal Management Program goals and policies. All comments must be received within 30 days of publication of this notice and addressed to Ms. Janet Fatheree, Council Secretary, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495.

TRD-9807800  
Garry Mauro  
Chairman

Coastal Coordination Council  
Filed: May 13, 1998

## Office of Consumer Credit Commissioner

### Notice Of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Articles 1D.003 and 1D.009, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003 and 1D.009, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 05/18/98 - 05/24/98 is 18% for Consumer <sup>1</sup>/Agricultural/Commercial <sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 05/18/98 - 05/24/98 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-9807790

Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: May 12, 1998

### Request for Interpretation of Subtitle 2, Title 79

Under provisions of Texas Finance Code, §14.108, the consumer credit commissioner may issue interpretations of Subtitle 2, Title 79, Texas Revised Civil Statutes Annotated, Article 5069-3A.001 *et seq.* Sections 311.031(c) and (d) of the Code Construction Act speak directly to the precedential significance of the simultaneous passage of the *Texas Credit Title* and the Texas Finance Code. In the instance in which a code provision conflicts with a statute, the above-referenced sections of the Code Construction Act indicate that the statutory provision prevails.

The Texas Finance Code was a product of the constitutional amendment to codify the revised statutes into code format. Part of the Texas Finance Code is the codification of the *Texas Credit Code*. The *Texas Credit Title*, a substantive rewrite of the *Texas Credit Code*, contains a provision dealing with conflicting legislation passed by the same legislature which gave precedence to the *Texas Credit Title*. Because the sections referenced in this interpretation request conflict with provisions in the Texas Finance Code, the consumer credit commissioner has authority, pursuant to the Texas Finance Code, to interpret the provisions in the *Texas Credit Title*.

The consumer credit commissioner has received the following request for an interpretation:

Request Number 98-01. Request from Mark Morris, Chase Bank of Texas, N.A., regarding certain charges under Article 5069-Chapter 3A.001 *et seq.* The request poses two questions:

1. On a loan utilizing the true daily earnings method or scheduled installment earnings method, is it permissible to charge "points?"
2. Does Article 3A.507 and 3A.852(b) permit a lender to impose more than one of the listed permissible collection charges in each section?

Interested parties may submit briefs and proposals pertaining to the issue under consideration to Leslie L. Pettijohn, Commissioner, Office of Consumer Credit Commissioner, 2601 North Lamar, Austin, Texas 78705, until June 22, 1998.

TRD-9807791  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: May 12, 1998



## Texas Court Reporters Certification Board

### Certification of Court Reporters

Following the examination of applicants on April 3, 1998, the Texas Court Reporters Certification Board certified to the Supreme Court of Texas the following individuals who are qualified in the method indicated to practice shorthand reporting pursuant to Chapter 52 of the Texas Government Code, V.T.C.A.:

**ORAL STENOGRAPHY:** Julie Lynne Acrea-Richardson; Shana Dawn Eckard-Fort Worth; and Tonya Lonnell Houghton-Hurst.

**MACHINE SHORTHAND:** Natalie Alva-San Antonio; Michelle Renee Antos-Austin; Heather Nicole Barker-Dallas; Tamara Kay Chapman- Pasadena; Susan Michele Rae Cook-Kaufman; Kimberly Donelle Davis- Houston; Kimberly Ann Gilson-Irving; Kimberly Lin Goodwin-Plano; Trenna M. Lacy-Abilene; Stephanie A. Larsen-Marble Falls; Deborah A. Marks-Dallas; Melissa Gwyn McPherson-Corsicana; Vicente Mendoza-Abilene; Cynthia M. Montalvo-Needville; Sylvia Arriaga Quesada-San Antonio; Julia Maricela Rangel-New Caney; Robyn Marie Rodriguez-Allen; Sheryl Elaine Stapp-Corpus Christi; Kathleen Ann Supnet-El Paso; Hilary Anne Thomas-Austin; Ava Claire Tuck- Dallas; Kimberly Kaye Wallace-Dale; and Dawn Anette Weeks- Garland.

TRD-9807517  
Peg Liedtke  
Executive Secretary  
Texas Court Reporters Certification Board  
Filed: May 8, 1998



## Texas Department of Criminal Justice

### Notice of Solicitation - Cancellation

The Texas Department of Criminal Justice - Parole Division hereby provides notice of cancellation of Solicitation 696-8-PP-008 published in the April 3, 1998, issue of the *Texas Register* (23 TexReg 3598).

TRD-9807868  
Carl Reynolds  
General Counsel  
Texas Department of Criminal Justice  
Filed: May 13, 1998



### Notice to Bidders

The Texas Department of Criminal Justice invites bids for Regional Distribution Warehouse Snyder, Texas. The project consists of an addition of approximately 40,000 square foot dry storage warehouse, 20,000 square feet cold storage, and office space renovation to an

existing warehouse facility for the Texas Department of Criminal Justice at Snyder Texas as shown on the contract documents.

All work will be awarded under one lump-sum contract. The successful bidder will be required to meet the following requirements and submit evidence to Owner within five days after receiving notice of intent to award from the Owner:

A. Contractor must have a minimum of five consecutive years of experience as a General Contractor and provide references for at least three projects that have been completed of a dollar value and complexity equal to or greater than the proposed project.

B. Contractor must be bondable and insurable at the levels required.

All Bid Proposals must be accompanied by a Bid Bond in the amount of 5.0% of greatest amount bid. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract.

Bid Documents can be purchased from the Architect/Engineer at a cost of \$200 (non-refundable) per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to the Architect/Engineer: Prozign, Incorporated, 5701 Woodway, Suite 200, Houston, Texas 77057; telephone: (713) 977-6090.

A Pre-Bid conference will be held on May 28, 1998, at 10:00 a.m. at the Daniel Unit, Scurry County, Snyder, Texas. Assemble at the contact visitation area of the Administration Building of the unit. A site visit at the Warehouse property will be held immediately following the pre-bid conference. Attendance for both is mandatory. Bids will be publicly opened and read at 2:00 p.m. June 17, 1998, in the Blue Room at the Facilities Division located in the warehouse building of the TDCJ Administrative Complex (formally Brown Oil Tool) on Spur 59 off of Highway 75 North, Huntsville, Texas. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

The Texas Department of Criminal Justice requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least 26.1% of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-9807867  
Carl Reynolds  
General Counsel  
Texas Department of Criminal Justice  
Filed: May 13, 1998



## Interagency Council on Early Childhood Intervention

### Notice of Public Hearings

The Interagency Council on Early Childhood Intervention will conduct public hearings pursuant to the Individuals with Disability Education Act (IDEA) relating to the agency's mediation procedures on the following dates:

**June 22, 1998 from 11:30 a.m. - 1:00 p.m.** at the

Heart of Texas Region MHMR Center

110 South 12th Street

Waco, Texas 76701

Contact Person: Wendy Winkler - 254/752-3451

**June 23, 1998 from 11:30 a.m. - 1:00 p.m.** at the

Easter Seal Rehabilitation Center

2203 Babcock Road

San Antonio, Texas 78229

Contact Person: Lou Mangold - 210/614-3911

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the public hearing should contact the agency at 512/424-6754. All request should be made at least three working days before the hearing if possible.

The purpose of the public hearings is to clarify the agency's process for providing mediation services, to receive comments on the mediation procedures for the Interagency Council on Early Childhood Intervention and to revise the state plan accordingly.

The requirements of the Individuals with Disabilities Education Act, Part C directs participating states to conduct public hearings on the agency's mediation process and receive comment on it.

Written comments may be submitted to Ms. Christy Dees, Interagency Council on Early Childhood Intervention, 4900 North Lamar, Austin, Texas 78751. All written comments must be received in this office or postmarked no later than June 23, 1998. Questions may be directed to Ms. Christy Dees at 512/424-6754.

TRD-9807877

Donna Samuelson

Deputy Executive Director

Interagency Council on Early Childhood Intervention

Filed: May 13, 1998



## Texas Education Agency

### Open-Enrollment Charter Guidelines and Application

**Eligible Applicants.** The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-98-016 from eligible entities to operate open-enrollment charter schools. Eligible entities include public institutions of higher education, private or independent institutions of higher education, organizations exempt from taxation under the Internal Revenue Code of 1986 (26 United States Code, §501(c)(3)), or governmental entities. Each prospective applicant is requested to send notice in writing of its intent to submit an application. The notice of intent must be sent to the Division of Charter Schools, Room 6-124, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494. Failure to notify TEA of intent to apply does not disqualify an applicant from submitting an application for an open-enrollment charter.

**Description.** The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter offers flexibility and choice for educators, parents, and students. An approved open-enrollment charter school may be located in a facility of a commercial or nonprofit entity or in a school district facility. If the open-enrollment charter school is to be located in a school district facility, it must be operated under the terms established by the board of trustees or governing body of the school district in an agreement governing the relationship between the school and the district.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade levels as provided by the charter. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Public Education Information Management System (PEIMS), criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. An open-enrollment charter school is immune from liability to the same extent as a school district, and its employees and volunteers are immune from liability to the same extent as school district employees and volunteers. An employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

**Dates of Project.** Application receipt deadline for review is July 24, 1998.

**Project Amount.** For each student enrolled in an open-enrollment charter school, Texas Education Code (TEC), §12.106(b), requires the commissioner of education to distribute to the school an amount equal to the following: the amount provided for the student under the specific Foundation School Program for which the school is chartered, plus the transportation allotment for which the student would be entitled; less an amount equal to the sum of the school's tuition receipts, plus the school's distribution from the Available School Fund. An open-enrollment charter school is entitled to receive local funds from the school district in which a student attending the school resides and may not charge tuition. An open-enrollment charter shall not discriminate in admission policy on the basis of sex, national origin, ethnicity, religion, disability, academic or athletic ability, or the district the child would otherwise attend. An open-enrollment charter school may deny admission to a student with a criminal record or documented discipline problems.

**Selection Criteria.** The State Board of Education (SBOE) may approve open-enrollment charter schools as provided in TEC, §12.101, and §12.1011. TEC, §12.1011(a)(1), authorizes the SBOE to grant not more than 100 charters for open-enrollment charter schools that adopt an express policy providing for the admission of students eligible for a public education grant under TEC, Chapter 29, Subchapter G. On March 6, 1998, the SBOE selected 41 applications submitted under TEC, §12.1011(a)(1), in response to a request for applications published in the August 29, 1997, issue of the *Texas Register*. Additionally, TEC, §12.1011(a)(2), authorizes the SBOE to grant an unspecified number of charters for open-enrollment charter schools for which at least 75% of the prospective student population, as specified in the proposed charter, will be students who have dropped out of school or are at risk of dropping out of school as defined by TEC, §29.081. An application for an open-enrollment charter must state whether it is being submitted for consideration under TEC, §12.1011(a)(1), or TEC, §12.1011(a)(2). Applications submitted under TEC, §12.1011(a)(1), will be considered separately from those submitted under TEC, §12.1011(a)(2). The following criteria will be considered in determining the selection of all open-enrollment charters: (1) school vision and goals; (2) governance structure; (3) effectiveness of educational programs; (4) compliance with accountability requirements; (5) pedagogy and faculty qualifications; (6) budgeting

process; (7) ability to comply with PEIMS data submissions; and (8) evidence of parental support. The SBOE may approve applicants to ensure representation of urban, suburban, and rural communities; various instructional settings; innovative programs; diverse student populations and geographic regions; and various eligible entities. The SBOE will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school. The SBOE may also consider the history of the sponsoring entity and the credentials and background of its board members.

**Requesting the Application.** An application must be submitted under SBOE guidelines to be considered. A complete copy of the publication "Open-Enrollment Charter Guidelines and Application" (RFA #701-98-016), which includes an application and procedures, may be obtained by writing the: Division of Charter Schools, Room 6-124, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701- 1494, or by calling (512) 463-9575.

**Further Information.** For clarifying information about the open-enrollment charter school application, contact Brooks Flemister, Division of Charter Schools, Texas Education Agency, (512) 463-9575 or by e-mail at bflemist@tmail.tea.state.tx.us.

TRD-9807873

Criss Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

Filed: May 13, 1998



#### Request for Applications Concerning Even Start Family Literacy Program, 1998–1999

**Eligible Applicants.** The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-98-011 that is authorized by Public Law 103-382, Part B of Title I of the Elementary and Secondary Education Act, as amended. Applications are being requested from a local education agency applying in partnership with a community-based organization, a public agency, an institution of higher education, or other nonprofit organization; or a community-based organization or other nonprofit organization of demonstrated quality applying in partnership with a local education agency; or an education service center applying as a fiscal agent of a shared services arrangement of school districts in partnership with a community-based organization, a public agency, an institution of higher education or other nonprofit organization to develop a program to improve the educational opportunities of children and adults by integrating early childhood and adult education for parents into a unified program.

**Description.** The overall objectives of the Even Start Family Literacy Program include the following: to provide family-centered education projects that help parents become full partners in the education of their children; to assist children receiving early childhood education in reaching their full potential as learners; to provide literacy training for parents of family units participating in the project; to improve the educational opportunities of the nation's children and adults by integrating early childhood education and adult education for parents into a unified program; to assist families with parenting strategies in child growth and development and educational process for children from birth through age seven; and to coordinate efforts that build on existing community resources to create a new range of services.

To qualify for this program, a family must be in need of the Even Start services, as indicated by a low-level income, a low level of

adult literacy or English language proficiency of the eligible parent or parents, and other need-related indicators. Eligible participants in this program are as follows: a parent or parents who are eligible for participation in an adult basic education program under the Adult Education Act; or a parent or parents who are within the State's compulsory school attendance age range, so long as a local education agency provides (or ensures the availability of) the basic education component; and a child or children, from birth through age seven, of the parents as described previously. The family must participate in all elements of the program.

**Dates of Project.** The Even Start Family Literacy Program will be implemented during the 1998-1999 school year. Applicants should plan for a starting date of no earlier than September 1, 1998, and an ending date of no later than August 31, 1999.

**Project Amount.** Funding will be provided for approximately 12 projects. Federal law requires that each grant be at least \$75,000 per year. Funding for continuation of the project each year, for up to four years, will be based on satisfactory progress of the first-year objectives and activities and on general budget approval by the commissioner of education and the state legislature. This project is funded 90% from Title I federal funds (\$2,398,350) and 10% from nonfederal sources (\$266,483). Cost sharing for the four years will be: 10% of the total cost of the program in the first year the eligible entity receives assistance; 20% in the second year; 30% in the third year; 40% in the fourth year; and 50% for any program refunded for another four years.

**Selection Criteria.** Applications will be reviewed on a competitive basis and approved on the ability of each applicant to carry out all requirements contained in the RFA. The TEA reserves the right to select from the highest ranking applications, programs that are representative of urban and rural areas of the state.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

**Requesting the Application.** A complete copy of RFA #701-98-011 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFA number in your request.

**Further Information.** For clarifying information about the RFA, contact Lillie Elizondo-Limas or Effie Franklin, Division of Adult and Community Education, Texas Education Agency, (512) 463-9294.

**Deadline for Receipt of Applications.** Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Time), Monday, June 29, 1998, to be considered.

TRD-9807835

Criss Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

Filed: May 13, 1998



#### Request for Applications Concerning 1998–2000 Staff Development and Parent Training for Campus Deregulation and Restructuring to Improve Student Achievement Grant Program

**Eligible Applicants.** The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-98-014 from public school districts on behalf of an individual school campus. The campus must have demonstrated a commitment to campus deregulation and to restructuring educational practices and conditions by entering into a partnership with representatives of all of the following entities: school staff; parents of students; community and business leaders; school district officers; a nonprofit, community-based organization that has a demonstrated capacity to train, develop, and organize parents and community leaders into a large, nonpartisan constituency that will hold the school and the school district accountable for achieving high academic standards; and the TEA. A separate application specific to the applying campus must be submitted for each campus for which the district is applying. Any campus that has been selected or is operating a 1997-1999 Staff Development and Parent Training for Campus Deregulation and Restructuring to Improve Student Achievement grant is not eligible to apply for or to receive a 1998-2000 Staff Development and Parent Training for Campus Deregulation and Restructuring to Improve Student Achievement Grant.

**Description.** The purpose of this initiative is to assist eligible individual public school campuses in implementing practices and procedures consistent with deregulation and school restructuring to improve student achievement and in identifying and training parents and community leaders who will hold the school and the school district accountable for achieving high academic standards. Grants must be used to train and develop school staff, parents, and community and business leaders so they understand and implement the: (1) academic standards and practices necessary for high academic achievement; (2) appropriate strategies to deregulate and restructure the school to improve student achievement; and (3) effective strategies to organize parents and community leaders into a large, nonpartisan constituency that will hold the school and the school district accountable for achieving high academic standards. No more than 20% of the total grant funds may be used to implement the academic standards and practices necessary for high academic achievement. No more than 25% of the total grant funds may be used to implement strategies developed by partners that are designed to enrich and extend student learning experiences outside of the regular school day. Grantees must demonstrate: (1) the development and implementation of a comprehensive plan to engage in ongoing development and training of teachers, parents, and community leaders to: (a) understand academic standards; (b) develop effective strategies to improve academic performance; and (c) organize a large constituency of parents and community leaders to hold the school and school district accountable for achieving high academic standards; (2) ongoing progress in achieving higher academic performance; and (3) ongoing progress in identifying, training, and organizing parents and community leaders who will hold the school and the school district accountable for achieving high academic standards.

**Dates of Project.** The Staff Development and Parent Training for Campus Deregulation and Restructuring to Improve Student Achievement Grant Program will be implemented during the 1998-1999 and 1999-2000 school years. Applicants should plan for a starting date of no earlier than December 1, 1998, and an ending date of no later than August 31, 2000.

**Project Amount.** Funding will be provided for approximately 30 projects. Each project will receive a maximum of \$25,000.

**Selection Criteria.** Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. The TEA reserves the right to select from the highest ranking applications campuses whose total percent of identified

students from low-income families is 60% or higher or campuses whose total percent of students passing all tests taken on the school year 1997-1998 Texas Assessment of Academic Skills (TAAS) was below the state average. Campuses meeting the "low income" or TAAS criterion will be identified by the TEA with data from the Public Education Information Management System (PEIMS) and the Academic Excellence Indicator System (AEIS).

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

**Requesting the Application.** A complete copy of RFA #701-98-014 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFA number in the request.

**Further Information.** For clarifying information about the RFA, contact Kathleen Burke, Texas Education Agency, Division of Special Projects, (512) 463-8306.

**Deadline for Receipt of Applications.** Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Time), Friday, August 14, 1998, to be considered.

TRD-9807844

Criss Clout

Associate Commissioner, Policy Planning and Research

Texas Education Agency

Filed: May 13, 1998



## **Fire Fighters' Pension Commission**

### **Request for Proposal for Master Trust Custodial Services**

Request for Proposal for Master Trust Custodial Services for the Texas Statewide Emergency Services Personnel Retirement Fund Administered by the Office of the Fire Fighters' Pension Commissioner

**Introduction.** The Office of the Fire Fighters' Pension Commissioner (the Office) issues this notice of request for proposal seeking a master trust custodian to provide custodial services to the Board of Trustees and the Commissioner of the Office for the assets of the Texas Statewide Emergency Services Personnel Retirement Fund (the Fund). At the end of fiscal year 1997, the Fund had assets with a market value of approximately \$25 million.

**Services.** Services to be provided by the master trust custodian include: (1) holding the Fund Custodian Account as a trust account for the sole benefit of and in the name of the Texas Statewide Emergency Services Personnel Retirement Fund; (2) holding Depository Trust Company eligible securities in book-entry form in the Depository Trust Company, unless otherwise instructed by the Office; (3) holding all Federal Reserve book-entry items in book-entry form in the Custodian's trust fiduciary account at the Federal Reserve, unless otherwise instructed by the Office; (4) holding all Participant Trust Company eligible securities in book-entry form in a Participant Trust Company sub-account established by the Custodian, unless otherwise instructed by the Office; (5) obtaining a nominee name to be reserved for Fund assets and all marketable securities that are not book-entry eligible, and holding the Fund assets in such nominee name, unless otherwise instructed by the Office; (6) signing a master receipt for all securities taken into custody by the Custodian; (7) providing a billing statement for any associated transition costs at the comple-

tion of the transition/conversion phase of the project; (8) providing detailed monthly or quarterly statements of services and fees coinciding with the fiscal year of the Office; (9) providing daily on-line downloadable reports that enable the Office to reconcile daily transactions, cash balances, asset listings and cash projections in a usable format; (10) providing daily on-line information to the Office for pending transactions, corporate actions and current market values; (11) providing monthly verified/audited reports downloadable to PC files no later than the tenth working day following the month end; (12) providing the software necessary for the Office to access the on-line system; and (13) upon a change in custodian, or at least once during the contract period, the Office may require the Custodian to verify and report exceptions concerning portfolio positions for cash, cash equivalents and securities, income items listed on the outstanding receivables report, reconciliations of transferred securities and cash, reconciling items between the Custodian and depository agents, open trades and corporate action items for one month prior, and one month following, the conversion date, month end pricing/valuation accuracy of the portfolio, and status of all tax reclaim filings.

Copies of the RFP. To receive a copy of the complete RFP, contact Morris E. Sandefer, Commissioner, Office of the Fire Fighters' Pension Commissioner, 920 Colorado Street, 11th floor, Austin, Texas 78701. Telephone (512) 936-3473; facsimile no. (512) 936-3480.

Written Questions. Questions concerning the RFP may be submitted in writing, no later than May 26, 1998, to Morris E. Sandefer, Commissioner, Office of the Fire Fighters' Pension Commissioner, 920 Colorado Street, 11th floor, Austin, Texas 78701. Telephone (512) 936-3473; facsimile no. (512) 936-3480.

Closing Date for Receipt of Proposals. Fifteen copies of the proposal, including two unbound copies, must be submitted in accordance with Section VI of the RFP to Morris E. Sandefer, Commissioner, Office of the Fire Fighters' Pension Commissioner, 920 Colorado Street, 11th floor, Austin, Texas 78701 no later than 12:00 noon, CDST, on June 5, 1998. Proposals received after the deadline will not be considered by the Office and will be returned, unopened, to the proposer.

Evaluation Process. Proposals meeting the minimum qualifications for consideration will be evaluated and scored by representative(s) of the Fund's investment consulting firm. The evaluation and scoring matrix used by the investment consulting firm representative(s) will be provided to the Board of Trustees of the Fund, together with any written recommendations or comments. The top ranked three proposers, as scored by the investment consulting firm representative(s), will be invited to make presentations to, and be interviewed by, the Board of Trustees at a meeting that probably will be held in College Station, Texas on July 17, 1998. Ultimate selection of a custodian for the Fund is the responsibility of the Board of Trustees.

The Office is not obligated to execute a contract as a result of the issuance of this RFP. The RFP does not commit the Office to pay any costs incurred before a contract is executed, nor does it obligate the Office to award a contract or pay any costs incurred in preparing a response to the RFP.

TRD-9807865  
Morris Sandefer  
Commissioner  
Fire Fighters' Pension Commission  
Filed: May 13, 1998

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**General Land Office**

Notice of Contract Award

Pursuant to §2254.001, et seq., Texas Government Code, the General Land Office (GLO) files this notice of a contract award to Shiner, Moseley and Associates, Inc., 2820 South Padre Island Drive, Suite 210, Corpus Christi, Texas 78415-1818. A Request for Qualifications for these professional engineering services was published in the February 13, 1998 issue of the *Texas Register* (23 TexReg 1398).

The engineer will provide professional engineering services for the Shamrock Island restoration project. Engineer will assist in project development and evaluation of alternatives for an erosion response structure to address the chronic erosion problem on Shamrock Island. This award has been denominated as GLO Contract Number 98-216R and compensation shall not exceed the amount of \$94,500.00. Contract period begins on April 17, 1998, and terminates August 31, 1999.

A minimum of seven complete copies of the final report and other required work products shall be provided to GLO in accordance with a schedule to be determined by mutual agreement.

TRD-9807413  
Garry Mauro  
Commissioner  
General Land Office  
Filed: May 7, 1998

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**Texas Health and Human Services Commission**

**Provider Contract Provisions - Senate Bill 30**

Pursuant to section 2.07 of Senate Bill 30, 75th Legislative Session, the Texas Health and Human Services Commission is required to develop a new provider contract for health care services that contains provisions designed to strengthen the commission's ability to prevent provider fraud under the state Medicaid program. The commission is also required to solicit suggestions and comments from representatives of providers in the state Medicaid program in developing the new provider contract. After the new provider contract is complete, the commission and each agency operating part of the state Medicaid program by rule shall require each provider who enrolled in the program before completion of the new contract to reenroll in the program under the new contract or modify the provider's existing contract in accordance with commission or agency procedures as necessary to comply with the requirements of the new contract. A provider must reenroll in the state Medicaid program or make the necessary contract modifications not later than September 1, 1999, to retain eligibility to participate in the program.

To solicit suggestions and comments from representatives of providers in the state Medicaid program in developing the new provider contract, the commission is using two methods: (1) publishing the proposed new provider contract language in the *Texas Register*, and (2) mailing the proposed new provider contract language to identified provider groups such as the Texas Medical Association and the Texas Osteopathic Medical Association.

If you are a provider in the Medicaid program or are a representative of providers in the Medicaid program and have suggestions or comments on the new provider contract language, please submit them in writing to Rebecca Herron, Texas Health and Human Services Commission, P. O. Box 13247, Austin, Texas 78711-3247. Comments must be received no later than 30 days following publication of this proposal in the *Texas Register*.

1. Provider has not been excluded or debarred from participation in any program under Title XVIII (Medicare) or any program



under Title XIX (Medicaid) under any of the provisions of Section 1128(a) or (b) of the Social Security Act (42 U.S.C. §1320a-7), or Executive Order 12549. Provider must notify (operating agency) within three (3) days of the time it receives notice that any action is being taken against Provider or any person defined under the provisions of section 1128(a) or (b), which could result in exclusion from the Medicaid program. Provider agrees to comply with 45 C.F.R. Part 76, "Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)." This regulation requires the Provider, in part, to: (a) execute the attached "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions" (Attachment \_\_\_) upon execution of this agreement; (b) provide written notice to the (operating agency) if at any time the Provider learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances; and (c) require compliance with 45 C.F.R. Part 76 by participants in lower tier covered transactions.

2. This contract is subject to all state and federal laws and regulations relating to fraud and abuse in health care and the Medicaid program. As provided by 42 C.F.R. § 431.107, Provider agrees to keep any records necessary to disclose the extent of services provided by the Provider to individuals in the Medicaid program, and, on request, provide free of charge to the (operating agency), the (operating agency's) agent, the Texas Health and Human Services Commission, the Texas Attorney General's Medicaid Fraud Control Unit, the Health Care Financing Administration, the Texas Department of Insurance, the Federal Bureau of Investigation, and/or the United States Department of Health and Human Services any such records and any information regarding payments claimed by the Provider under this agreement, as well as any records or information requested by these agencies and/or their agents. Provider must cooperate and assist (operating agency) and any state or federal agency charged with the duty of identifying, investigating, sanctioning, or prosecuting suspected fraud and abuse. Provider must also allow these agencies and/or their agents access to its premises.

3. The Texas Attorney General's Medicaid Fraud Control Unit and the Texas Health and Human Services Commission's Office of Investigations and Enforcement may conduct private interviews of Provider personnel, subcontractors and their personnel, witnesses, and patients. Requests are to be complied with in the form and the language requested. Provider personnel and subcontractors and their personnel are to cooperate fully in making Provider personnel and subcontractors and their personnel available in person for interviews, consultation, grand jury proceedings, pre-trial conferences, hearings, trials, and in any other process, including investigations at Provider's and the subcontractor's own expense.

4. Provider agrees to keep its application for participation in the Medicaid program current by informing the (operating agency) in writing of any changes to the information contained in its application, including, but not limited to, changes in ownership or control, federal tax identification number, or provider business addresses, at least ten (10) days prior to making such changes. Provider also agrees to notify the (operating agency) within three (3) business days of any restriction placed on or suspension of the provider's license or certificate to provide medical services.

5. Provider agrees to submit claims for payment in accordance with billing guidelines and procedures promulgated by the (operating agency), including electronic claims. Provider certifies that information submitted regarding claims will be true and accurate, complete, and that such information can be verified by source documents from which data entry is made by the Provider. Further, Provider under-

stands that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.

6. Provider agrees to disclose information on ownership and control, information related to business transactions, and information on persons convicted of crimes in accordance with 42 C.F.R. Part 455, Subpart B, and provide such information on request to the (operating agency), the Texas Health and Human Services Commission, the Texas Department of Health, the Texas Department of Protective and Regulatory Services, the Texas Attorney General's Medicaid Fraud Control Unit, the Health Care Financing Administration, and/or the United States Department of Health and Human Services.

TRD-9807869

Marina S. Henderson

Interim Commissioner

Texas Health and Human Services Commission

Filed: May 13, 1998

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## Texas Department of Housing and Community Affairs

### Housing Trust Fund-Notice of Funding Availability

The Texas Department of Housing and Community Affairs, through its Housing Trust Fund, is pleased to announce that it will make available approximately one million nine hundred thousand dollars (\$1,900,000) in loan funds to finance, acquire, rehabilitate, and develop safe, decent and affordable **multifamily** housing for low, very low, and extremely low income persons and families, and individuals with special needs.

The Housing Trust Fund was designed to provide gap financing, to ensure that projects have the final amount of funding necessary for the completion of a project. The maximum award amount is four hundred seventy-five thousand dollars (\$475,000). Mixed income projects are encouraged, providing that a portion of the units are targeted towards families at or below eighty percent (80%) of area median income.

Eligible applicants include local units of government, nonprofit organizations, for profit organizations, public housing authorities, and community housing development organizations (CHDO). Funding set-asides are as follows:

*\$1,045,000 All eligible groups may compete for funds*

*\$ 855,000 Reserved for eligible nonprofit and community housing development organizations*

Applications meeting threshold criteria will be evaluated and scored within the three categories of leveraging, housing need, and program design. Applications will then be selected based on program scoring criteria, with consideration given to geographic distribution, applicant's past history with the Department, and community impact. An applicant's high score is used to evaluate the project and does not, in and of itself, guarantee that an award will follow. The Department will also look at credit underwriting and the developer's experience. The Department's Board of Directors reserves the right to change the award amount, to award less than the requested amount, or to not make any awards.

Applications may be submitted until 5:00 p.m., July 24, 1998.

FAXED APPLICATIONS WILL NOT BE ACCEPTED.

All interested parties are encouraged to participate in this program. Applications will be available on May 22, 1998. For additional

information, or to request an application package, please call the Housing Trust Fund Office at (512) 475-1458, or e-mail your request to [jpierce@tdhca.state.tx.us](mailto:jpierce@tdhca.state.tx.us). Please direct your applications to: Texas Department of Housing and Community Affairs, Housing Trust Fund - Attn.: Keith Hoffpauir, Post Office Box 13941, Austin, Texas 78711-3941. *Physical Address*: 507 Sabine, Suite 800, Austin, Texas 78701.

TRD-9807875  
Larry Paul Manley  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: May 13, 1998



#### Housing Trust Fund/State Energy Conservation Office, Housing Partnership Program, Notice of Funding Availability

The Texas Department of Housing and Community Affairs' (TDHCA) Housing Trust Fund, in conjunction with the General Services Commission State Energy Conservation Office (SECO), is pleased to announce that it will make available two million dollars (\$2,000,000) of Exxon Oil Overcharge funds to be utilized in both single family and multifamily developments across the state. The award of funds is contingent upon the imminent execution of an agreement between TDHCA and SECO.

These funds may be used to improve the energy efficiency of housing which serves individuals, families, and persons with special needs whose income is above fifty percent (50%), and not more than eighty percent (80%), of Area Median Family Income.

Eligible applicants include local units of government, nonprofit organizations, for profit organizations, public housing authorities, and community housing development organizations (CHDO). Funding set-asides are as follows:

*\$300,000 All eligible groups, excluding for profit organizations, may compete for funds*

*\$935,000 All eligible groups, including for profit organizations, may compete for funds*

*\$765,000 Reserved for eligible nonprofit and community housing development organizations*

Applications will be selected based upon program scoring criteria, with consideration given to geographic distribution, applicant's past history with the Department, and community impact. An applicant's high score is used to evaluate the project but does not, in and of itself, guarantee an award will follow. The Department's Board of Directors reserves the right to change the award amount, to award less than the requested amount, or to not make any awards.

Applications must be received at TDHCA by 5:00 p.m. on July 3, 1998.

#### FAXED APPLICATIONS WILL NOT BE ACCEPTED.

All interested parties are encouraged to participate in the program. For more information, or to request a proposal package, please contact the Housing Trust Fund office at (512) 475-1458, or e-mail [jpierce@tdhca.state.tx.us](mailto:jpierce@tdhca.state.tx.us). Please direct your proposal to: Texas Department of Housing and Community Affairs, Housing Trust Fund, Attn.: Keith Hoffpauir, P.O. Box 13941, Austin, Texas 78701. *Physical Address*: 507 Sabine, Suite 800, Austin, Texas 78701.

TRD-9807876  
Larry Paul Manley

Executive Directors  
Texas Department of Housing and Community Affairs  
Filed: May 13, 1998



#### Notice of Public Hearing

##### MANUFACTURED HOUSING DIVISION

Notice is hereby given of a public comment period to be held by the Texas Department of Housing and Community Affairs (the "Department") at 507 Sabine Street, 4th Floor Board Room, Austin, Texas, at 9:00 a.m. to 1:00 p.m., Wednesday, June 24, 1998, to discuss the proposed rules 10 Texas Administrative Code, §80 (West Pamphlet 1997)("Rules"), concerning manufactured housing. The proposed manufactured housing rules are published in the May 8, 1998, Texas Register.

All interested parties are invited to attend such public hearing to express their views with respect to the proposed manufactured housing rules. Questions or requests for additional information may be directed to Sharon S. Choate at the Texas Department of Housing and Community Affairs Manufactured Housing Division, 507 Sabine Street, 10th Floor, Austin, Texas 78701; (512) 475-2892.

Persons who intend to appear at the hearing and express their views are invited to contact Sharon S. Choate in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their comments in writing to Sharon S. Choate prior to the date scheduled for the hearing. Written comments may be sent to the Texas Department of Housing and Community Affairs, Manufactured Housing Division, P. O. Box 12489, Austin, Texas 78711-2489 or comments may be faxed to (512) 475-4760.

This notice is published and the previously described hearing is to be held in satisfaction of the requirements of the Texas Manufactured Housing Standards Act, Texas Revised Civil Statutes Annotated, Article 5221f (Vernon 1997) and 10 Texas Administrative Code (West Pamphlet 1997).

Individuals who require auxiliary aids for this meeting should contact Gina Arenas, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1 (800) 735-2989 at least two days prior to the meeting so that appropriate arrangements can be made.

TRD-9807811  
Larry Paul Manley  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: May 13, 1998



#### Texas Department of Insurance

##### Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application to change the name of PINKSTON LIFE INSURANCE COMPANY to AMERICAN INDUSTRIES FAMILY LIFE INSURANCE COMPANY, a domestic life company. The home office is located in Houston, Texas.

Application to change the name of THE MILLERS MUTUAL FIRE INSURANCE COMPANY to THE MILLERS INSURANCE COMPANY, a domestic property and casualty company. The home office is located in Fort Worth, Texas.

Application to change the name of COLONIAL PENN LIFE INSURANCE COMPANY to CONSECO DIRECT LIFE INSURANCE COMPANY, a foreign life company. The home office is located in Philadelphia, Pennsylvania.

Any objections must be filed within 20 days after this notice has been 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-9807514  
Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: May 8, 1998



### Third Party Administrator Application

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application for admission to Texas of Administrative Services of Texas, Inc., a foreign third party administrator. The home office is Wilmington, Delaware.

Any objections must be filed within 20 days after this notice has been filed with the Secretary of State, addressed to: Texas Department of Insurance, Attn: Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-9807786  
Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: May 12, 1998



## Texas Department of Mental Health and Mental Retardation

### Awarding of Contract

The Texas Department of Mental Health and Mental Retardation (TDMHMR) has entered into a major consulting services contract with Pareto Solutions, LC, 1237 Avondale Lane, West Palm Beach, Florida, 33409, pursuant to Texas Government Code, Chapter 2254, Subchapter B.

The consultant will assist TDMHMR in determining the appropriate reimbursement structure for compensating behavioral health managed care organizations and other support organizations participating in NorthSTAR, a managed behavioral health program. TDMHMR and the Texas Commission on Alcohol and Drug Abuse will administer NorthSTAR, which is scheduled for implementation in July 1999.

Notice of the Request for Offers of Consulting Services was published in the February 6, 1998 issue of the *Texas Register* (23 TexReg 1221).

The total value of the contract is \$65,000.00.

The term of the contract is March 25, 1998 through August 31, 1998.

TRD-9807550  
Charles Cooper  
Chairman, Texas MHMR Board  
Texas Department of Mental Health and Mental Retardation

Filed: May 11, 1998



## Texas Natural Resource Conservation Commission

Notice of Application for Amendment to Certificate of Adjudication Pursuant to Texas Water Code §11.122 Requiring Notice to Interjacent Appropriators

Notice was mailed May 11, 1998, on the following applications.

Application No. 12-2830A to amend Certificate of Adjudication No. 12-2830; Applicant is Don Gromatzky, 402 South Williams, Hamilton, Texas 76531; Certificate of Adjudication No. 12-2830 was issued to Rickie Stephens, et ux and authorizes the diversion and use of not to exceed 117 acre-feet of water per annum from the Leon River, tributary of the Little River, tributary of the Brazos River, Brazos River Basin. Diversion is authorized at a maximum rate of 1.78 cubic feet per second (cfs), which is 800 gallons per minute (gpm), for irrigation purposes in Comanche County, Texas. The time priority for the use of water for irrigation purposes, authorized under this certificate, is August 31, 1954. The applicant has purchased 30 acre-feet per annum of the water rights authorized under this certificate. The applicant seeks authorization to divert and use not to exceed 30 acre-feet of water per year from the Leon River, Brazos River Basin, at a maximum rate of 0.668 cfs (300 gpm) to irrigate 31 acres of land in Hamilton and Comanche Counties, approximately 9 miles northwest of Hamilton, Hamilton County, Texas. The land to be irrigated is owned by Paul Gromatzky. The Certificate of Adjudication will not be made appurtenant to the land to be irrigated. The water right amendment, if granted, will be junior in priority to the water rights authorized under Certificate of Adjudication Nos. 12-2829, 12-2831, 12-2832, 12-2834, 12-2836, 12-2837, 12-2838, 12-2839, 12-2840, and the remaining water rights included in Certificate No. 12-2830.

Application to combine the water rights authorized by Certificates of Adjudication Nos. 14-1920 and 14-1923 into Certificate of Adjudication No. 14-1920, and to amend said Certificate 14-1920, as combined. Applicants are Wallace and Tommy Maddox, HC 62, Box 38, Lometa, Texas 76853; Certificate of Adjudication No. 14-1920 was issued to E. L. Greene, Trustee, and authorizes the diversion and use of not to exceed 14 acre-feet of water per annum from the San Saba River, Colorado River Basin. The authorized diversion has a time priority of June 3, 1914. Diversion is authorized at a maximum rate of 1.56 cfs (700 gallons per minute) for irrigation purposes on property located approximately six miles northeast of San Saba, San Saba County, Texas. Certificate of Adjudication No. 14-1923 was issued to George M. Author and Kelly Author and authorizes diversion and use of not to exceed 15 acre-feet of water per annum from the San Saba River, tributary of the Colorado River, Colorado River Basin. The authorized diversion has the year 1915 as the time priority. Diversion is authorized at a maximum rate of 3.33 cfs (1500 gallons per minute) for irrigation purposes on property located in San Saba County. The authorized diversion point is downstream of the diversion point authorized by Certificate No. 14-1920. The water rights authorized by both of the above certificates are owned by Wallace and Tommy Maddox. The applicants seek authorization to: 1) combine the water rights authorized by Certificate No. 14-1923 into Certificate No. 14-1920; 2) amend Certificate No. 14-1920, as combined, by changing the purpose of use of the 29 acre-feet of water per annum from irrigation to industrial use; 3) change the existing diversion points on the San Saba River to one diversion point on the Colorado River downstream of the existing points; and 4) allow use of

this water on property leased by the applicants located approximately 15 miles south of Goldthwaite in Mills County, with a condition that the water right not be appurtenant to the land. There are ten (10) water right holders with diversion points on the San Saba and Colorado Rivers downstream of the diversion points authorized by Certificate Nos. 14-1923 and 14-1920 and upstream of the proposed diversion point. The time priority for diversion and use of the water authorized by this amendment, if granted, is June 3, 1914 and the year 1915, except that it will be junior in priority to the water rights authorized by Certificate of Adjudication Nos. 14-1919, 14-1921, 14-1922, 14-1923, 14-1924, 14-1925, 14-1926, 14-1927, 14-1928, 14-1929, and Application No. 2576, and anyone else who might be affected by the movement of this water right.

Application No. 14-1556A to amend Certificate of Adjudication No. 14-1556; Applicant is Tommie Murr, 214 North 19th, Junction, Texas 76849; Certificate of Adjudication No. 14-1556 was issued to Jack C. Hoggett and wife, Rosemary Hoggett on August 15, 1980. The Certificate authorizes the owners, with a time priority of March 22, 1904, to divert and use not to exceed 512 acre-feet of water per annum from three specific points on the South Llano River, tributary of the Llano River, tributary of the Colorado River, Colorado River Basin. Diversion is authorized at a maximum combined rate of 6.02 cubic feet per second (cfs), which is 2700 gallons per minute (gpm), to irrigate a maximum of 151 acres of land in Kimble County, approximately 5.5 miles southwest of Junction, Texas. One of the above diversion points is also authorized under Certificate No. 14-1557. Both certificates include a condition indicating that the maximum diversion rate under Certificate Nos. 14-1556 and 14-1557 may not exceed the combined rate of 6.02 cfs (2700 gpm). Tommie Murr obtained ownership of a 50 acre-foot portion of the water rights authorized by Certificate No. 14-1556. The remainder of Certificate 14-1556 is owned by the Hoggetts and Beryl Jane Henderson. Certificate No. 14-1557 is owned by the Hoggetts. Applicant seeks to amend Certificate of Adjudication No. 14-1556 by establishing a diversion point on the South Llano River approximately 3 miles downstream of the currently authorized diversion points, and to establish the place of use for his 50 acre-foot portion of the water rights. Tommie Murr seeks to use his 50 acre-feet of water per annum for the irrigation of a maximum of 66.11 acres of land out of three tracts located in Kimble County, Texas. The diversion rate will not exceed the authorized maximum combined diversion rate of 6.02 cubic feet per second mentioned above (the existing maximum combined diversion rate authorized under Certificate Nos. 14-1556 and 14-1557). If approved, the applicant's water right under Certificate No. 14-1556 would have a time priority of March 22, 1904 associated with the water right, but would be junior in priority to water rights held by the other certificate holders under Certificate No. 14-1556. In addition, the applicant's water right would be junior in priority to the water rights held under Certificate Nos. 14-1557, 14-1558, 14-1559, 14-1560, 14-1561 and 14-1562.

The Executive Director may issue amendments to the Certificates of Adjudication on or after June 5, 1998, unless a written hearing request is filed in the Chief Clerk's Office of the TNRCC on or before May 31, 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 application 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 amendment 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 31, 1998. For information concerning technical aspects of the permit, contact Kellye Rila or Michelle Town, 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-9807782

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: May 12, 1998



#### Notice of Availability/Invitation to Comment

The Texas Natural Resource Conservation Commission (TNRCC) announces the availability of the Draft 1995 and 1996 Updates to the Water Quality Management Plan for the State of Texas.

The Water Quality Management Plan (WQMP) is developed and promulgated pursuant to the requirements of Section 208 the federal Clean Water Act (CWA). The law requires area-wide water quality management planning in areas having significant water quality problems which can only be addressed on an area-wide basis. The governor of each state is authorized to designate such planning areas and representative organizations within them to develop area-wide waste treatment management plans. There are seven designated areas in Texas. A regional council is the designated planning agency in each of these areas. The water quality agencies for these seven areas are: the Lower Rio Grande Valley Development Council, the Coastal Bend Council of Governments, the Houston-Galveston Area Council, the South East Texas Regional Planning Commission, the Central Texas Council of Governments, the North Central Texas Council of Governments, and the Ark-Tex Council of Governments. The portion of the state outside these designated areas is known as the non-designated area. The TNRCC is the water quality agency for the non-designated area, which is divided into 20 separate planning areas, primarily along major river basin boundaries.

The 1996 WQMP Update will include all domestic and wastewater permits issued since 1992. The Update recommendations are consistent with the state's wastewater permit limits. Inclusion of these permits in the 1996 WQMP Update will allow wastewater permittees the opportunity to seek federal wastewater permits (National Pollutant Discharge Elimination System) from the U.S. Environmental Protection Agency.

A copy of the 1995 and 1996 Updates may be viewed at the TNRCC Central Office at 12015 N. Interstate 35, Building A, Library, or at TNRCC Regional Offices as listed.

## TNRCC Regional Office Locations

Region 1  
3918 Canyon Dr.  
Amarillo, TX 79109-4966  
806/353-9251

Region 4  
1101 E. Arkansas Ln.  
Arlington, TX 76010-6499  
817/469-6750

Region 7  
3300 North A St., Bldg 4, Ste 107  
Midland, TX 79705-5421  
915/570-1359

Region 10  
3870 Eastex Fwy., Ste. 110  
Beaumont, TX 77703-1892  
409/898-3838

Region 13  
140 Heimer Rd., Ste 360  
San Antonio, TX 78232-5042  
210/490-3096

Region 2  
4630 50th St., Ste. 600  
Lubbock, TX 79414-3509  
806/796-7092

Region 5  
2916 Teague Dr.  
Tyler, TX 75701-3756  
903/535-5100

Region 8  
301 W. Beauregard Ave, Ste. 202  
San Angelo, TX 76903-6326  
915/655-9479

Region 11  
1921 Cedar Bend, Ste. 150  
Austin, TX 78758-5336  
512/339-2929

Region 14  
6300 Ocean Dr., Ste. 1200  
Corpus Christi, TX 78412-5503  
512/980-3100

Region 3  
209 S. Danville, Ste. B210  
Abilene, TX 79605-1451  
915/698-9674

Region 6  
7500 Viscount Blvd., Ste.147  
El Paso, TX 79925-5633  
915/778-9634

Region 9  
6801 Sanger Ave., Ste. 2500  
Waco, TX 76710-7807  
254/751-0335

Region 12  
5425 Polk Ave., Ste. H  
Houston, TX 77023-1486  
713/767-3500

Region 15  
134 E. Van Buren, Ste. 301  
Harlingen, TX 78550-6807  
956/425-6010

A public hearing will be held on Tuesday, June 16, 1998, at 10:00 a.m., at the Texas Natural Resource Conservation Commission offices, 12015 N. Interstate 35, Austin, Texas, Building B, Room 201S.

Comments on the Draft 1995 and 1996 Updates to the Water Quality Management Plan shall be provided in written form and sent to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Comments may be faxed to (512) 239-5687, but must be followed up with the

submission and receipt of the written comments within three working days of when they were faxed. Written comments must be received by 5:00 p.m., July 6, 1998. For further information contact Suzanne Rogers, Texas Natural Resource Conservation Commission, Water Quality Division, (512) 239-4619, e-mail *skrogers@tnrcc.state.tx.us*.

TRD-9807726

Kevin McCalla

Director, Legal Services

Texas Natural Resource Conservation Commission

Filed: May 12, 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 June 21, 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 June 21, 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: Robert and Elizabeth Allin; DOCKET NUMBER: 98-0057-MWD-E; IDENTIFIER: Permit Number 13601-001; LOCATION: near Willis, Montgomery County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 13601-001 and the Code, §26.121, by exceeding the permitted daily average limit of 15 milligrams per liter for total suspended solids; and 30 TAC §305.64(b), by failing to transfer Permit Number 13601-001 at least 30 days prior to transfer date; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2)COMPANY: Clara Barrio dba Bama Motors; DOCKET NUMBER: 98-0161-AIR-E; IDENTIFIER: Account Number EE-1967-F; LOCATION: Clint, El Paso County, Texas; TYPE OF FACILITY: used car dealership; RULE VIOLATED: 30 TAC §114.20(c)(1) and the THSC, §382.085(b), by offering for sale a vehicle with missing emission controls; PENALTY: \$300; ENFORCEMENT COOR-

DINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(3)COMPANY: Buster Paving Company, Incorporated; DOCKET NUMBER: 97-1150-AIR-E; IDENTIFIER: Account Number LA-0078-N; LOCATION: Paris, Lamar County, Texas; TYPE OF FACILITY: asphaltic concrete plant; RULE VIOLATED: 30 TAC §111.111(a)(1)(B), §116.115(a), Permit Number 22437, and the Act, §382.085(b), by exceeding the permitted 5.0% opacity limit averaged over a six-minute period from the plant's baghouse stack; and 30 TAC §101.7 and the Act, §382.085(b), by failing to maintain pollution abatement equipment in good working order; PENALTY: \$1,800; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(4)COMPANY: City of Follett; DOCKET NUMBER: 98-0167-MWD-E; IDENTIFIER: Permit Number 10508-001; LOCATION: Follett, Lipscomb County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 10508-001 and the Code, §26.121, by discharging effluent which was noncompliant with the five-day biochemical oxygen demand; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Bill Main, (512) 239-4481; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(5)COMPANY: Javier Escarsega dba Jasmin Auto Sales; DOCKET NUMBER: 97-1190-AIR-E; IDENTIFIER: Account Number EE-2027-J; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: used car dealership; RULE VIOLATED: 30 TAC §114.1(c)(1) and the THSC, §382.085(b), by offering for sale a vehicle with missing emission control equipment; PENALTY: \$300; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(6)COMPANY: Barbara Rudd dba Rudd Country, Incorporated; DOCKET NUMBER: 97-1152-PWS-E; IDENTIFIER: Enforcement Identification Number 11904; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: public drinking water; RULE VIOLATED: 30 TAC §290.41(c)(3)(N) and (K), by failing to provide the well with a flow measuring device and by failing to seal the well head with gaskets or a pliable crack-resistant caulk; 30 TAC §290.43(e), by failing to enclose all tanks and pressure maintenance facilities in a locked intruder resistant fence; 30 TAC §290.44(d), by failing to maintain a minimum operating pressure of 35 pounds per square inch at all points within the distribution system; and 30 TAC §290.46(f), (f)(2), and (n), by failing to maintain a disinfectant residual throughout the water distribution system, by failing to measure the disinfectant residual in the water distribution system using a test kit which employs a diethyl-p-phenylenediamine indicator, and by failing to maintain an up-to-date map of the distribution system; and 30 TAC §290.106(a)(1), by failing to prepare a plan showing the sites at which samples for bacteriological analysis will be collected; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Tom Napier, (512) 239-6063; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3509, (806) 796-7092.

(7)COMPANY: The Settlers Water System, Incorporated; DOCKET NUMBER: 97-1158-PWS-E; IDENTIFIER: Public Water Supply Number 1570019; LOCATION: near Madisonville, Madison County, Texas; TYPE OF FACILITY: public drinking water; RULE VIOLATED: 30 TAC §290.106(a)(2), by failing to submit monthly bacteriological samples; and 30 TAC §291.76 and the Code, §13.541, by failing to pay water regulatory assessment fees; PENALTY:

\$2,813; ENFORCEMENT COORDINATOR: Bhasker Reddi, (512) 239-6646; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7807, (254) 751-0335.

(8)COMPANY: Triton Tool and Supply, Incorporated; DOCKET NUMBER: 98-0271-MWD-E; IDENTIFIER: Permit Number 12466-001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: tool preparation and supply operation; RULE VIOLATED: Permit Number 12466-001 and the Code, §26.121, by failing to meet the ammonia-nitrogen daily average concentration limit; PENALTY: \$8,125; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-9807714

Kevin McCalla

Director, Legal Services

Texas Natural Resource Conservation Commission

Filed: May 12, 1998



#### Extension of Deadline for Written Comments

The Texas Natural Resource Conservation Commission (TNRCC) has extended its deadline to receive written comments for the proposed amendments to Chapter 213, relating to the Edwards Aquifer.

The proposal was published in the March 27, 1998, issue of the *Texas Register*. The deadline for receipt of written comments to the proposed changes was originally published as May 11, 1998, but has been extended to June 11, 1998. Comments must be received by 5:00 p.m.

Written comments on the proposal or on the actions the commission should take to protect the Edwards Aquifer from pollution should reference Rule Log No. 97105-213-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640 or faxed to (512) 239-5687. All comments sent by fax must be followed by an original signed hard copy for the agency's record.

For further information contact Mary Ambrose, Water Policy and Regulations Division at (512) 239-4813.

TRD-9807727

Kevin McCalla

Director, Legal Services

Texas Natural Resource Conservation Commission

Filed: May 12, 1998



#### Proposal for Decision

The State Office Administrative Hearing has issued Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on May 11, 1998, on Wright Oil Co.; SOAH Docket No. 582-97-2124; TNRCC Docket No. 97-0367-IHW-E; In the matter to be considered by the Texas Natural Resource Conservation Commission on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to comment on Proposal for Decision and Order. Comment period will end 30 days from date of publication.

TRD-9807781

Douglas A. Kitts

Agenda Coordinator

Texas Natural Resource Conservation Commission

Filed: May 12, 1998



#### Provisionally-Issued Temporary Permits to Appropriate State Water

Listed below are permits issued during the period of May 12, 1998

Application No. TA-7947 by D.L. Lennon, Inc. for diversion of 1 acre-foot in a 1 year period for industrial (roadway construction) use. Water may be diverted from East Caddo Creek, Sabine River Basin, approximately 7 miles northwest of Greenville, Hunt County, Texas at the crossing of FARM-TO-MARKET ROAD 1569 and East Caddo Creek.

Application No. TA-7948 by D.L. Lennon, Inc. for diversion of 2 acre-feet in a 1 year period for industrial (roadway construction) use. Water may be diverted from Post Oak Creek, Red River Basin, approximately 10 miles west of Bonham, Fannin County, Texas at the crossing of a County Road and Post Oak Creek near FARM-TO-MARKET ROAD 1752.

Application No. TA-7949 by J.H. Strain & Sons, Inc. for diversion of 5 acre-feet in a 1 year period for industrial (roadway construction) use. Water may be diverted from Lytle Creek, Brazos River Basin, approximately 3 miles southeast of Abilene, Taylor County, Texas at the crossing of Loop 322 and Lytle Creek.

Application No. 7950 by ATAPCO for diversion of 8 acre-feet in a 6-month period for mining (drilling gas wells) purpose. Water may be diverted from the Nueces River, Nueces River Basin, approximately 21 miles northwest of Corpus Christi, Nueces County, Texas.

Application No. TA-7951 by PAVECO for diversion of 10 acre-feet in a 1 year period for industrial (roadway construction) use. Water may be diverted from Ranger Creek, San Antonio River Basin, approximately 3 miles northwest of Boerne, Kendall County, Texas at the crossing of Ranger Creek Road and Ranger Creek.

The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permits listed above and who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be canceled without notice and hearing. No further diversions may be made pending a full hearing as provided in §295.174. 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-9807780

Eugenia K. Brumm



### Public Notice

The Texas Natural Resource Conservation Commission (TNRCC) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Chapter 361, as amended (the Act), to annually publish an updated state registry identifying each facility that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. Since the last annual publication on April 18, 1997, the TNRCC has determined that two facilities, Double R Plating and Jensen Drive Scrap, pose an imminent and substantial endangerment to public health and safety or the environment and pursuant to §361.188, are hereby listed on the state Superfund registry. Since the last annual publication, one facility, Waste Oil Tank Service, has been deleted from the registry pursuant to §361.189, and five facilities, Phipps Plating, Materials Recovery Enterprises, Hart Creosoting, J.C. Pennco Waste Oil Service, and Poly-Cycle Industries, Inc. have been proposed for listing to the state Superfund registry pursuant to §361.184(a).

Pursuant to §361.181 and §361.188, the registry identifying those facilities that are listed and have been determined to pose an imminent and substantial endangerment in relative priority of need of action follows:

1. Col-Tex Refinery, both sides of Business Interstate 20 (U.S. 80) in Colorado City, Mitchell County: Oil refinery and tank farm.
2. Houston Scrap, 3799 Jensen Drive, Houston, Harris County: Aluminum, lead, and battery recycling.
3. Houston Lead, 300 Holmes Road, Houston, Harris County: Recycling lead storage batteries.
4. Double R Plating Company, on County Road 3544, approximately 3 miles northwest of the intersection of U.S. 59 and Farm Road 96, near Queen City, Cass County: Metal refinishing company.
5. State Marine, Old Yacht Club Road at the edge of Sabine Lake, Port Arthur, Jefferson County: Barge cleaning operation.
6. Precision Machine, 500 West Olive Street, Odessa, Ector County: Machine and chrome plating shop.
7. Sonics International, Inc., north of Farm Road 101, approximately 2 miles west of Ranger, Eastland County: Two hazardous waste injection wells.
8. Maintech International, 8300 Old Ferry Road, Port Arthur, Jefferson County: Chemical cleaning and equipment hydro-blasting.
9. Federated Metals, 9200 Market Street, Houston, Harris County: Magnesium dross, sludge disposal, and inactive landfill.
10. Gulf Metals, on Telean Street, northwest of the intersection of Mykawa Road and Almeda-Genoa Road, Houston, Harris County: Disposal of hazardous materials.
11. Wortham Lead Salvage, on the north side of U.S. 175 near the intersection of County Road 2938, between Mabank, Kaufman County and Eustace, Henderson County: Lead salvage facility.
12. Texas American Oil, approximately 3 miles north of Midlothian on Old State Highway 67, Ellis County: Storage and transport of used oil.

13. Niagara Chemical, west of the intersection of Commerce Street and Adams Avenue, Harlingen, Cameron County: Pesticide formulation.

14. International Creosoting, 1110 Pine Street, Beaumont, Jefferson County: Wood preserving plant.

15. McBay Oil & Gas, approximately three miles northwest of Grapeland on Farm Road 1272, Houston County: Oil refinery and reclamation plant.

16. Aztec Mercury, 970 Callaway Drive at the corner of Callaway Drive and West Dumble Street, Alvin, Brazoria County: Mercury recycling.

17. Solvent Recovery Services, 5502 Farm Road 521 approximately 0.2 mile south of its intersection with Texas 6, Arcola, Fort Bend County: Paint solvent recycling facility.

18. Harris Sand Pits, 23340 South Texas 16, approximately 10.5 miles south of San Antonio at Von Ormy, Bexar County: Commercial sand and clay quarry.

19. Butler Ranch, 11.8 miles west of Falls City off Farm Road 791, Karnes County: 2 abandoned uranium mining pits containing drums of hazardous substances.

20. Hayes-Sammons Warehouse, Miller Avenue and East Eighth Street, Mission, Hidalgo County: Commercial grade pesticide storage.

21. Jensen Drive Scrap, 3603 Jensen Drive, Houston, Harris County: Scrap salvage facility.

22. Baldwin Waste Oil Company, on County Road 44 approximately 0.1 mile west of its intersection with Farm Road 1889, Robstown, Nueces County: Waste oil processing facility.

23. Hall Street, north of intersection of 20th Street East with California Street, north of Dickinson, Galveston County: Waste disposal.

24. Unnamed Plating, 6816-6824 Industrial Avenue, El Paso, El Paso County: Metals processing and recovery facility.

25. La Pata Oil Company, 1403 Ennis Street, Houston, Harris County: Waste oil recycling facility.

26. Munoz Borrow Pits, 0.1 mile south of U.S. 83 on the east side of Texas 1016, Mission, Hidalgo County: Contaminated soil fill.

27. South Texas Solvents, approximately 4 miles south of Banquete at the intersection of Farm Road 666 and County Road 32, Nueces County: Solvent recovery facility.

28. Bestplate, Inc., 1090 South Interstate 45, Hutchins, Dallas County: Metal fabrication and plating.

Pursuant to §361.184(a) and §361.181, those facilities which have been determined to be eligible and have been proposed for listing on the state Superfund registry are set out in relative priority of need of action as follows:

1. J. C. Pennco Waste Oil Service, 4927 Higdon Road, San Antonio, Bexar County; Used drum recycler, used waste oil recycler.
2. Phipps Plating, 305 East Grayson Street, San Antonio, Bexar County: Metal plating.
3. Pioneer Oil and Refining Co., 20280 South Payne Road, outside of Somerset, Bexar County: Oil refinery facility.
4. Higgins Wood Preserving, inside the bordering streets of North Timberland Drive (U.S. 59) on the west, Warren Street on the east,



and Paul Avenue on the north, Lufkin, Angelina County: Wood preserving facility.

5. Marshall Wood Preserving, 2700 West Houston Street, Marshall, Harrison County: Wood pressure treatment facility.

6. Thompson-Hayward Chemical Company, on the east side of U.S. 277, 0.5 mile south of Munday, Knox County: Pesticide formulating facility.

7. Old Lufkin Creosoting, 1411 East Lufkin Avenue, Lufkin, Angelina County: Wood preserving facility.

8. Materials Recovery Enterprises, about 4 miles southwest of Ovalo, near U.S. 83 and Farm Road 604, Taylor County; Class I industrial solid waste management site.

9. Harvey Industries, Inc., southeast corner of Farm Road 2495 and Texas 31 (One Curtis Mathes Drive), Athens, Henderson County: Television cabinets and circuit board manufacturing.

10. American Zinc, approximately 3.5 miles north of Dumas on U.S. 287 and 5 miles east on Farm Road 119, Moore County: Zinc smelter.

11. Troups, on the west side of Texas 326, 2.1 miles north of its intersection with Texas 105 in Sour Lake, Hardin County: Fence post treating facility.

12. JCS Company, north of Phalba on County Road 2415, approximately 1.5 miles west of the intersection of County Road 2403 and Texas 198, Van Zandt County: Battery recycling facility.

13. Jerrell B. Thompson, north of Phalba on County Road 2410, approximately one mile north of the intersection of County Road 2410 and Texas 198, Van Zandt County: Battery recycling facility.

14. Hi-Yield, northeast side of the Southern Pacific Railroad, bordered by Sycamore Street (south), Johnson Street (east), and Ross Street (north), Commerce, Hunt County: Formulation and distribution of insecticides and cotton defoliant.

15. Aztec Ceramics, 4735 Emil Road, San Antonio, Bexar County: Tile manufacturing.

16. Hart Creosoting, south of Jasper on the west side of U.S. 96, approximately 1 mile south of U.S. 190, Jasper County: Wood treatment facility.

17. Permian Chemical Company, 325 Pronto Avenue (formerly listed as 1901 Pronto Road), southeast of Odessa, Ector County: Hydrochloric acid and potassium sulfate manufacturer.

18. Sampson Horrice, 2000 and 2006 Plainfield Drive (formerly listed as 8460 Sparrow Street and 1 Sparrow Street), Dallas, Dallas County: Inactive gravel pit that illegally accepted hazardous and solid waste.

19. Barlow's Wills Point Plating, south side of U.S. 80, approximately 3.4 miles east of its intersection with Texas 64, in Wills Point, Van Zandt County: Inactive electroplating facility.

20. Poly-Cycle Industries, Inc. on Texas 75 about 0.5 miles north of Palmer, Ellis County: Lead battery treatment/recycling facility.

21. Tricon America, Inc., 101 East Hampton Road, Crowley, Tarrant County: Aluminum and zinc melting and casting facility.

The public records for each of the sites are available for inspection and copying during regular Commission business hours at the TNRCC Central Records Center (MC 199), Bldg. D, North Entrance, Room 190, 12100 Park 35 Circle, Austin, Texas 78753, telephone 1 (800) 633-9363 (within Texas only) or 512-239-2920. Copying of file information is subject to payment of a fee.

TRD-9807840

Kevin McCalla  
Director, Legal Services  
Texas Natural Resource Conservation Commission  
Filed: May 13, 1998

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## Texas Parks and Wildlife Department

### Request for Proposals: National Recreation Trails Fund

The Texas Parks and Wildlife Department (TPWD) announces a request for proposals for recreational trail projects to be funded through the Federal National Recreational Trails Fund (NRTF). The funds come from a portion of the federal tax on motor fuel consumed by non-highway recreational vehicles. Even though the tax is collected from motorized trail users, the act dictates spending on non-motorized trails as well. These funds will be available through a reimbursement grant program for trail development, renovation and maintenance. Eligible projects ranging from \$5,000 to \$100,000 will be reimbursed up to 50% of the project cost if selected by the Texas Parks and Wildlife Commission for funding. Government entities as well as not for profit and private organizations are eligible to be sponsors of trail projects.

Application forms and program guidelines are available from Texas Parks and Wildlife by writing the Department at 4200 Smith School Road, Austin, Texas 78744, attention Land Conservation Program or by calling (512) 389-4868. Completed applications must be received or postmarked by July 1, 1998. Contact person is Andy Goldbloom at (512) 389-4737.

TRD-9807758  
Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department  
Filed: May 12, 1998

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## Public Utility Commission of Texas

### Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On May 6, 1998, USN Southwest, Inc., filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SP-COA Certificate Number 60024. Applicant intends to expand its geographic area to include the entire state of Texas, and to remove the resale only restriction.

The Application: Application of USN Southwest, Inc., for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 19278.

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 May 27, 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 19278.

TRD-9807533  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas

Filed: May 8, 1998



### Notice of Application for Approval of Preliminary Integrated Resource Plan

Notice is given to the public of the filing with the Public Utility Commission of Texas on May 1, 1998, an application for approval of a preliminary integrated resource plan, pursuant to §34.021 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Houston Lighting & Power Company for Approval of Preliminary Integrated Resource Plan, Docket Number 19270, before the Public Utility Commission of Texas.

Applicant seeks commission approval of its preliminary integrated resource plan, pursuant to PURA §34.021.

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 June 15, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9807534  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 8, 1998



### Notices 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 May 6, 1998, for a service provider certificate of operating authority (SPCOA), restricted to resale, 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 VarTec Telecom, Inc., for a Service Provider Certificate of Operating Authority, Docket Number 19178 before the Public Utility Commission of Texas.

Applicant intends to provide local exchange services to customers in Texas by reselling facilities of other incumbent local exchange companies.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than May 27, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9807531  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 8, 1998



Notice is given to the public of the filing with the Public Utility Commission of Texas an application on May 5, 1998, for a service provider certificate of operating authority (SPCOA), restricted to resale, 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 Trans National Telecommunications, Inc., for a Service Provider Certificate of Operating Authority, Docket Number 19277 before the Public Utility Commission of Texas.

Applicant intends to resell the existing services of the incumbent local exchange carrier(s) where available.

Applicant's requested SPCOA geographic area includes those exchanges served by GTE Southwest, Inc., and Southwestern Bell Telephone Company 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 May 27, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9807532  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 8, 1998



### Notice of Intent to File Pursuant to P.U.C. Substantive Rule §23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. Substantive Rule §23.27 for a new PLEXAR-Custom service for Minute Maid Company in Houston, Texas.

Tariff Title and Number: Application of Southwestern Bell Telephone Company for a New PLEXAR-Custom service for Minute Maid Company in Houston, Texas pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 19273.

The Application: Southwestern Bell Telephone Company is requesting approval for a new PLEXAR-Custom service for Minute Maid Company in Houston, Texas. The designated exchange for this service is the Houston exchange, and the geographic market for this specific PLEXAR-Custom service is the Houston LATA.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9807385  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 6, 1998



Public Notice of NPA Relief Recommendations for the Metropolitan Houston (713/281) NPAs, the Metropolitan Dal-

las (214/972) NPAs, and the Austin/Corpus Christi Area (512) NPA.

At its May 6, 1998 open meeting, the Public Utility Commission of Texas (PUC) reviewed the Industry Report containing Numbering Plan Area (NPA) relief recommendations for the Metropolitan Houston (713/281) NPAs, the Metropolitan Dallas (214/972) NPAs, and the Austin/Corpus Christi area (512) NPA in Project Numbers 16899 - *NPA Relief Planning for the 214/972 Area Codes*; 16900 - *NPA Relief Planning for the 713/281 Area Codes*; and 16901 - *NPA Relief Planning for the 512 Area Code*.

The industry recommendation on NPA relief provides:

*Dallas area NPA relief.* The NPA split boundary currently in place between the 214 and the 972 NPAs would be eliminated on December 5, 1998, creating a single area served by the 214 and the 972 NPAs. In addition, in July 1999, a third, new NPA would be introduced to the Dallas area and cover the same area as 214 and 972. Attachment 1 to Order Number 3 in these projects is a map of the Dallas metropolitan area affected by this plan. Ten digit mandatory dialing for all local calls within this overlaid area would be required consistent with FCC mandate. Relief provided by this plan would be projected to last until the year 2004.

*Houston area NPA relief.* The NPA split boundary currently in place between the 713 and the 281 NPAs would be eliminated on January 16, 1999, creating a single area served by the 713 and 281 NPAs. In addition, coincident with the erasure of the geographic boundary, a third, new NPA would be introduced to the Houston area and cover the same area as 713 and 281. Attachment 2 to Order Number 3 in these projects is a map of the Houston metropolitan area affected by this plan. Ten digit mandatory dialing for all local calls within this overlaid area would be required consistent with FCC mandate. Relief provided by this plan would be projected to last until the year 2003.

*Austin/Corpus Christi area NPA relief.* A geographic split of the 512 NPA, serving the Austin LATA (local access and transport area) and the Corpus Christi LATA is recommended. The recommendation would be for the Corpus Christi LATA to be assigned a new NPA and the Austin LATA to retain the 512 NPA. In addition, a second, new NPA would be requested from the North American Numbering Plan Administrator for the overlay of the Austin LATA when additional NPA relief is required. Attachment 3 to Order Number 3 in these projects is a map of the Austin and Corpus Christi areas affected by this plan. Relief provided by this plan would be projected to last until the year 2011 for the Corpus Christi NPA and until 2004 for the Austin 512 NPA configuration. Once the overlay NPA is introduced in the Austin area, not before the year 2000, the relief provided would last through the year 2010. Relief implementation for this activity would begin in September 1998 and conclude 12 months later, in September 1999.

The commission is considering whether to delegate to the Number Administrator the authority to implement the relief recommended in the Industry Plan, subject to the condition that the Number Administrator report back to the commission every three months on the status of customer education efforts and technical implementation of the relief plan.

Persons who wish to intervene in this proceeding prior to the commission issuing a final decision delegating authority to the Number Administrator to implement the NPA relief recommendations for the Metropolitan Houston (713/281) NPAs, the Metropolitan Dallas (214/972) NPAs, and the Austin/Corpus Christi area (512) NPA, should file a motion to intervene and a statement of position with the Public Utility Commission of Texas, at P.O. Box 13326,

Austin, Texas 78711-3326 no later than June 5, 1998. All motions to intervene and statements of position should specifically refer to Project Numbers 16899, 16900, and 16901. Ten copies of the motion to intervene and statement of position should be filed with the commission's filing clerk. A motion to intervene must comply with PUC Procedural Rule §22.103(b). All persons filing a motion to intervene must also file, concurrently with the motion, a statement of position. The statement of position must comply with the requirements of PUC Procedural Rule §22.124(b). If the movant disagrees with the proposal for NPA relief, the statement shall provide a detailed list of the points of disagreement, and an explanation of such areas of disagreement.

After reviewing any filings, the commission will determine whether to conduct further proceedings concerning the NPA relief recommendations for the Metropolitan Houston (713/281) NPAs, the Metropolitan Dallas (214/972) NPAs, and the Austin/Corpus Christi area (512) NPA. The commission shall have the authority given to a presiding officer pursuant to PUC Procedural Rule §22.202. The commission may identify issues raised by the motion(s) to intervene and statement(s) of position and establish a schedule for addressing those issues, including the submission of evidence, if necessary, and briefing and oral argument. The commission may conduct a public hearing.

TRD-9807778

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: May 12, 1998



### Public Notice of Proposal for Implementing Number Conservation Measures in the Fort Worth and San Antonio Exchanges

At its May 6, 1998 open meeting, the Public Utility Commission of Texas reviewed a proposal submitted by Southwestern Bell Telephone Company (SWBT) for implementing number conservation measures in the Fort Worth and San Antonio metropolitan exchanges in Project Number 18438 - *Number Conservation Measures in Texas*.

Under the proposal, if adopted by the commission, SWBT shall consolidate rate centers by October 1, 1998, according to the following plan: Fort Worth - consolidate 20 rate centers to nine according to the matrix and map in Attachment 1 of Order Number 4 in Project Number 18438; and San Antonio - consolidate 29 rate centers to one according to the matrix and map in Attachment 2 of Order Number 4 in Project Number 18438. Further, SWBT shall file compliance tariffs within 10 days of the issuance of a commission order approving the proposal. Also under the proposal, the Number Administrator shall notify all Texas codeholders, within 10 days of a commission order approving the proposal, that holders of more than one unused (vacant) NXX code in the proposed consolidated rate center area should voluntarily return those codes if there are no numbers assigned at implementation of the rate center consolidation. Finally, the Number Administrator shall consider the consolidated rate center boundary beginning 66 days or less prior to implementation when assigning new NXX codes.

Persons who wish to intervene in this proceeding prior to the commission issuing a final decision approving or rejecting the number conservation proposal for the Fort Worth and San Antonio exchanges should file a motion to intervene and a statement of position with the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than June 5, 1998. All motions to intervene and statements of position should specifically refer to

Project Number 18438. Ten copies of the motion to intervene and statement of position should be filed with the commission's filing clerk. A motion to intervene must comply with P.U.C. Procedural Rule §22.103(b). All persons filing a motion to intervene must also file, concurrently with the motion, a statement of position. The statement of position must comply with the requirements of P.U.C. Procedural Rule §22.124(b). If the movant disagrees with the proposal for implementing number conservation measures in the Fort Worth and San Antonio exchanges, the statement shall provide a detailed list of the points of disagreement, and an explanation of such areas of disagreement.

After reviewing any filings, the commission will determine whether to conduct further proceedings concerning the number conservation proposal for the Fort Worth and San Antonio exchanges. 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 motion(s) to intervene and statement(s) of position and establish a schedule for addressing those issues, including the submission of evidence, if necessary, and briefing and oral argument. The commission may conduct a public hearing.

TRD-9807777  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 12, 1998



## **Riceland Regional Mental Health Authority**

### **Request for Proposal**

Riceland Regional Mental Health Authority is issuing a Request for Proposal for an Annual Financial and Compliance Audit. To obtain a copy of the RFP contract:

Amanda Darr, CFO  
Riceland Regional Mental Health Authority  
P.O. Box 869  
Wharton, Texas 77488  
Telephone: (409) 532-3098  
Fax: (409) 532-0092  
TRD-9807690  
Marjorie Dornak  
Secretary  
Riceland Regional Mental Health Authority  
Filed: May 11, 1998



## **Teacher Retirement System of Texas**

### **Consultant Contract Award**

This consultant contract information is filed in compliance with the notice requirement under the Government Code, §2254.030.

The Teacher Retirement System of Texas (TRS) has contracted with a private consultant to conduct a study of TRS' portfolio trading costs.

TRS has executed a contract with Plexus Group, Inc. whose address is 11150 Olympic Boulevard, Suite 900, Los Angeles, California 90064.

The agreed compensation set forth in the contract is \$40,000. In addition, consultant will be compensated \$20,000 for the preparation of an analysis of trading costs for the 1997 calendar year. The contract is effective January 1, 1998, and will expire on December 31, 1998. Thereafter, the contract shall renew automatically at the end of each quarter for an additional calendar quarter.

Written quarterly reports regarding the analyses of TRS' global equity investments are required to be delivered to TRS not later than 30 days after the end of the sixth calendar week following the immediately preceding calendar quarter. Consultant may be requested to attend one TRS Board meeting per year to deliver an oral and written report to the Board. An executive summary of such report shall be delivered to TRS 15 days prior to the date of the meeting the consultant is to attend.

TRD-9807513  
Charles Dunlap  
Executive Director  
Teacher Retirement System of Texas  
Filed: May 8, 1998



## **Texas Department of Transportation**

### **Notice of Invitation-BRINSAP Section**

The Design Division of the Texas Department of Transportation (TxDOT) intends to enter into thirty-five professional service contracts pursuant to Texas Administrative Code, Chapter 2254, Subchapter A and 43 TAC §§9.30-9.43, to provide Statewide Routine Bridge Inspection Services. To be considered, a prime provider and any subproviders proposed on the team must be precertified by the deadline date for receiving the letter of interest for the advertised work category unless the work category is a non-precertified work category. To qualify for contract award, a selected prime provider must perform a minimum of 30% of the actual work. Please be advised that a prime provider or subprovider currently employing former TxDOT employees should 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 licensed in Texas who will sign and seal the work to be performed on the contract.

RFP Number: 48-9RFP5001 - The precertified work category that will be required for 100% of the work is 6.1.1 - Routine Bridge Inspection. The work to be performed shall consist of the inspection of ON-system and OFF-system bridges throughout the state, including load rating for all bridge types (e.g. cast-in-place concrete bridges, steel girder bridges, steel truss bridges, timber bridges, prestressed concrete beam bridges, bridge-class concrete culverts, etc.) The Consultant Selection Team has determined a range of scores for providers that are considered equally qualified to perform the work to be not less than 700 points out of a maximum 900 points.

Disadvantaged Business Enterprise (DBE) and Historically Underutilized Business (HUB) Goal: The assigned DBE and HUB participation goal for the overall work to be performed under this pool of thirty-five contracts is 20%. There is not a specific goal assigned to each individual contract.

Long List Evaluation Criteria: TxDOT will consider the following criteria in its review of all interested providers.

1. Past Performance Scores: Minimum requirements - The prime provider must submit two good, verifiable references in conjunction

with routine bridge inspection work with complete names, addresses and phone numbers. References may be from TxDOT or any other entity for which routine bridge inspection work has been completed. Proposed project manager must submit two good, verifiable references regarding his/her experience as a project manager in conjunction with routine bridge inspection work. In providing references, please only show the name, address and telephone number of a reference to be contacted. Written letters are not required and not preferred.

The list of provider teams submitting Letters of Interest will be sent to all TxDOT Bridge Inventory, Inspection, and Appraisal Program (BRINSAP) Coordinators, and these BRINSAP Coordinators will evaluate past performance as excellent, good, needs improvement, or no past history. Those evaluations will then be reviewed and considered by the Consultant Selection Team in scoring this item.

2. Professional Qualifications of the Team (Team Capability/Experience): The prime provider should provide information on their business, applicable certifications and recognition, and other pertinent information that demonstrate their qualification to perform the contract. The prime provider shall also provide demonstration of education, training, certification, awards, etc. for project personnel (including employees of subproviders). The prime provider and any proposed subproviders must have experience in performing similar contracts. Performance records on file with the State will be reviewed and considered; however, the lack of an evaluation for prior State of Texas work will not be held against a firm. Similar experience gained through other clients must be substantiated by verifiable references.

Project Manager: The Project Manager must have adequate experience in managing routine bridge inspection contracts or projects of similar nature. Minimum requirements: Registered as a Professional Engineer or be qualified for registration as a professional Engineer and have six years experience in bridge inspection or bridge design assignments in a responsible capacity and have completed a comprehensive training course based on the "Bridge Inspector's Training Manual" which has been developed by a joint federal-state task force. Must be precertified through TxDOT's precertification process.

Inspection Team Leader - Minimum Requirements: (1) Have a minimum of five years experience in bridge inspection assignments in a responsible capacity and have completed a comprehensive training course based on the "Bridge Inspector's Training Manual" which has been developed by a joint federal-state task force, or (2) current certification as a Level III or IV Bridge Safety Inspector under the National Society of Professional Engineer's program for National Certification in Engineering Technologies (NICET).

NOTE: Team-leaders and team-members may be technicians (i.e. non-P.E.'s). If you propose to use technicians in these roles, they are not precertified. The minimum qualifications as specified in the AASHTO "Manual For Condition Evaluation of Bridges" shall apply. You may submit a one page summary per technician to explain their experience and how they meet the minimum requirements. These pages will be allowed in addition to the five page letter of interest.

3. Experience of Project Team: The prime provider should designate experienced professional and technical staff to competently and efficiently perform the bridge inspections, either through their own personnel or subproviders. Identify the project team composition, project leadership, reporting responsibilities, and address how subproviders will fit into the management structure. Minimum Requirements - Project team members have successfully completed one to three bridge inspection contracts. Project team members have good references from previous bridge inspection contracts. Project team members have performed 300 - 800 bridge inspections.

4. Evidence of Compliance with DBE/HUB Goal: The assigned DBE and HUB participation goal for the overall work to be performed under this pool of thirty-five contracts is 20%. There is not a specific goal assigned to each individual contract; therefore, each precertified provider receives three points.

Deadline: A letter of interest notifying TxDOT of the provider's intent to submit a proposal will be accepted by fax at (512) 416-2105, or by hand delivery to Texas Department of Transportation, Design Division - BRINSAP Section, 118 Riverside Drive, Austin, Texas Attention: Mike Lynch, P.E., or by mail to Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483, Attention: Mike Lynch, P.E., State Bridge Inspection Engineer. Letters of interest will be received until 5:00 p.m. on June 5, 1998.

Letter of Interest Requirements: The letter of interest is limited in length to five 8 1/2 x 11 inch pages (10 point font size, single sided pages with no attachments or appendices) plus one page per technician outlining how they meet the requirements, if applicable, and must include the following: RFP Number 48-9RFP5001; an organizational chart containing names, addresses, telephone numbers and fax numbers of the prime provider and any subprovider(s) proposed for the team, as well as their proposed responsibilities (by work category) for the contract; 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; and special project related experience.

Agency Contact: Requests for additional information regarding this notice of invitation should be addressed to Mike Lynch, P.E., State Bridge Inspection Engineer at (512) 416-2174 or fax number (512) 416-2105.

TRD-9807796  
Bob Jackson  
Acting General Counsel  
Texas Department of Transportation  
Filed: May 13, 1998



#### Notice of Invitation - Design Division

The Texas Department of Transportation (TxDOT) intends to enter into two contracts with professional engineers, pursuant to Texas Government Code, Chapter 2254, Subchapter A, and 43 TAC §§9.30-9.43, to provide the following services. To be considered, a prime provider and any subproviders proposed on a team must be precertified by the deadline date for receiving the letter of interest in each of the advertised work categories, unless the work category is a non-listed work type. To qualify for a contract award, a prime provider must perform a minimum of 30% of the actual contract work. Please be advised, a prime provider or subprovider currently employing former TxDOT employees needs to be aware of the revolving door laws including Government Code, Chapter 572 and Section 52, Article IX, of the General Appropriations Bill. To be considered, the proposed team must demonstrate that they have a professional engineer registered in Texas who will sign and seal the work to be performed on the contract.

Contract Numbers 48-845P0003 and 48-845P0004: The precertified categories and the percent of work per category are: 14.1.1 - Soil Exploration (95%); and 14.2.1 - Geotechnical Testing (5%). The services to be performed will support the Design Division Geotechnical Branch in providing soil boring and testing for the design and construction of transportation facilities. This includes

drilling, sampling, testing, and monitoring of soil and rock according to the department's approved procedures. The consultant selection team has determined a range of scores for providers that are considered equally qualified to perform the work to be not less than 700 points out of a maximum 900 points.

Disadvantaged Business Enterprises (DBE) Goal: The goal for DBE participation for the work to be performed under this contract is 15% of the contract amount.

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 names and phone numbers of two separate satisfactory references for performing similar work. Preferred requirements: The team must provide three separate satisfactory written references for performing similar work.

2. Project Requirements (Team Capability/Experience): Soils Exploration (14.1.1) - Minimum requirements: As established by the minimum precertification standards. Preferred requirements: The team must have one professional engineer with experience in the soils exploration work category, technician/geologist with one year experience in geotechnical logging and driller with experience operating equipment in various soil conditions and conducting standard TxDOT Texas Cone Penetrometer Test. The team must have the ability to provide two weeks continuous drilling within 30 days of receipt of work order at any location in the state.

Geotechnical Testing (14.2.1) - Minimum requirements: As established by the minimum precertification standards. Preferred requirements: The team must have one Professional Engineer (P.E.) with demonstrated experience in geotechnical testing, two technicians with experience in geotechnical testing, and the ability to provide test results within 30 days of receipt of work order.

3. Special (Similar) Project Related Experience of Project Manager and Team Members: Soils Exploration (14.1.1) - Minimum requirements: The Project Manager must fully demonstrate that the team can perform the soil borings to the required depth in all types of soil conditions and can completely interpret the soil conditions derived from these borings. Preferred requirements: In addition to the above, the Project Manager must demonstrate capability to drill at remote locations anywhere in the state. The availability of at least two drill rigs is required.

Geotechnical Testing (14.2.1) - Minimum requirements: The Project Manager must demonstrate the capability to competently perform slope inclinometer monitoring and special laboratory testing procedures.

Preferred requirements: In addition to minimum requirements, the project manager must demonstrate his/her experience with inclinometer monitoring and laboratory test ASTM D 4767.

4. Evidence of Compliance with Assigned DBE Goal - A provider gets three points for meeting the assigned goal or zero points for not meeting the assigned goal.

Deadline: A completed letter of interest notifying TxDOT of the provider's intent to submit a proposal will be accepted by fax at (512) 416-2557 or by hand delivery, addressed to TxDOT, Design Division, Attention: George H. Odom, P.E., 118 East Riverside, Austin, Texas, 78704, or by regular mail addressed to TxDOT, Design Division, Attention: George H. Odom, P.E., 125 E. 11th St., Austin, Texas 78701-2483. Letters of Interest will be received until 5:00 p.m., on Friday, June 5, 1998.

Letter of Interest Requirements: The Letter of Interest is limited to three 8 1/2 x 11-inch pages, plus one page per reference, 12 point font size, single sided with no attachments or appendices, and must include Contract Numbers 48-845P0003 and 48-845P0004; an organizational chart containing names, addresses, telephone and fax numbers of the prime provider and any subprovider(s) 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; evidence of compliance with the assigned DBE 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; special project related experience; 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 George H. Odom, P.E. at (512) 416-2238 or fax (512) 416-2557.

TRD-9807795

Bob Jackson

Acting General Counsel

Texas Department of Transportation

Filed: May 13, 1998



#### Notice of Invitation - Pharr District

The Texas Department of Transportation (TxDOT) intends to enter a contract with a professional engineer, pursuant to Government Code, Chapter 2254, Subchapter A, and 43 TAC §§9.30-9.43, to provide the following services. To be considered, a prime provider and any subproviders proposed on the team must be precertified by the deadline date for receiving the letter of interest for each of the advertised work category(s), unless the work category is a non-listed work category. To qualify for contract award, a selected prime provider must perform a minimum of 30% of the actual contract work. Please be advised, a prime provider or subprovider currently employing former TxDOT employees, needs to be aware of the revolving door laws, including Government Code, Chapter 572 and Section 52, Article IX of the General Appropriations Bill. To be considered, the proposed team must demonstrate that they have a professional engineer registered in Texas who will sign and seal the work to be performed on the contract.

Contract Number 21-845P5021: The precertified work categories and the percent of work per category are: 1.5.1 Feasibility Studies (15%); 2.1.1 Traffic Noise Analysis (2%); 2.2.1 Air Quality Analysis (2%); 2.3.1 Wetland Delineation (4%); 2.4.1 Nationwide Permit (2%); 2.4.2 Sec. 404 (33 U.S.C. Sec. 1344) Individual Permits (including mitigation monitoring) (2%); 2.4.3 U.S. Coast Guard and U.S. Army Corps of Engineers, Sec 10 (1%); 2.6.1 Protected Species Determination (1%); 2.6.2 Biological Assessments (2%); 2.6.3 Biological Surveys (3%); 2.8.1 Surveys Research and Documentation of Historic Buildings and Objects (3%); 2.10.1 Archaeological Surveys, Documentation, Excavations, Testing Reports and Data Recovery Plans (2%); 2.12.1 Socio-Economic and Environmental Justice Analyses (3%); 2.13.1 Hazardous Materials Assessment (1%); 2.14.1 Environmental Document Preparation (6%); 3.2.1 Route Studies and Schematic Design - Major Roadways (19%); 3.4.1 Minor Bridge Layouts (3%); 3.5.1 Major Bridge Layouts (3%); 7.1.1 Traffic Engineering Studies (3%); 10.1.1 Hydrologic Studies (2%); 10.2.1 Basic Hydrologic Design (3%); 15.1.1 Survey (5%); 15.1.2 Parcel

Maps (2%); 15.1.3 Legal Descriptions (3%); 15.1.4 Right of Way Maps (5%); 15.3.1 Aerial Mapping (1%); 15.4.1 Control for Aerial Mapping (2%). The work will be performed in Brooks County and shall consist of identifying and evaluating the feasibility of three alternate routes for a future US 281 freeway facility from Jim Wells/Brooks County line to SH 285 in the City of Falfurrias and from SH 285 south to FM 3066. The work will include the preparation of an environmental document and an approved FHWA schematic layout for the preferred route selected, participation in public meetings and hearing process, and preparation of a right-of-way map and estimated right-of-way, utility adjustments and project construction cost.

Historically Underutilized Business (HUB) Goal: The goal for HUB participation in the work to be performed under this contract is 30% of the contract amount.

Long List Criteria: TxDOT will consider the following criteria in its review of all interested providers:

1. Past Performance Scores:

Minimum Qualifications: Must provide one name and phone number of a reference for which a team member did a feasibility or a route study and held one public meeting. Preferred Qualifications: Must provide four names and phone numbers of references for whom a team member(s) did at least two feasibility and two route studies through the level in which a preferred route was selected in one of the studies in at least a rural/semi-urban setting.

2. Project Requirements (Team Capability/Experience):

Feasibility Studies (1.5.1) - Minimum Qualifications: As established by the precertification standards. Preferred Qualifications: The assigned team member(s) must have completed four feasibility studies for a new expressway facility or for expanding a two lane facility and at least one that considered the impacts to a populated area between five to ten thousand.

Traffic Noise Analysis (2.1.1), Air Quality Analysis (2.2.1) - Minimum Qualifications: As established by the precertification standards. Preferred Qualifications: The assigned team member(s) must have prepared four traffic noise/air quality analysis through the approval of the Environmental Protection Agency.

Wetland Delineation (2.3.1) - Minimum Qualifications: As established by the precertification standards. Preferred Qualifications: The assigned team member must have five years of field experience in wetland delineation of the types existing in creeks and fresh water ponds.

Nationwide Permit (2.4.1) - Minimum Qualifications: As established by the precertification standards. Preferred Qualifications: Employ one employee with working knowledge of the nationwide permit process with five years of experience in nationwide permit determination and jurisdictional water identification.

Individual Permits (including mitigation and monitoring) (2.4.2) - Section 404 (33 U.S.C. §1344) - Minimum Qualifications: As established by the precertification standards. Preferred Qualifications: Employ a team member with working knowledge of the individual §404 Permit process, with six years of experience, and who has applied for and received three individual permits.

U.S. Coast Guard and U.S. Army Corps of Engineers, §10 (Title 33, U.S.C. §403) (2.4.3) - Minimum Qualifications: As established by the precertification standards. Preferred Qualifications: Employ one employee with six years experience and working knowledge of the Rivers and Harbors Act, §10 who has applied for and received four navigation-related permits.

Protected Species Determination (2.6.1) and Biological Assessments (2.6.2) - Minimum Qualifications: As established by the precertification standards. Preferred Qualifications: Employ one employee with four years experience in having performed species determinations and assessments.

Biological Surveys (2.6.3) - Minimum Qualifications: As established by the precertification standards. Preferred Qualifications: Employ one employee with four years experience in habitat recognition, including field experience with or as a recognized expert for the species/habitat of concerns.

Survey Research and Documentation of Historic Buildings and Objects (2.8.1) - Minimum Qualifications: As established by the precertification standards. Preferred Qualifications: Employ one employee with five years of direct experience performing surveys, research or documentation of historic buildings, structures and objects.

Archaeological Surveys, Documentation, Excavations, Testing Reports and Data Recovery Plans (2.10.1) - Minimum Qualifications: As established by the precertification standards. Preferred Qualifications: Employ one employee with three additional years of experience in archaeological research and field and analytic experience in archaeology.

Socio-Economic and Environmental Justice Analyses (2.12.1) - Minimum Qualifications: As established by the precertification standards. Preferred Qualifications: Employ one employee with four years of full-time experience performing socio-economic analysis for environmental documents in a rural/semi-urban setting.

Hazardous Material Assessment (2.13.1) - Minimum Qualifications: As established by the precertification standards. Preferred Qualifications: Employ one employee with four years experience performing Phase I and II site assessments.

Environmental Documentation Preparation (2.14.1) - Minimum Qualifications: As established by the precertification standards. Preferred Qualifications: Employ a team member or combination of team members with experience in completing four transportation projects through the issuance of the FONSI; with participation in the preparation of and management of environmental documents for three environmental impact statements through the Record of Decision.

Route Studies and Schematic Design - Major Roadways (3.2.1) - Minimum Qualifications: As established by the precertification standards. Preferred Qualifications: Employ a team member(s) with six years engineering experience and having completed a total of three route studies (at least one in a rural/semi-urban setting) along new location for an expressway or, as a minimum, a four lane divided rural facility and at least one that considered the impacts to a populated area between five to ten thousand.

Minor Bridge Layouts (3.4.1) - Minimum Qualifications: As established by the precertification standards. Preferred Qualifications: Employ a team member with six years experience in preparing bridge layouts for multiple boxes and simple bridge spans.

Major Bridge Layouts (3.5.1) - Minimum Qualifications: As established by the precertification standards. Preferred Qualifications: Employ a team member with six years of engineering experience with experience in preparing bridge layouts for overpass and underpass type structures with 135 foot spans.

Traffic Engineering Studies (7.1.1) - Minimum Qualifications: As established by the precertification standards. Preferred Qualifications: Employ a team member with six years experience with experience in performing traffic engineering studies in a rural/semi-urban setting

in which one considered the impacts generated by international commerce.

Hydrologic Studies (10.1.1) - Minimum Qualifications: As established by the precertification standards. Preferred Qualifications: Employ a team member with six years experience and knowledge in analyzing watersheds greater than 200 acres in rolling to flat type terrain.

Basic Hydraulic Design (10.2.1) - Minimum Qualifications: As established by the precertification standards. Preferred Qualifications: Employ a team member with six years experience and who demonstrates their experience in sizing culverts for a calculated discharge.

Survey (15.1.1), Parcel Maps (15.1.2), Legal Descriptions (15.1.3), Right of Way Maps (15.1.4) - Minimum Qualifications: As established by the precertification standards. Preferred Requirements: Employ a registered professional land surveyor with previous land grants experience and two technicians with seven years experience.

Aerial Mapping (15.3.1) - Minimum Qualifications: As established by the precertification standards. Preferred Qualifications: Employ a team member with eight years of experience in aerial mapping.

Horizontal and Vertical Control for Aerial Mapping (15.4.1) - Minimum Qualifications: As established by the precertification standards. Preferred Qualifications: Employ a registered professional land surveyor with demonstrated experience in Global Positioning System.

### 3. Special (Similar) Project Related Experience of Project Manager and Team Member:

Traffic Noise Analysis (2.1.1), Air Quality Analysis (2.2.1), Wetland Delineation (2.3.1), Nationwide Permit (2.4.1), Individual Permits (2.4.2), U.S. Coast Guard and U.S. Army Corps of Engineers, Sec. 10 (2.4.3), Protected Species Determination (2.6.1), Biological Assessments (2.6.2), Biological Surveys (2.6.3), Surveys Research and Documentation of Historic Buildings and Objects (2.8.1), Archaeological Surveys, Documentation, Excavations, Testing Reports and Data Recovery Plans (2.10.1), Socio-Economic and Environmental Justice Analyses (2.12.1), Hazardous Materials Assessment (2.13.1), Minor Bridge Layouts (3.4.1), Major Bridge Layouts (3.5.1), Traffic Engineering Studies (7.1.1), Hydrologic Studies (10.1.1), Basic Hydrologic Design (10.2.1), Survey (15.1.1), Parcel Maps (15.1.2), Legal Descriptions (15.1.3), Right of Way Maps (15.1.4), Aerial Mapping (15.3.1), Control for Aerial Mapping (15.4.1) - Minimum Requirements: The prime or sub provider employ team members who can demonstrate the concerns that must be identified, considered, investigated, etc., in performing the identified categories of work for this contract. Preferred Requirements: The team should demonstrate experience in new locations around an area with five to ten thousand population for which farming and ranching are the major economy generators.

Feasibility Studies (1.5.1), Environmental Document Preparation (2.14.1), Route Studies and Schematic Design - Major Roadways (3.2.1) - Minimum Requirements: The prime or sub provider employ team members who can demonstrate the concerns that must be identified, considered, investigated, etc., in performing the identified categories of work for this contract. Preferred Requirements: The project manager should demonstrate his knowledge and experience in the following major categories: Feasibility Study (1.5.1), Environmental Documentation Preparation (2.14.1) and Route Studies and Schematic Design (3.2.1). The team should demonstrate experience in new locations around an area with five to ten thousand population for which farming and ranching are the major economy generators.

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 (956) 702-6110, by hand delivery, or mail to TxDOT, Pharr District, Attention: Homero L. Gutierrez, P.E., P.O. Drawer EE, 600 West Expressway 83, Pharr, Texas 78577. Letters of interest will be received until 5:00 p.m. Friday, June 5, 1998.

Letter of Interest Requirements: The letter of interest is limited in length to nine 8 1/2 x 11 inch pages (10 or 12 point font size, single sided with no attachments or appendices), and must include the contract number 21-845P5021; an organizational chart containing the names, addresses, telephone and fax numbers of the prime provider and any subproviders proposed for the team and their contract responsibilities by work category; certification that the proposed team individuals are currently employed by either the prime provider or a subprovider; the prime provider's project manager and key personnel proposed for the contract; team capabilities; special project related experience; evidence of compliance with the assigned HUB goal through the prime provider or subprovider identified on the team, or a written commitment to make a good faith effort to meet the assigned goal; project related experience performed since precertification; and other pertinent information addressed in the notice, including references for related projects. It will be up to the provider to determine how he will best cover the requested information in his letter of interest within the allowed number of pages.

Agency Contact: Requests for additional information regarding this notice of invitation should be addressed to Homero L. Gutierrez, P.E., at (956) 702-6158 or fax (956) 702-6100.

TRD-9807421  
Bob Jackson  
Acting General Counsel  
Texas Department of Transportation  
Filed: May 7, 1998

## **Texas Water Development Board**

### **Request for Statement of Qualifications from Consultants Water Research Study on Financing Methods for Water and Wastewater Infrastructure**

The Texas Water Development Board (the Board) requests the submission of Statements of Qualifications from interested Consultants leading to the possible award of a contract for state Fiscal Year 1998 to conduct a water research study that surveys and analyzes water supply and wastewater infrastructure financing methods for political subdivisions in an amount not to exceed \$80,000 from the Research and Planning Fund. Rules governing the Research and Planning Fund (31 Texas Administrative Code, Chapter 355) are available upon request from the Board, or may be found at the Secretary of State's Internet address: <http://www.sos.state.tx.us/tac/31/index.html>.

Description of the Research Objectives and Purpose. The scope of work for the proposed research will include a survey of infrastructure financing methods available in both Texas and other western states, as well as a determination of the types of fees that political subdivisions in Texas may assess to finance such infrastructure projects under current law. The scope of work will also require a determination of the advantages and disadvantages of each financing method depending upon the type, size, location, growth rate, per capita income, and other



characteristics of the political subdivision and the area needing the infrastructure. That determination will include an assessment of the effects or potential effects of each method on development patterns, economic growth, and housing costs based on case histories, where available, of implementation of each method. The scope of work will also include a determination of how effective each financing method is in raising the required monies. Finally, the research will identify which parties tend to bear the actual costs of each financing method.

Description of Consultant Criteria. The consultant should demonstrate prior experience in water related infrastructure financing and economic analysis and be conversant with advanced financial analysis methods and advanced statistical methods. The consultant should be able to review, research, analyze, evaluate and interpret data and research findings; and have excellent oral presentation and writing abilities. If the consultant is short-listed, the consultant should be prepared to make an oral presentation to staff members of the Board.

Deadline for Submittal, Review Criteria and Contact Person for Additional Information. Eight double-sided copies of a completed

Statement of Qualifications must be filed with the Board prior to 5:00 PM, June 22, 1998. Respondents to this request shall limit their Statement of Qualifications to 10 double-spaced pages, excluding the resumes of the project team members. Statements of Qualifications can be directed either in person to Ms. Danna Stecher, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas; or by mail to Ms. Danna Stecher, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231. Requests for information and the consultant evaluation criteria should be directed to Ms. Danna Stecher at the preceding address or by calling (512) 936-0854.

TRD-9807878  
Suzanne Schwartz  
General Counsel  
Texas Water Development Board  
Filed: May 13, 1998



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